

REPORT

PLANNING AND DEVELOPMENT COUNCIL MEETING

MEETING DATE: MARCH 19, 2018

FROM: Municipal Enforcement, Planning and Legal Departments

DATE: March 1, 2018

SUBJECT: Cannabis Legalization and Sale

LOCATION: Town wide

WARD: Town wide

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RECOMMENDATION:

That the report on *Cannabis Legalization and Sale* from the Municipal Enforcement, Planning and Legal Departments, dated March 1, 2018, be received.

KEY FACTS:

The following are key points for consideration with respect to this report:

- Council directed staff to further review the issue of cannabis sale in Oakville focusing on
 - Public consultation
 - Proximity to schools and residential uses

BACKGROUND:

At its meeting of February 26, 2018, Council provided the following direction to staff:
“That the following clause be referred back to staff to review and report back at the March 19, 2018 Planning and Development Council meeting:

That should the Ontario Cannabis Retail Corporation (OCRC) continue with its plan to locate a retail location in Oakville, that the OCRC be requested to delay the implementation of a retail location in Oakville in order to provide transparent and substantive public consultation on the proposed location, to ensure that the location is not in close proximity to schools and residential uses.”

Staff have reviewed Council’s direction and spoken with OCRC representatives in order to provide Council a more complete update on the current status of cannabis sale in Oakville.

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COMMENT/OPTIONS:

Oakville cannabis retail location

The stated objectives of Federal Bill C-45 are to prevent young persons from accessing cannabis, to protect public health and public safety by establishing strict product safety and product quality requirements and to deter criminal activity by imposing serious criminal penalties for those operating outside the legal framework. A key recommendation of the Federal Task Force on Cannabis Legalization and Regulation was that retail sales be regulated by provinces in close collaboration with municipalities, including: limits on density and location of storefronts, such as distance from schools, community centres, and public parks. Ontario's *Cannabis Act* prohibits retail sale of cannabis in certain places such as a hospital; psychiatric facility; long-term care home; pharmacy; campuses of a post-secondary institution; school; private school; child care centre; home child care; or a prescribed place. However, Ontario's *Cannabis Act* does not contain any siting restrictions on proximity to schools or residential uses. The LCBO indicates that it will utilize guidelines to identify specific store locations with the objective of ensuring that youth are protected and the illegal market is addressed.

When a store location is identified, a public notice will be posted at <https://lcbocannabisupdates.com>. The public can also submit general or specific comments on store locations at <https://lcbocannabisupdates.com/feedback/>. Residents that are concerned about a potential location are encouraged to submit comments to the Province as early as possible.

The LCBO is currently in the process identifying sites for retail locations based on meetings with municipalities. Provincial staff have met with Town staff to provide an update on the program and to request information from the town on possible locations that may be appropriate. Town staff indicated that we supported the Federal Task Force recommendations around locations and that the LCBO staff should focus their efforts in commercial areas which were highly accessible. These areas include the town's three major growth areas, Midtown, Uptown and Palermo, the Trafalgar Corridor, Dorval Crossing area at Dorval north of the QEW and the Burloak commercial area south of the QEW. Town staff also indicated that locations within our three main street areas, Downtown, Kerr and Bronte, were locations that they should not consider.

The town's zoning by-law would permit a cannabis store wherever a retail store is permitted as shown in the map attached as Appendix A. At this time, there is no land use planning justification for distinguishing between a cannabis store and any other retail store that contains regulated substances like cigarettes and alcohol. In addition, the town has limited control on locations given our inability to regulate Provincial bodies.

Despite these constraints, LCBO staff have indicated that they are focusing their efforts in the areas identified by town staff and have entered into discussions with a landowners in those areas. However, they would not provide details of which location until the lease arrangements are finalized. When finalized they will notify the public through their on-line consultation noted above.

