



Committee of the Whole Report For the Meeting of May 9, 2019

To: Committee of the Whole

Date: April 30, 2019

From: Chris Coates, City Clerk

Subject: Storefront Cannabis Retailer Regulation Bylaw 19-053

RECOMMENDATION

That Council direct staff to:

1. Bring forward the Storefront Cannabis Retailer Regulation Bylaw 19-053 for first and second readings to the May 9, 2019 Council meeting.
2. Schedule an Opportunity for Public Comment at a regular Council meeting as an opportunity to make representations on the proposed bylaw in accordance with section 59 of the Community Charter.
3. Provide notice of the intention to adopt the new Storefront Cannabis Retailer Regulation Bylaw by mail to all known storefront cannabis retailers as well as through normal advertising of Council's agenda.
4. Undertake a review and analysis of business license fees once Provincial Licensing and Enforcement has stabilized.

EXECUTIVE SUMMARY

The Cannabis-Related Business Regulation Bylaw was adopted in 2016. It established licensing and operating regulations for cannabis-related businesses to regulate cannabis retailers in the city to address local impacts of unregulated proliferation of cannabis retailers and in anticipation of eventual legalization of non-medical cannabis.

The Government of Canada legalized cannabis on October 17, 2018. Subsequently the Province assumed responsibility for cannabis retail store licensing. The Province adopted the *Cannabis Control and Licencing Act* which set out the provincial licensing framework. As result, many provisions in the City's Cannabis-Related Business Regulation Bylaw are no longer necessary as they are addressed in the provincial licensing framework. At the November 8, 2018 meeting, Council passed a motion directing staff to amend the Cannabis-Related Business Regulation Bylaw to align it with the provincial licensing framework. The draft new bylaw, the Storefront Cannabis Retailer Regulation Bylaw, is attached as Appendix A.

The Storefront Cannabis Retailer Regulation Bylaw retains licensing and operating provisions from the Cannabis-Related Business Regulation Bylaw that are not set out in provincial or federal enactments. Under the proposed new Storefront Cannabis Retailer Business Regulation Bylaw, a provincially-licensed cannabis retail store owner must apply for a municipal business license, pay

a \$5000 business licence fee, and follow the municipal regulations that relate to air ventilation, windows, signage, hours of operation, and number of employees on-site. The Business Licence Bylaw and Ticket Bylaw would be amended to reflect the Storefront Cannabis Retailer Regulation Bylaw title, definitions, and provisions.

Before adopting the proposed Storefront Cannabis Retailer Regulation Bylaw the City is required under section 59(2) of the *Community Charter* to give notice of its intention to do so and provide an opportunity for persons who consider that they are affected to make representations to Council. The required notice could be provided by mailing notices to all known storefront cannabis retailers and through normal publication of Council agenda. A formal Opportunity for Public Comment, held prior to the third reading of the proposed bylaw, could serve to provide the required opportunity to make representations to Council.

PURPOSE

The purpose of this report is to present the Storefront Cannabis Retailer Regulation Bylaw for Council's consideration.

BACKGROUND

The Cannabis-Related Business Regulation Bylaw was adopted in 2016 after the proliferation of illegal cannabis retail stores in Victoria that went uncontrolled by the provincial and federal government. The City took action by zoning for cannabis retail use and enacting the Cannabis-Related Business Regulation Bylaw in order to minimize the community, health, and safety impacts of cannabis-related businesses.

When the Government of Canada legalized cannabis on October 17th, 2018, provinces assumed responsibility for cannabis retail store licensing. The Province of British Columbia adopted the *Cannabis Control and Licensing Act* which sets out administration, general rules about who may possess, sell, promote, and produce cannabis, licensing and operating conditions for cannabis retail stores, and consumption. The new provincial rules have resulted in some duplication and contradiction with the City's existing Cannabis-Related Business Regulation Bylaw.

