

Item:



Committee of the Whole Report

DATE: Wednesday, December 05, 2018

WARD(S): ALL

TITLE: ONTARIO RECREATIONAL CANNABIS LEGISLATION

FROM:

Mary Reali, Deputy City Manager, Community Services

ACTION: FOR INFORMATION

Purpose

This report provides Council with information on provincial legislation related to cannabis legalization and its potential regulatory impacts on municipalities.

Report Highlights

- Recreational cannabis became legal on October 17, 2018 across Canada.
- The Province of Ontario introduced legislation that initially limits the sale of cannabis through its on-line store, but which will allow sales to be conducted through authorized private retail stores, as of April 1, 2019.
- Municipalities have the option to prohibit private retailers but must exercise their option through a resolution of Council by January 22, 2019.
- Staff are undertaking a poll to assess public opinion on the subject of private retail stores, with the results being made available to Council prior to its meeting on December 12, 2018.
- With or without retail stores, cannabis will continue to be available through the Province's on-line store and legal stores in neighbouring municipalities; the public will continue to be able to legally consume cannabis.
- Amendments to the *Smoke Free Ontario Act, 2017*, now permit the smoking of cannabis in most places where the smoking of tobacco is allowed, but municipalities have the option to establish further restrictions through by-law. City of Vaughan staff will make these recommendations under separate cover in early 2019.

Recommendations

1. THAT this report be received for information.

Background

On October 17, 2018, the federal [Cannabis Act, 2018](#), legalized cannabis. Section 7 of this Act states that the purpose of the legislation is to protect public health and public safety and, in particular, to:

- (a) protect the health of young persons by restricting their access to cannabis;
- (b) protect young persons and others from inducements to use cannabis;
- (c) provide for the licit production of cannabis to reduce illicit activities in relation to cannabis;
- (d) deter illicit activities in relation to cannabis through appropriate sanctions and enforcement measures;
- (e) reduce the burden on the criminal justice system in relation to cannabis;
- (f) provide access to a quality-controlled supply of cannabis; and
- (g) enhance public awareness of the health risks associated with cannabis use.

While the federal legislation legalized cannabis, the establishment of more specific regulations with respect to sale and consumption fall under provincial jurisdiction.

To this end, the recently elected Ontario government passed the [Cannabis Statute Law Amendment Act, 2018](#), which amends a number of relevant Acts, to provide certainty to the marketplace and to permit the consumption of cannabis anywhere that smoking of tobacco is allowed. Specifically, the purpose of the Act is to:

- (a) protect Ontario's youth by ensuring that cannabis remains out of the hands of people under the age of 19;
- (b) protect Ontario's roads and ensure that police enforce a strict prohibition against drug-impaired driving; and
- (c) combat the illegal market through enforcement against those operating outside the legal regime and by providing consumers with a compelling retail alternative.

As of October 17, 2018, cannabis in Ontario has been available for purchase on-line and starting on April 1, 2019 the Province will begin licensing private retail stores with oversight by the Alcohol and Gaming Commission of Ontario. According to the province,

the model will foster competition to better combat the illegal market and to help build a safe, reliable retail system where public safety is paramount.

Ontario municipalities have been given a one-time opportunity to opt-out of the Province's private cannabis retail model. In those municipalities that do not opt out of the private retail model, retail stores will have to go through an authorization process that includes distancing requirements from sensitive uses and consultation with the municipality.

Municipalities maintain their authority to enact and enforce by-laws that will or can further regulate smoking of cannabis in public places, beyond the provincial minimum standards, as established by the recent amendments in the *Smoke Free Ontario Act, 2017*.

Shortly after the legalization date was confirmed by the Federal Government, the City of Vaughan joined the York Region Cross Municipal Working Group on Cannabis and complemented this with the formation of its own Internal City of Vaughan Cannabis Working Group (comprised of staff from By-law, Planning, Building Standards, Vaughan Fire and Rescue Services, Legal and Corporate & Strategic Communications). These groups continue to operate with the intent of understanding the broader implications of government policy and assisting with the development of local policy responses. As part of this, the City of Vaughan has established a [cannabis information web page](#) to provide Vaughan citizens with the latest information on the sale and consumption of cannabis within the City's boundaries. This issue continues to evolve with additional funding information and the release of retail licensing regulations coming as recently as November 21. As a result, the City also continues to consult and work with its regulatory partners, such as York Regional Public Health and York Regional Police, to monitor local impacts and concerns, and to inform its policy development and enforcement strategy.

