



City of
Peterborough

To: **Members of the General Committee**

From: **Patricia Lester**
Commissioner of Corporate and Legislative Services

Meeting Date: **December 3, 2018**

Subject: **Report CLSOCS18-006**
Legalization of Cannabis Update

Purpose

A report to provide an update on cannabis legislation, recommend that the City of Peterborough not exercise its right to prohibit (“opt out” of) retail cannabis sales in the City of Peterborough and recommend repealing the City’s Smoking By-law 18-070 and replacing it with a by-law that restricts the smoking of cannabis in the same manner that the smoking of tobacco is regulated.

Recommendations

That Council approve the recommendations, outlined in Report CLSOCS18-006 dated December 3, 2018 of the Commissioner of Corporate and Legislative Services, as follows:

- a) That the City of Peterborough not “opt out” of having cannabis retail stores located in the City of Peterborough;
- b) That Council repeal Smoking By-law 18-070;
- c) That Council approve a new Smoking By-law, as attached to Report CLSOCS18-006 as Appendix A;
- d) That staff report back to Council as necessary on any aspect of cannabis legalization that may impact the municipality; and

- e) That Council delegate the authority to review the Alcohol and Gaming Commission of Ontario's ("AGCO") proposed cannabis store locations and respond within the 15-day review period, to the Commissioner of Corporate and Legislative Services who will consult with key stakeholders prior to the City's response.

Budget and Financial Implications

The financial implications associated with potential additional enforcement of no smoking/vaping standards related to cannabis have not yet been determined.

Background

Council at its meeting of January 29, 2018 received Report OCS18-001 for information and added the following recommendation:

"That as recommended by the Federation of Canadian Municipalities, a municipal staff working group be assembled to identify, discuss and deal with municipal issues as they arise from cannabis legalization".

Staff from Corporate and Legislative Services have been monitoring the legislation relating to cannabis, attempting to identify potential issues as they relate to the municipality. Informal conversations between staff and the key stakeholders, Peterborough Public Health, Peterborough Police and the Provincial Offences Office have occurred and will continue.

A change in Provincial government in June of this year has resulted in a revised framework of provincial laws relating to cannabis use and sale. Staff will continue to monitor the provincial web-site for new regulations, as information continues to be communicated to municipalities and staff will consider any communication from the Association of Municipalities of Ontario ("AMO").

Federal Legislation to Legalize Cannabis

The federal **Cannabis Act**, ("federal Cannabis Act") established a legal framework for controlling the production, distribution, sale and possession of cannabis across Canada. Effective October 17, 2018, subject to provincial restrictions, adults who are 18 years of age or older are legally able to:

- possess up to 30 grams of legal cannabis, dried or equivalent in non-dried form in public;
- share up to 30 grams of legal cannabis with other adults;
- buy dried or fresh cannabis and cannabis oil from a provincially-licensed retailer;
- grow, from licensed seed or seedlings, up to four cannabis plants per residence for personal use; and to

- make cannabis products, such as food and drinks, at home as long as organic solvents are not used to create concentrated products.

Cannabis edible products and concentrates are anticipated to be legal for sale in October, 2019.

The current regime for medical cannabis will continue to allow access to cannabis for people who have the authorization of their healthcare provider.

Federal and Provincial Roles re Cannabis

Federal, provincial and territorial governments share responsibility for overseeing the cannabis regulation system.

The Federal government's responsibilities are to set:

- requirements for producers who grow and manufacture cannabis;
- rules and standards, including:
 - types of cannabis products available for sale;
 - packaging and labelling requirements for products;
 - standardized serving sizes and potency;
 - prohibitions on the use of certain ingredients;
 - production practices;
 - tracking requirements of cannabis from seed to sale with a view to keeping cannabis out of the illegal market;
 - restrictions on promotional activities.

Provinces and territories are responsible for developing, implementing, maintaining and enforcing systems to oversee the distribution and sale of cannabis. They are also able to regulate certain matters more restrictively, such as:

- increasing the minimum age in their province or territory (but not lowering it);
- lowering the personal possession limit in their jurisdiction;
- creating additional rules for growing cannabis at home, such as lowering the number of plants per residence;
- restricting where adults can consume cannabis, such as in public or in vehicles.