On November 8, 2018, Council passed the following motion:

That Council direct staff to:

- 1. Bring forward the Cannabis Retail Store Public Consultation Policy and Fees Bylaw to establish public consultation policy and fees, to the November 8, 2018 Council meeting for introductory readings.*
- 2. Amend the Cannabis-Related Business Regulation Bylaw to align with the Province of British Columbia's Cannabis Control and Licensing Act.*

Council adopted the Cannabis Retail Store Licensing Consultation Policy and Fee Bylaw (in point 1 of the above motion) on November 22, 2018.

During a review of the legislative framework required to amend the Cannabis-Related Business Regulation Bylaw, staff also subsequently identified duplication in the existing Bylaw with federal rules. The federal *Cannabis Act* sets out rules with regard to promotion, packaging and labelling, display, selling and distributing, in addition to other matters. The existing Bylaw contains some

provisions in regard to promotion. As a result, the revisions being suggested in the proposed new bylaw include additional provisions proposed for removal beyond just those presented in the staff report to the November 8, 2019 Committee of the Whole meeting attached as Appendix B, in order to develop a bylaw that would better align with the broader legislative framework in totality.

ISSUES AND ANALYSIS

Noted below are issues that came forward during review and drafting of the proposed Storefront Cannabis Retailer Regulation Bylaw that is the subject of this report. Following the thorough review of the provincial and federal legislation and given the extent of the proposed changes, it is proposed to replace the Cannabis-Related Business Regulation Bylaw with the new Storefront Cannabis Retailer Regulation Bylaw.

Business types

The existing Cannabis-Related Business Regulation Bylaw defines four activities permitted for a cannabis-related business. The table below lists those activities and illustrates any provincial and federal rules affecting the activities within the 'cannabis-related business' definition contained in the Cannabis-Related Business Regulation Bylaw. This table demonstrates that only a storefront cannabis retailer license is compatible within the broader legislative framework, and legislation now covers activities such as sale of cannabis and cannabis accessories, promotion of cannabis, and storage of cannabis. In addition, the original Bylaw established a classification for businesses that advocated or provided consultancy on cannabis. Since legalization, Council may consider that the broader regulations which previously were intended to capture any business operating with cannabis as a focus are no longer necessary.

REVIEW OF EXISTING BYLAW DEFINITIONS		
Cannabis-related business" activity	Summarized provincial and/or federal rule(s)	Reference(s)
Recreational cannabis advocacy and promotion	Federal and provincial Acts set rules about promotion of cannabis and cannabis accessories. Federal rules define appropriate and inappropriate means of promotion. Provincial rules define who may promote cannabis and cannabis accessories.	Cannabis Act, s.17(1) states that it is prohibited to promote cannabis or a cannabis accessory through prescribed means, and s.17(2) states that only a person authorized to produce, sell or distribute cannabis may promote by prescribed means. Cannabis Control and Licensing Act, s.16 prohibits a person from promoting cannabis for the purpose of selling it without a licence. Cannabis Licensing Regulation, s.11 requires a person to hold a marketing licence for this purpose.

Cannabis-related business" activity	Summarized provincial and/or federal rule(s)	Reference(s)
Sale of recreational cannabis and paraphernalia used in cannabis consumption	Federal and provincial Acts set rules about sale of cannabis. Provincial rules define that a cannabis retail store licensee may sell cannabis. There are no federal or provincial rules about who may sell cannabis accessories.	Cannabis Act, section 69(1) states that only a person authorized under a provincial Act may sell cannabis. Cannabis Control and Licensing Act section 15(c) authorizes a licensee to sell cannabis. There are federal and provincial rules against selling cannabis accessories to minors under section 32(1) of the Cannabis Act and section 69(1) of the Cannabis Control and Licensing Act.
Recreational cannabis storage and distribution	Provincial Act sets rules about storing and distributing recreational cannabis. Typically, only BC Liquor and Cannabis Distribution Branch may distribute. Cannabis retail store must keep cannabis on premises. The Province does not require a business license and no licensed business can exclusively store cannabis.	Cannabis Control and Licensing Act section 15(c) authorizes a licensee to sell cannabis and the cannabis was registered under the Cannabis Distribution Act and was purchased by the licensee from the government or under other prescribed circumstances.
Recreational cannabis consumption	While recreational cannabis is legal, it is illegal for a business to permit recreational cannabis consumption on the premises (including smoking and vaping, eating). Smoking and vaping are restricted under the Provincial Act and under the current City Business Licence Bylaw. Ingesting cannabis is not restricted but production and sale of edibles cannabis products is currently illegal under federal rules. If federal rules legalize production and sale of edible products, it would likely be provincial jurisdiction to establish cannabis consumption licenses for home-made edible products. Further, there are currently provincial rules that restrict a business from allowing a person to be a patron while intoxicated or to become intoxicated on the premises which would apply to ingesting edible cannabis products.	While not specifically addressed in the existing federal and provincial legislation, the CRD Anti-Smoking Bylaw was amended around the time of legalization to prohibit smoking and vaping of cannabis in and nearby businesses. As such the prohibition in Section 35 of the Business License Bylaw, which was a consequential amendment in the existing (original) Cannabis-Related Business Bylaw attached as Schedule D, is no longer necessary.

