



Committee of the Whole Report

For the Meeting July 4th, 2019

To: Committee of the Whole

Date: June 26th, 2019

From: Chris Coates, City Clerk

Subject: Advisability of Cannabis Consumption Site Pilot or Regulations

RECOMMENDATION

That Council receive this report for information.

EXECUTIVE SUMMARY

On September 6th, 2018, Council directed staff to examine the regulatory context for cannabis consumption sites, review other jurisdictions including Denver, Colorado, and report back on the advisability of initiating a pilot or introducing regulations for cannabis consumption sites.

While the Government of Canada legalized use of cannabis on October 17th, 2018, the Province of British Columbia, the Capital Regional District, the City, and many private property owners restrict or prohibit where a person can consume cannabis. This complex regulatory framework precludes the City from initiating a pilot of introducing regulations that would enable cannabis consumption sites without conflicting with provincial and regional district jurisdiction. Further, the Province has signalled that regulations with regard to cannabis consumption sites are under review; although, there is no certainty about what these rules will be and when or if they will be decided. Due to this complex and changing regulatory environment, it is not advisable to initiate a pilot or to introduce regulations for cannabis consumption sites.

Cannabis consumption rules and sites in Toronto, Halifax, and Denver, Colorado do not demonstrate transferable options for initiating a pilot or introducing regulations to enable cannabis consumption sites. Toronto and Halifax have broader authority than the City to regulate smoking and vaping cannabis. While in Denver, the extent of legalization creates opportunities to set up indoor cannabis consumption lounges for ingesting or vaping cannabis that are not currently available in the City. Lack of similar jurisdiction and regulatory context prevents the City from pursuing any options in these cities.

PURPOSE

The purpose of this report is to provide Council with information about the regulatory context in the City regarding the advisability of a pilot or regulations for cannabis consumption sites.

BACKGROUND

On September 6th, 2018, Council passed the following motion resulting from a Council Member Report attached as Appendix A:

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1. That Staff be directed to investigate, beginning in the first quarter of 2019, regulations in other jurisdictions governing consumption sites for cannabis use.
2. That this review take into consideration the City and County of Denver, Colorado's Cannabis Consumption Pilot Program, as well as the regulatory context in the City of Victoria arising from regional, provincial, and federal regulations.
3. That staff report back to Council on the advisability of initiating a Pilot Program or introducing regulations for consumption sites for cannabis use.

Legal Cannabis Products

Since legalization of cannabis on October 17th, 2018, a person may legally obtain cannabis from a government cannabis store, a provincially licensed cannabis retail store or produce their own recreational cannabis products for personal use, subject to the limitations in the legislation. A government cannabis store and cannabis retail store may sell dried cannabis, cannabis oil, cannabis seeds and cannabis accessories. As Canada has not yet legalized the commercial production and sale of cannabis edibles, extracts and topicals, these stores may not sell these products; however, a person may produce cannabis edibles, extracts and topicals for personal use.

Regulatory Context of Consumption

The Province of British Columbia (Province), Capital Regional District (CRD) and City restrict consumption of cannabis in public spaces. Private property owners may further regulate consumption on their premises. The result is a complicated regulatory context discussed below.

a. Consumption in Public Spaces

The BC *Cannabis Control and Licensing Act* sets out regulations for consumption, including specific regulations for smoking and vaping. Under the Act, a person must generally not consume cannabis in the following public places:

- In a prescribed place, including a building or structure
- On a school property
- While operating a vehicle or boat or someone is operating one of these
- In a government cannabis store or provincially-licensed cannabis retail store

Further, a person must not smoke or vape cannabis in the following outdoor and indoor public places:

Outdoors:

- in or on a health board property, unless in a designated area
- within a prescribed distance of the above
- skating rink, sports field, swimming pool, playground or skate park
- a spray pool or wading pool or splash pad
- a deck, seating area, viewing area or other place used in association with the above
- a park
- a regional park
- an outdoor area established by municipality for community recreation
- in or on a bus stop, train station or stop, taxi stand or ferry dock or stop, or similar place

Indoors:

- In a public place
- In a workplace
- In a common area within an apartment building, condominium or dormitory
- Within 6 metres from a doorway, window, air intake of the above places

