



## Council Report For the Meeting of January 17, 2019

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**To:** Council **Date:** January 8, 2019  
**From:** Chris Coates, City Clerk  
**Subject:** Rise and Report on the Decision to Deny the Appeal from the refusal to issue a Business Licence at 1412 Douglas Street

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### EXECUTIVE SUMMARY

On November 22, 2018, Council heard an appeal from a decision to refuse a business licence to Kyle Cheyne for a business known as "Terp City" at 1412 Douglas Street. At the closed meeting of December 6, 2018, Council approved the following reasons for a decision in that appeal:

#### Introduction

Under section 60(5) of the Community Charter, an applicant who is refused a business licence by a municipal officer or employee is entitled to have Council reconsider the matter.

On October 2, 2017, Kyle Cheyne applied to the City for a cannabis-related business licence under the City's Cannabis Related Business Regulation Bylaw and Business Licence Bylaw for a business located at 1412 Douglas Street and known as "Terp City" (the "Applicant"). The business is described as a "cannabis lounge" and is essentially a place where, for a fee, anyone can come in and consume their cannabis. Patrons can also purchase prepackaged foods and drinks. The City's Licence Inspector refused to issue a cannabis-related business licence because the business did not comply with the provisions of the City's Bylaw and on May 29, 2018 the Applicant was informed of that decision.

The Applicant requested that Council reconsider the Licence Inspector's decision, and on November 22, 2018, Council held a business licence hearing to receive submissions from the Applicant and the City's Manager of Bylaw & Licensing Services (the Manager") with regards to this matter.

#### Applicant's Submissions

The Applicant's submissions were presented by his lawyer and can be summarized as follows.

First, that licencing of cannabis is a matter within the exclusive federal jurisdiction and the City lacks jurisdictional competence to enact a prohibition on cannabis consumption. The laws related to cannabis continue to evolve and, according to the Applicant's submission, City bylaws are likely to be declared invalid soon.

Secondly, that many of Terp City customers are licensed medical users of cannabis who either cannot or choose not to consume cannabis at home, at work, or in public. Terp City, it was argued, fills an important gap in the regulation of cannabis by providing them with a safe location to consume their medicine. These medical users have, according to the Applicant's submissions, a constitutionally protected right to consume cannabis and any municipal bylaw that limits that right is unconstitutional.

Thirdly, that the regulatory scheme established by the City is itself contradictory in that it authorizes the sale of cannabis and cannabis-related paraphernalia, while prohibiting consumption of the very product that it promotes. Included in the Applicant's submissions was a request to Council to allow for a site for safe consumption of cannabis. The Applicant informed Council that no cannabis is sold on the premises and no food is prepared on the premises. The Applicant also said that no persons under 19 years of age are allowed on the premises.

#### City's Manager of Bylaw & Licencing Services Submissions

The Manager submitted that both the Business Licence Bylaw (section 35) and the Cannabis Related Business Regulation Bylaw (section 6(c)) expressly prohibit consumption of cannabis on any business premises in Victoria. Because the Applicant's entire business model relates to on-site consumption of cannabis, the Licence Inspector denied the Applicant's cannabis-related business licence application.

#### Council's Decision

The role of City Council in a business licence hearing is very limited. As was recognized by the Applicant's lawyer during his submission, City Council is not a court of competent jurisdiction to determine constitutional issues or to grant a remedy under the Canadian Charter of Rights and Freedoms. Nor is the business licence hearing a proper forum to decide the validity of a municipal bylaw. Our role in this hearing is to reconsider the decision of the Licence Inspector to refuse the Applicant a business licence.

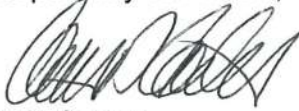
The City has enacted a set of business regulations to deal with the proliferation of cannabis related businesses in Victoria. In doing so even before the formal legalization of cannabis, the City was proactively responding to the need to better manage the impact the presence of these businesses has had on the community. The object of these regulations has not been to deny access to medical cannabis. To the contrary, the City's Cannabis Related Business Regulation Bylaw expressly states that it does not apply to the production or distribution of cannabis licensed by Health Canada under the Access to Cannabis for Medical Purposes Regulations. The purpose of the City's cannabis-related bylaws has been to balance the interests of the community with the rights of cannabis users.

A prohibition of consumption of cannabis on business premises is one of the regulations contained in City bylaws. It was adopted, in part, because there are currently no provincial or federal standards or rules currently in place regarding the safe consumption or service of cannabis. While Council feels a certain degree of sympathy towards the argument that provision of a safe location in which medical or recreational cannabis can be consumed is beneficial, this remains contrary to the City's bylaws. In our view, the Licence Inspector had no choice but to withhold a business licence from the applicant. Similarly, we feel compelled to deny the appeal and refuse to issue a business licence for a business whose entire business model revolves around a contravention of the existing City bylaw. Therefore, the appeal is denied.



In the course of the hearing, a question was asked regarding existing Council directions in relation to the issue of on-site consumption. Although it does not affect Council's decision in relation to this business licence application, it seems appropriate to mention that Council had previously directed staff to explore the possible repeal of the prohibition of on-site consumption of cannabis. We want to be clear that our decision in relation to this Applicant is based solely on the current status of the City's bylaws and should not be taken as precluding issuance of a business licence in the future if the prohibition on on-site consumption is repealed.

Respectfully submitted,



Chris Coates  
City Clerk



Susanne Thompson  
Deputy City Manager

Report accepted and recommended by the City Manager:



Date:

Jan 10, 2019