Licensing Conditions

The Cannabis-Related Business Regulation Bylaw contains extensive licensing conditions, including submitting an application form, a security plan for the premises, proof of a security alarm contract, proof of ownership or legal possession of the premises, and current police information checks for the applicant and on-site managers. These existing municipal licensing conditions duplicate the provincial licensing conditions. Through the provincial licensing process, the applicant will have undergone an extensive security screening and financial integrity checks that would be required before the Province issues a license.

It is proposed that the applicant has a provincial license before applying for a municipal business licence, that the provincial licensee submit an application form, and that Bylaw Services staff conduct an inspection of the proposed storefront cannabis retailer location to ensure compliance with municipal operating conditions, such as installation of an air ventilation system.

Operating Conditions

The Cannabis Related Business Regulation Bylaw sets out operating conditions for cannabis related businesses. The table lists those operating conditions and demonstrates provincial and federal rules that duplicate or overlap with those operating conditions. This table demonstrates that in order to continue mitigating the community, health, and safety impacts of storefront cannabis retailers in Victoria, it would only be necessary to have municipal operating conditions for air filtration, signage, number of employees on premises, windows, and hours of operation, as the other existing provision are covered off by the new legislation.

REVIEW OF EXISTING OPERATING CONDITIONS		
Municipal rule	Provincial and/or federal rules	In Proposed New Bylaw?
Business may not allow a person under the age of 19 on premises	Cannabis Control and Licensing Act, section 70	No
Business may not advertise or promote the use of a cannabis to a person under the age of 19	Cannabis Act, Division 2, Subdivision A, Promotion restricts: promotion in a way that could be appealing to a young person; promotion anywhere where a young person is permitted by law; promotion by means of telecommunication unless steps taken to prevent young person from accessing it.	No
Business may not display any advertising or sign that is visible from outside of the premises except for a maximum of two signs which display no images and contain only: (1) alpha-numeric characters, and 2) the business name, and is in a size as permitted under the Sign Bylaw.	No federal or provincial rules	Yes
Business may not allow a person to smoke, vape, consume or otherwise ingest cannabis or products containing cannabis on the premises	Cannabis Control and Licensing Act, section 67 (called 'prescribed place'; Cannabis Licensing Regulation defines 'prescribed place' as in a retail store and a government cannabis store.	No
Installation of video surveillance cameras that monitor all entrances and exits	Provincial Terms and Conditions for Cannabis Retail Stores, page 12 24/7 monitoring and unobstructed view of retail sales area, product storage area, and entrances and exits	No