The Capital Regional District (CRD) has exclusive jurisdiction under its Health Letters Patent and the Local Government Act to enact and enforce public health bylaws government activities' in public places within the entire region. In addition to the Province, the CRD has set more strict rules on smoking and vaping cannabis on public property and near private property. The CRD *Clean Air Bylaw* sets regulations for smoking and vaping of any substances in public spaces. This Bylaw sets the following restrictions:

- No smoking or vaping indoors (1999);
- No smoking or vaping on patios where food and beverages are served and/or consumed (2007);
- No smoking or vaping in parks, playgrounds, playing fields, public squares and bus stops (2014); and
- No smoking or vaping within 7 metres of doorways, windows, and air intakes or in any public place, including parks (2014).

Under its authority to regulate business, the City also prohibits consumption in businesses in the *Cannabis-Related Business Regulation Bylaw* and in the *Business Licence Bylaw*. This provision was introduced prior to the legalization of cannabis, to manage cannabis-related businesses in Victoria. This prohibition is proposed to be repealed if Council adopts the proposed bylaw regulating storefront cannabis retailers. On July 11th, Council will receive input through a required consultation process under the Community Charter, on the proposed bylaw that received two readings earlier this spring. Should Council adopt this proposed bylaw in its current form, there would be no municipal rules applicable consumption on a business premises, rather the Provincial and regional rules would apply.

b. Consumption in Private Spaces

Provincial, regional district, and municipal rules do not prohibit a private property owner or tenant from smoking or vaping cannabis on their premises, with the exception of vehicles and boats while in operation. Private property owners may set consumption policies. Some policy options include a ban on consumption, designation of consumption areas, and no policy. YVR and YYJ airports and the University of Victoria are examples of private property owners that have established designated smoking and vaping areas for persons on the premises.

Recreational Cannabis Consumption in Other Jurisdictions

a. Recreational Cannabis Consumption in Toronto and Halifax

Toronto and Halifax have comparable interjurisdictional authority between provincial, regional (if applicable) and municipal authority for consumption. Both municipalities prohibit indoor public consumption sites. Despite this, there are some cannabis consumption lounges operating in both municipalities. There are fewer restrictions on smoking or vaping on outdoor public property in these municipalities. In Toronto, a person may smoke or vape cannabis in a municipal park, which has enabled a special event scheduled for summer 2019 to operate an outdoor cannabis consumption patio. In Halifax, the municipality prohibits consumption on all public property by default but has set up 83 designated smoking and vaping areas for both cannabis and tobacco to date with more proposed areas being considered.

b. Recreational Cannabis Consumption in Denver, Colorado

Denver prohibits consumption of cannabis on public property.

Denver conducted a pilot for cannabis consumption lounges. The pilot allowed businesses to apply for designated consumption areas for a year or for a special event (both indoor and outdoor). After receiving voter approval in November 2016, this pilot began in July 2017. As of March 2019, only two businesses obtained licenses to operate a cannabis consumption lounge. A month after obtaining a license, one business shut down their operations. No special events sought a license. The pilot was set to expire on December 31, 2020 but it was turned into a program on February 25th, 2019 with the goal to increase uptake from potential cannabis consumption lounges that would like greater certainty.

Cannabis consumption lounges are currently feasible in Denver because the state's *Clean Indoor Air Act* only prohibits smoking indoors and it is legal for a business to sell edible cannabis products in Colorado. Therefore, a cannabis consumption lounge may allow a person to eat or vape cannabis, just not smoke. However, the Colorado House of Representatives recently voted in favour of a bill that would prohibit vaping indoors and now the Senate will consider this bill. If this bill is adopted in its current form, only edible cannabis products will be permitted for use in cannabis consumption lounges.

ISSUES AND ANALYSIS

Cannabis Consumption Sites Opportunities and Constraints

Staff understand the concept of a cannabis consumption site to involve a managed operation where access is controlled and activities monitored. With that in mind the limitations by way of the regulations in place from other authorities make such an undertaking extremely difficult to establish and be compliant for a managed operation. The legislation around consumption is still not addressed in such a way as to provide clear opportunities for consumption sites. As noted, the Province has indicated that consumption sites are something that may be addressed in a subsequent legislative review, it is perhaps more practical to await legislative change than it would be to try to create local rules that might provide a degree of opportunity for a managed consumption sites. Even if it were possible to expand opportunities, doing so would likely create an administrative and enforcement concern for the City to ensure compliance with the requirements are sustained.