Public inquiries respecting the consumption of cannabis have been few. In the first month following legalization, the City received 27 calls (nine through By-law & Compliance, Licensing & Permit Services, six through Access Vaughan, and 12 through the Offices of the Mayor and Members of Council). 23 of the 27 were requests for information.

Over this same period, across the City's social media platforms (i.e., Facebook, Twitter and Instagram), there were 11 posts from the public, 91 likes, four comments, and four shares/retweets. All public engagements were reactive (i.e., in response to a City post).

In its 2018 Citizen Satisfaction Survey, conducted by Ipsos over the summer, residents were asked to identify the most important issue facing their community and that should receive the greatest attention from the Mayor and Members of Council. Not one of the 806 respondents identified the legalization of recreational cannabis as such an issue. In addition, health and community safety, which are commonly linked to concerns about the legalization of recreational cannabis, were raised by 9 per cent and 5 percent of respondents, respectively.

As part of the City's ongoing efforts to understand residents' views on key issues, staff are undertaking additional public engagement to identify the community's perceptions on the recent legalization of recreational cannabis. Staff felt it was appropriate to consult with citizens and key stakeholders through a statistically significant telephone survey administered by Forum Research Inc. Results from these polls are expected to be made available to Council before their meeting of December 12, 2018.

In the meantime, in the Greater Toronto Area, municipal responses to cannabis legislation have varied. Markham and Richmond Hill have enacted by-laws to essentially prohibit consumption of cannabis in all public places and have also announced their intention to opt out of the Province's private retail model. Staff conducted a municipal comparator by reaching out to 22 municipalities across Ontario to gain a better understanding of their approach regarding the opting out provision. Of the 22 municipalities, staff have communicated with 18 and have confirmed their intent to proceed with a staff report to their respective Council's prior to the January 22, 2019 opt out deadline.

Previous Reports/Authority

Memorandum to Mayor and Members of Council and Corporate Management Team: Ontario introducing cannabis legislation, September 26, 2018 (see Attachment 1).

Analysis and Options

Under section 41 of its [*Cannabis Licence Act, 2018*](#), the Province has given municipalities until January 22, 2019 to opt out of the private retail model. Municipalities that want to opt out must do so through a resolution of Council. Failure to pass a resolution by this date will automatically signal that the Province can accept applications from interested parties for potential cannabis stores within that municipality. Municipalities that opt out by January 22, 2019 may opt in at a future date through a resolution of Council, but cannot opt out again.

Through several information releases, and most recently through its Economic Outlook and Fiscal Review presented on November 15, the Province of Ontario announced that it had earmarked \$40 million (known as the Ontario Cannabis Legalization

Implementation Fund) over two years to help municipalities with the implementation costs of recreational cannabis legalization. Much of this financial assistance is dependent on whether a municipality adopts the private retail model or opts out of it. Of the total funds earmarked, \$15 million will be distributed prior to the opt-out deadline. Another \$15 million will be distributed after the opt-out deadline and the remaining \$10 million will be set aside to help address any unforeseen circumstances.

In addition, the Province committed, over this same period, 50 per cent of its portion of any federal excise duty on recreational cannabis that exceeds \$100 million to municipalities that have not opted out of its private retail model as of January 22, 2019.

Opting Out

The Province announced that starting on December 17, 2018, the AGCO will begin receiving applications for private cannabis retail stores. However, any applications for the establishment of a private cannabis retail store within the boundaries of a municipality that has opted out shall be refused by the Province. In such instances, cannabis will continue to be legally and readily available to the public through the Province's on-line cannabis store, and through any stores in neighbouring municipalities where private cannabis retail may be permitted.

For municipalities that opt out of the Province's private retail model, funding will be provided in two installments. Prior to the opt-out deadline, every municipality shall receive an initial payment on a per-household basis, with no municipality receiving less than \$5,000. After the opt-out deadline, municipalities that have opted out will receive a second lump sum of \$5,000.

It is important to note that although a municipality can reverse its decision to opt out after the January 22 opt-out deadline, doing so will not make the municipal government eligible for the additional funding from the Ontario Cannabis Legalization Implementation Fund. Therefore, the municipality that reverses its opt-out decision after January 22, will only be eligible for the minimum second lump sum of \$5,000.

Not Opting Out

In municipalities that decide not to opt out and accept the Province's private retail model, the Province, through the AGCO, will accept applications for private retail stores. Section 42 of the *Cannabis Licence Act, 2018* will not allow municipalities to pass any by-laws that distinguish between land use on the basis of the sale of cannabis or that establish a system of licences respecting the sale of cannabis. Therefore, municipalities will not be able to use zoning regulations to restrict the location of provincially authorized retail stores beyond those zoning restrictions already in existence for general retail. Similarly, municipalities will not be able to license and establish any regulations

pertaining to cannabis retail operations. However, the Province's regulatory framework does not in any way prevent property owners from refusing to lease premises to an authorized cannabis retailer.