Municipal rule	Provincial and/or federal rules	In Proposed New Bylaw?
Retain video camera data for at least 21 days	Provincial Terms and Conditions for Cannabis Retail Stores, page 12 Retention is for 30 days	No
Install a security and fire alarm monitored by a licensed third party	Provincial Terms and Conditions for Cannabis Retail Stores, page 12 Monitoring by licensed third party not required	No
Remove cannabis, cannabis products, and other valuables from premises when business is closed	Conflicts with provincial rule Provincial Terms and Conditions for Cannabis Retail Stores, page 14	No
Install and maintain air filtration system	No federal or provincial rules	Yes
Display sign that premises is 19+ only	No federal or provincial rules Provincial recommendation to operators in Provincial Terms and Conditions for Cannabis Retail Stores	No
Two employees on premises, including a manager	No federal or provincial rules	Yes
Only allowed to conduct cannabis-related business and accessory uses	Cannabis Licensing Regulation, section 5 Only items permitted for sale at a retail store are: cannabis, cannabis accessories, bags of an approved class or type, prepaid purchase cards. Provincial Terms and Conditions for Cannabis Retail Stores, page 12 No "co-location"	No
Transparent windows and not blocked	Conflict with provincial rules Cannabis Licensing Regulation, section 5(p) Retail store must be...enclosed by floor-to-ceiling walls that are not transparent.	Yes – although this provision will be of no force and effect while in conflict with provincial rules, the City has been discussing a proposed amendment with the Province and, therefore, this provision is being retained in the new bylaw

Municipal rule	Provincial and/or federal rules	In Proposed New Bylaw?
Hours of operation 7am to 8pm	Cannabis Licensing Regulation, section 5(m) 9:00am to 11:00pm...	No .The existing Cannabis related Business Bylaw established operating hours between 7am and 8pm. The proposed Bylaw establishes operating hours between 9 am and 8 pm.
Inform Licence Inspector about new manager, officer, directors, or shareholder and provide a current police information check	Cannabis Control and Licensing Act, section 46 reporting requirements and amendments to license for any changes to the licensee individual, partnership, corporation, and other matters. More details in Provincial Terms and Conditions for Cannabis Retail Stores, page 9-10	No

Licence Fees

Under the existing Cannabis-Related Business Regulation Bylaw, a business that kept cannabis on the premises would pay a \$5000 licence fee and a cannabis-related business that did not keep cannabis on the premises would pay a \$500 licence fee. As the City would now only licence storefront cannabis retailers, the \$5000 licensing fee for a business with cannabis on the premises would remain in place while the \$500 licensing fee for a business without cannabis on the premises would be removed along with the definition.

This licensing fee was determined on a cost-recovery basis using the estimated cost of the resources required to administer and enforce the new regulatory scheme. Despite the City's more limited role in regard to licensing, monitoring, and enforcement under the Storefront Cannabis Retailer Regulation Bylaw, a reduced licensing fee is not currently proposed as the resource impact of the present and future cannabis retail stores operating in Victoria are currently unknown. To date, the City has incurred significant costs in relation to administration and enforcement of the Cannabis Related Business Regulation Bylaw. The Enforcement approach is noted later in this report. It is suggested to undertake a thorough review of the business licence fee once the provincial licensing and enforcement processes have stabilized.

Other Considerations

Promotion to Young Persons/Minors

The federal Cannabis Act has the purpose to protect the health of young persons and protect young persons from inducement to cannabis. There are several federal provisions that aim to achieve this purpose. The province also has rules to protect minors. Under provincial rules, a store that allows a minor into the store or sells to a minor would be fined. Further, the province recommends that stores posts signs that no one younger than 19 may enter into the store. The Storefront Cannabis Retailer Regulation Bylaw therefore excludes this provision. Nonetheless, it is entirely within the City's power to require a business to prominently display signs that say no one under the age of 19 may enter into the store.

Provisions Not in Effect

The transparent window provision is not in effect due to a provincial provision. Under the Cannabis Licensing Regulation, the Province requires that a cannabis retail store must be located in a permanent building or structure and be enclosed by floor-to-ceiling walls that are not transparent. Despite the municipal rule, the province's rule invalidates the municipal rule when there is a conflict. If the Province removes the corresponding provision, the Bylaw provision would immediately come into effect.

Enforcement

Reviewing the City's enforcement approach based on the new legislation was anticipated prior to legalization and the findings suggest a new approach is practical under the circumstances.