In terms of cannabis use and where it can occur in a non-managed way, despite the CRD Clean Air Bylaw and the restricted areas where smoking and vaping cannot occur, there is public space that is not covered by these regulations and that in accordance with other government's regulations, the smoking and vaping of cannabis can occur.

Changing Regulatory Environment

The Province of BC has indicated that consumption rules are under review. Initiating a pilot or introducing regulations for cannabis consumption sites in this complex regulatory environment could result in conflict with Canada or the Province. It is advised to wait until further direction from Canada or the Province about cannabis consumption sites.

Staff will continue to monitor this changing regulatory environment and report to Council with any significant related changes from either Canada or the Province.

Zoning

If Council adopts the Storefront Cannabis Retailer Bylaw in its current form, the City would no longer prohibit a business to allow consumption on the premises. This is possible because the Province currently prohibits a business from allowing consumption on the premises.

If the Province relaxes this prohibition, Council could regulate the location of consumption sites by prohibiting consumption sites in the Zoning Bylaw. This approach would require a business to apply

for zoning to permit consumption. The City would have in place a process to obtain public feedback and manage where these businesses would be permitted. This approach is similar to that for storefront cannabis retailers in 2015 and any property would need to undergo a rezoning process that includes public consultation and the opportunity for comment.

Other Jurisdictions

Given the City's very limited jurisdiction over consumption, there are few options employed in other cities that could be used to develop a cannabis consumption pilot or regulations. Toronto, Halifax, and Denver restrict ingesting, smoking, or vaping on public property to some extent, however none have taken any actions to use City property to establish cannabis consumption sites. This may be because in Toronto and Halifax it is permitted to smoke and vape on some public property. In Denver, it may be because the city has established the program that would allow businesses to set up designated consumption areas in businesses and for special events. Victoria does not have the jurisdiction to regulate consumption on public property as do Toronto and Halifax in a way that would create designated cannabis consumption sites or to regulate consumption on private property or in businesses. It remains that Victoria may likely only exercise its rights as a private property owner and set up designated smoking/vaping areas, as do Vancouver and Victoria airports and the UVic campus.

OPTIONS AND IMPACTS

Option 1: Receive this report for information (*Recommended*).

Option 2: Council advocate for legislative changes at the Regional and Provincial level with regard to cannabis consumption sites.

Option 3: Direct staff to explore zoning-related options for regulating cannabis consumption sites.

2019-2022 Strategic Plan

There are no impacts in this report on the Strategic Plan.

Impacts on Financial Plan

There are no impacts in this report on the Financial Plan.

Accessibility Impact Statement

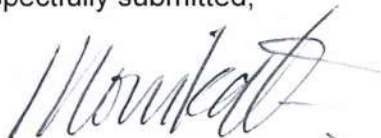
There are no impacts in this report on accessibility issues.

CONCLUSION

Legalization of recreational cannabis consumption brings to light the prohibitions and restrictions on consumption on public and private property. Due to the Province's jurisdiction over consumption, and the CRD jurisdiction over public health matters in the region, the City does not have the ability to authorize cannabis consumption site, even as a pilot project. With Canada giving consideration to legalizing edible cannabis products and the Province indicating consumption sites may be on a subsequent legislative agenda, Council may consider waiting to see if clearer authority is addressed. Staff will continue to monitor development of the legislation and, should it occur, would provide further information with regard to cannabis consumption sites that may not conflict with the other jurisdictions.

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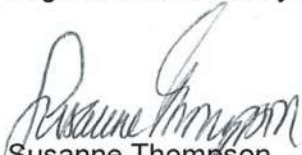
Respectfully submitted,



Monika Fedyczkowska
Legislative and Policy Analyst




Chris Coates
City Clerk



Susanne Thompson
Deputy City Manager

Report accepted and recommended by the City Manager:


Date: June 26, 2019

List of Attachments

Appendix A –September 6th, 2018 Council Member Report