The Province's legislation provides for a process to grant licences that includes distancing restrictions with regards to sensitive uses, such as 150 metres from schools. Regulations further stipulate specific operational restrictions, such as preventing entrance to anyone who is under the age of 19 years and restricting daily operating hours between 9:00 a.m. and 11:00 p.m. The Act also makes ineligible any applicant whose proposal is not in the public interest. Subsection 4(7) of the Act requires that public notice of an application for a retail store be given and Subsection 4(9) requires that such notice include a request for the municipality to make a written submission to the Registrar as to whether such application is in the public interest, having regard to the needs and wishes of the residents. In accordance with the recently released [O. Reg. 468/18](#), public interest is limited to: the protection of public health and safety; the protection of youth by limiting their access to cannabis; and the prevention of illicit activities in relation to cannabis.

In order to meet the consultation requirements under the provincial process, the City would develop a municipal cannabis policy statement that would articulate the public interest aligned with the provincial regulation O. Reg. 438/18, noted above. This policy statement would form the basis for any City submission respecting a cannabis retail store application within the borders of the City of Vaughan.

For municipalities that adopt the private retail model, earmarked funding will also be provided in two installments with the first payment coming prior to the opting-out deadline on a per-household basis and, unlike opting out, a second payment calculated on the same basis, coming after the opting-out deadline. The \$10 million set aside by the Province to deal with unforeseen circumstances will be distributed with priority being given to municipalities that have not opted out of the private retail model; however, a specific funding formula has not yet been released.

Risks Associated with Options

Under the Province's private retail model, municipalities cannot explicitly regulate the sale of cannabis through land use regulations nor impose conditions on cannabis retail businesses; however, even under the opt-out scenario, municipalities are very limited on their use of zoning or licensing to deal with illegal cannabis operations. However, licensed cannabis retailers must still comply with a municipality's general retail zoning provisions and all building and fire code regulations.

Under the Province's private retail licensing model, decisions with respect to the location of provincially-licensed businesses rest with the Registrar of Alcohol, Gaming and Racing, and cannot be appealed; however, municipalities are given an opportunity to provide input as to public interest.

By opting out of the Province's private retail model, municipalities arguably frustrate the primary objectives of both the federal and provincial governments by hindering safe, legal, retail options for cannabis buyers and potentially creating opportunities for criminal elements to capitalize on the restricted accessibility. There is also no indication that prohibiting retail stores locally, especially when they may be legally and readily accessible in neighbouring jurisdictions, will have a dampening impact on local demand and purchases. This reasoning is aligned with the findings from a [2018 cannabis report from Deloitte](#) that found that most people who consume cannabis will tend to obtain it through legal sources if these sources are available. This is also in line with the generally accepted principle that compliance levels are higher under circumstances where it is made easier to comply.

Opting out will also mean that the City will not be eligible for a full share of provincial funding, placing additional financial pressure on the municipality in dealing with any related illicit activity. According to the Deloitte report, legal retail sales in Ontario will range between \$700 million and \$1.68 billion and, depending on the actual sales volume, the City could be the recipient of additional funds, as the Province has announced 50 per cent of its portion of any federal excise duty on recreational cannabis that exceeds \$100 million to municipalities that do not opt out of the private cannabis retail model.

Regulatory Alignments

Irrespective of the City's approach to retail sales, the City will have to address both legal and illegal sale and consumption of cannabis. Staff will be coming forward in early 2019 with a report making recommendations to amend and bring its related by-laws in line with the Province's new regulations, including amendments recently made to the *Smoke Free Ontario Act, 2017*.

Additionally as with all regulatory municipal by-laws, while York Regional Police are authorized to enforce, when taking into consideration the efficient deployment of police resources, any by-law related matters will not be a priority. Primary jurisdiction, first response and responsibility will continue to remain with the By-law and Compliance, Licensing and Permit Services department, accordingly. As such, all by-laws must be created in a manner that establish the appropriate powers for enforcement staff, derived from and limited within the scope of the governing legislation. Out-right bans or prohibitions in circumstances where a higher legislative authority (such as the Province)

has allowed for regulation may be deemed overly broad/and *ultra-vires*, giving the by-law no effect, consequently open to challenge and/or the inability to prosecute. Enacting restrictive by-laws beyond a municipality's ability to enforce will be ineffective, inefficient and costly, with no public benefit and only serve to frustrate public expectations.