Enforcement

Enforcement of recreational cannabis regulations continues to be a staff concern. The use of recreational cannabis will only be permitted in a private residence and is expressly prohibited in the following locations

- A public place
- A workplace
- A vehicle or boat
- Any prescribed place

Responsibility for cannabis regulations is not made clear in the Act or proposed regulations. Moving violations such as impaired operation of a vehicle would naturally be the responsibility of the police. Other violations, such as use in a public place, are not as clear. Section 21 of the *Cannabis Act* states

“A power that may be exercised under this Act by a police officer, other than a power set out in section 19, may also be exercised by a person designated under subsection 1 (3) of the Provincial Offences Act for the purposes of this Act”

This section makes it possible for enforcement of cannabis regulations, such as use in a public place, to be downloaded to municipal law enforcement officers (by-law officers) – this has been highlighted in AMOs recent policy statement (Appendix B). Without further clarity, it is not possible to understand municipal impacts or costs associated with the legislation.

Nuisance issues

Nuisance issues related to the use of recreational cannabis are also an enforcement concern. The *Cannabis Act* restricts use of recreational cannabis to private property. While this is preferable to public use, there are still significant nuisance issues that will arise, such as odor from one yard to another or odor between adjoining units of condominiums or apartments.

Without provincial legislation to deal with these issues, complaint handling and enforcement will be a municipal responsibility. The town's nuisance by-law speaks to odors as a public nuisance. It is unclear if the courts would find the use of a legal substance in a permitted area as a public nuisance.

It is anticipated that nuisance issues associated with legalized recreational cannabis will result in a significant increase in requests for enforcement.

Home growing

In addition to possession of recreational cannabis purchased at an OCRC store, each home will also be permitted to grow up to four cannabis plants. This has the potential to be a significant draw on enforcement resources and responsibility has not been clarified by the province.

It is anticipated that complaints will be received due to plant odor and exceeding plant limits. Since the violation occurs on private property, investigating officers will not have the authority to enter onto the property to collect evidence. This will likely cause frustration between neighboring residents, as well as between residents and the municipality. Without role clarity and provision of appropriate authorities to deal with complaints (i.e. inspection authority), staff anticipate receiving a significant number of complaints, with little possible remedy.

In addition, regulations allow for the transportation of one cannabis plant from private property to private property. Role clarity in dealing with this violation has also not been provided and may result in a draw on enforcement resources.

Enforcement and legal costs

Ontario's *Cannabis Act* includes deterrents to discourage illegal cannabis activities, including high fines for individuals or corporations convicted of illegal selling or distribution, provincial penalties for driving while impaired and zero tolerance for young, novice and commercial drivers who drive with cannabis in their system.

Policing and enforcement issues that accompany either the continued illegal consumption of marijuana or enforcement of regulations contained in the *Cannabis Act*, will require significant municipal resources. The Province has announced an investment in police training, investigations and public education (Appendix C). Funding will be distributed to municipalities on a per household basis, adjusted to ensure that each municipal government receives no less than \$10,000. If the province's portion of the revenue from federal excise duty on recreational cannabis for the first two years of legalization exceeds \$100 million, the province will provide municipal governments with 50 per cent of the surplus.

Although it is not currently possible to quantify all municipal costs related to recreational cannabis, staff have reviewed enforcement scenarios. Based on the review, staff believe that at a minimum, town enforcement activity will result in \$25,000 in one-time and \$232,000 in ongoing costs.

CONSIDERATIONS:

(A) PUBLIC

The OCRC provides updates on regulations, locations and consultation on its website <https://lcbocannabisupdates.com> and public comment on siting locations can be made at <https://lcbocannabisupdates.com/feedback/>.

(B) FINANCIAL

Municipalities may be responsible for significant costs related to enforcing aspects of the *Cannabis Act*. Without a detailed understanding of the municipal role staff are unable to determine cost impacts.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

Addressing local issues arising from the legalization of marijuana will require the involvement of multiple town departments, including legal, planning, fire and municipal enforcement.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- have environmentally sustainable programs/services
- provide outstanding service to our residents and businesses
- be accountable in everything we do

(E) COMMUNITY SUSTAINABILITY

Ensuring that municipal issues and impacts are considered by the provincial and federal governments while introducing cannabis legislation addresses the pillars of social, economic and cultural sustainability.

APPENDICES:

Appendix A – Retail Store Zoning

Appendix B – AMO Policy Statement

Appendix C – Provincial Funding Statement

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