When the City's Cannabis-Related Business Regulation Bylaw was adopted in 2016, staffing in Bylaw Services was increased by one FTE to accommodate the workload associated with increased licencing, inspection and enforcement. At that time Cannabis was not legalized but given the proliferation of cannabis retail businesses in the City, Council, after careful consideration and consultation, enacted a Business Regulation Bylaw to establish operating conditions for these types of businesses. The City's regulations were established to create a range of operating conditions, but did not regulate the products sold as that is outside of local government authority.

Since the Federal and Provincial Governments established legislation they also assumed enforcement authority and responsibility. The Province has established the Community Safety Unit which will assume primary responsibility for inspection and enforcement under the new legislation. Provincial enforcement differs significantly from the authority granted to local government to enforce. For example, local governments are not provided direct enforcement methods. Rather enforcement is through the issuance of Municipal Tickets or the court system. The Province has the ability to seize product and take other steps against operators who are non-compliant with their regulations. This is a far more effective and efficient system. An information pamphlet from the Community Safety Unit, attached as Appendix C. In short enforcement options include:

- seizure of illegal cannabis
- imposition of monetary penalties
- injunctive relief
- criminal charges.

City staff met with the leadership team of the Community Safety Unit April 24th who further advised as follows:

- The Community Safety Unit has begun visiting unlicensed cannabis retailers for the purposes of education and to raise awareness about cannabis laws, the penalties and consequences for violating federal and provincial regulatory regimes, how to obtain a non-medical cannabis retail license and the enforcement activities of the CSU.
- Those operating illegally should be warned that they could receive a visit from CSU officers in the very near future.
- Illegal retailers that do not obtain a provincial licence will have to close—and as more legal retail stores open across the province, you can expect to see increasing enforcement action by the CSU.

Despite the appearance of reduced municipal role that results from changes to the City's bylaw covered in this report, Bylaw and Licensing Services will still have a very active role in licencing and in working with the Community Safety Unit:

- Monitoring and enforcing the remaining City Bylaw provisions.

- Enforcing on any business operating without a City business license in instances where a Provincial License has been approved and a city license application is not progressing. For clarity, if a Provincial License is not issued to any operator, the City will defer enforcement to the Province.
- Providing updated information to the Community Safety Unit of the Ministry of the Solicitor General in terms of who is operating in the City and whether or not they hold the required licenses to do so and any other known Provincial infractions.

OPTIONS AND IMPACTS

Option 1 – Give the attached Storefront Cannabis Retailer Regulation Bylaw two readings and direct staff to provide notice and schedule an Opportunity for Public Comment in accordance with section 59 of the Community Charter.

Option 2– Provide additional direction to staff before consideration of the proposed Storefront Cannabis Retailer Regulation Bylaw.

Accessibility Impact Statement

There are no direct impacts on accessibility issues in connection with the proposed Bylaw.

Impacts to Financial Plan

The proposed Bylaw does not have any direct financial implications at this time. As noted a review of the licensing fees is recommended once the Provincial Licensing of retailers in the City stabilizes.

CONCLUSION

The Cannabis-Related Business Regulation Bylaw adopted in 2016 served to minimize the negative impacts of illegal cannabis-related business with regard to community, health, and safety. In the wake of legalization and more involved federal and provincial roles, the extensive municipal licensing and operating conditions are no longer required to manage these impacts. The proposed Storefront Cannabis Retailer Regulation Bylaw contains licensing and operating conditions that complement the overlying federal and provincial legislative framework.

Respectfully submitted,


 Monika Fedyczkowska
 Legislative and Policy Analyst


 Chris Coates
 City Clerk


 Susanne Thompson
 Deputy City Manager/CFO

Report accepted and recommended by the City Manager:


 Date: May 3, 2019

List of Attachments

Appendix A - Draft Bylaw

Appendix B - November 8, 2018 COTW Report

Appendix C - Community Safety Unit Information Pamphlet

Appendix D - Cannabis Related Business Regulation Bylaw No. 16-061