Financial Impact

On November 21, 2018, the Province disclosed additional details on how the \$40 million earmarked for offsetting the costs of recreational cannabis legalization will be distributed. Funding will be shared in a 50/50 split between upper and lower tier municipalities, with the ability for this split to be adjusted at the local level. The additional funds from the excess federal excise duty on cannabis will be dependent on a number of variables that are currently difficult to predict. The only certainty is that opting out will equate to lesser funding and that irrespective of whether a municipality opts out or not, there will be additional costs incurred to regulate public consumption, such as the erection of signs in City facilities and the ongoing need to educate and create awareness.

Broader Regional Impacts/Considerations

In providing the information in this report, City staff consulted with York Regional Public Health and York Regional Police on the potential impacts of the new legislation. Staff remain active members of the Cross Municipal Working Group on Cannabis and will continue to liaise and work with neighbouring municipalities, the Region and all relevant agencies, such as York Regional Police and York Regional Public Health, to coordinate policies, awareness campaigns and enforcement initiatives, where appropriate.

Conclusion

Opting out of the Province's private retail model will ensure that no cannabis stores become licensed within the City's boundaries; however, it will not eliminate illicit operators and, in fact, may encourage such operators to set up in Vaughan. It is also unlikely that opting out will have an impact on local consumption, given that illegal distribution and consumption currently exists, legal cannabis will still be readily available through the Province's on-line store and through any neighbouring municipality that allows provincially licensed stores.

Adopting the Province's private retail model will align the municipality with both the federal and provincial objectives of providing safe, legal and competitive retail alternatives for cannabis. Although allowing private retailers to operate in Vaughan will not eliminate illegal operations, it will make the business environment less desirable for such operations. Licensed and regulated retailers tend to operate in a manner that is consistent with the health, safety, well-being and overall interest of the public.

As staff are unable to anticipate the possible financial and resource pressures associated with legalization of recreational cannabis, the greater funding from the Province that results from not prohibiting provincially licensed stores will also allow the City to be better resourced in dealing with any associated undesirable activity.

Further to the issue respecting private cannabis retailing, staff will be bringing forward recommendations in 2019 to ensure that the City's by-laws are aligned with the Province's smoking legislation and that the broader interests of the public are met. In the meantime, and prior to the upcoming meeting of City Council on December 12, staff will be releasing the results of a public poll being conducted by Forum Research Inc. to identify the level of community support in Vaughan for the Province's private cannabis retail model. This information may further inform Council's deliberations on the matter.

Attachment

1. Memorandum to Mayor and Members of Council and Corporate Management Team: Ontario introducing cannabis legislation, September 26, 2018.

For more information, please contact: Gus Michaels, Director & Chief Licensing Officer, By-law & Compliance, Licensing & Permit Services, ext. 8735

Prepared by

Rudi Czekalla-Martinez, Manager, Policy & Business Planning, ext. 8782

DATE: Sept. 26, 2018

TO: Hon. Mayor and Members of Council
Corporate Management Team

FROM: Tim Simmonds, Chief Corporate Initiatives and Intergovernmental Relations

RE: Ontario introducing cannabis legislation

Purpose:

The purpose of this memorandum is to inform Members of Council and CMT of proposed provincial legislation related to cannabis legalization.

<https://bit.ly/2zxqPeH>

Highlights:

- Municipalities must decide before Jan. 22, 2019 whether or not to exercise a one-time opt-out for retail cannabis stores in their community;
- The Alcohol and Gaming Commission of Ontario will be the regulatory authority on cannabis. The AGCO will grant licences, enforce compliance and revoke licences where necessary;
- The Ontario government will introduce its new cannabis legislation on Sept. 27, 2018;
- The proposed legislation will allow the province to establish distance buffers separating cannabis stores from schools;
- The Smoke Free Ontario Act will be modified to include cannabis;
- Municipalities will be consulted before licences for retail cannabis stores are granted;
- The proposed legislation will include concentration limits, limiting the number of cannabis stores a license holder can open in one municipality;
- The Province re-stated its commitment to provide municipalities \$40-million over the next two years to deal with the anticipated costs associated with cannabis legalization. However, the Province will announce, at a later date, more details about how the funding will be allocated;
- The Ontario Cannabis Retail Corporation will no longer be a subsidiary of the LCBO. Instead, it will report directly to the Minister of Finance.



Intergovernmental Relations will monitor the introduction of the Province's new cannabis legislation on Sept. 27 and provide ongoing briefings and analysis.