Ontario's Legislation Respecting Cannabis

The **Cannabis Statute Law Amendment Act, 2018**, ("Bill 36") received Royal Assent on October 17, 2018. Bill 36 amends the **Cannabis Act, 2017**, **Ontario Cannabis Retail Corporation Act**, the **Liquor Control Act**, **Smoke-Free Ontario Act**, the **Highway Traffic Act** and introduced a new act – **Cannabis License Act**.

Bill 36 authorizes the AGCO, to license and regulate private cannabis retail in the province. The AGCO has the following licensing functions within municipalities that have not "opted out" of retail sale of cannabis:

- (a) The AGCO will be responsible for licensing cannabis Retail Operators within municipalities. Licensing will be subject to criminal and financial eligibility checks.
- (b) Once a specific cannabis retail site within a municipality has been proposed, the AGCO will be responsible for determining and granting a Retail Store Authorization.
- (c) The AGCO will license Cannabis Store Retail Managers employed in senior positions at retail locations.

The AGCO and police will also be responsible for inspections and enforcement of the **Cannabis Licence Act**.

The AGCO will be required to provide municipal governments and the public with a 15-day notification period of a proposed cannabis retail site for a Retail Store Authorization to receive public input and to hear concerns from the local community. The first retail stores are to be operational April 1, 2019, after all licenses and authorizations are in place.

The AGCO must “consider” the comments received in response to the 15-day notification period. However, the **AGCO will not be bound by municipal official plans, zoning approvals and licensing by-laws** when deciding whether to grant a Retail Store Authorization.

In October, AMO expressed its concerns regarding the lack of municipal jurisdiction respecting the siting of cannabis retail stores and the inadequacy of the AGCO’s 15-day consultation period. AMO’s concerns were not addressed in Bill 36 as finally passed. Attached as Appendix B is AMO’s Submission to the Standing Committee on Social Policy, October 11, 2018. The result is that municipalities may only hope that the AGCO will have regard to the preferences of municipalities respecting the location of licensed cannabis retail stores within municipalities that have not “opted out”.

Further, taking into account the City Council’s meeting schedule, a 15-day consultation period is inadequate for municipal participation. Therefore it is recommended that Council delegate authority to the Commissioner of Corporate and Legislative Services to review any potential sites, by coordinating information from various municipal departments as necessary and providing comments to the AGCO.

Bill 36 – Whether to “Opt Out”

Local municipalities in Ontario have a one-time opportunity to opt out of cannabis retail in their communities. There is no time period for a local municipality to opt back in via resolution. However, if the decision to “opt out” is reversed by the municipality, that decision is final.

There are three options available to Council related to the opportunity to “opt out”:

1. Do not “opt out” (recommended).
2. “Opt out” by January 22, 2019.
3. “Opt out” but without prejudice to a Council decision to subsequently “opt in”.

Option 1: Do not “opt out”

By default, a municipality that does not “opt out” will permit cannabis retail stores in the municipality, subject to the provincial licensing system described above, the Regulations released November 16, 2018 and any additional regulations.

Option 2: Opt Out

If Peterborough Council were to wish to “opt out”, it must pass a resolution by January 22, 2019, stating that the City does not wish to host cannabis retail stores in the City. The resolution must be sent to the AGCO. The AGCO’s receipt of this resolution will automatically cancel any outstanding applications for a Retail Store Authorization in the City. The AGCO will keep a public list of communities that have opted out of hosting cannabis retail.

Option 3: Opt out but without prejudice to a Council decision to subsequently opt back in

Council could decide by January 22, 2019, to temporarily or conditionally “opt out” but expressly without prejudice to a subsequent decision of Council to opt back in, but any subsequent decision to opt in would be final.

Discussion of the Options

Staff have considered the following to support the City not opting out:

- “Opting out” would simply prevent the retail sale of cannabis within the City’s territorial limits. However, it would not prevent cannabis purchased from a licensed retailer in a neighbouring municipality from being brought into and consumed within the City. Further, City residents can, in any event, order cannabis on-line from the Ontario Cannabis Retail Corporation. Accordingly, “opting out” is unlikely to diminish possession and consumption of cannabis in the City.
- “Opting out” would dissuade otherwise qualified persons from investing in cannabis retail operations in Peterborough. Rather, any such investments would likely be diverted to neighbouring municipalities that have not “opted out”.
- The Minister of Finance will track municipal governments that “opt out”. AMO has cautioned that “opting out” could negatively affect the portion of excise tax funds a municipal government is eligible to receive to offset costs related to the legalization of cannabis.

Option 3 is consistent with the “precautionary” recommendation of Dr. Salvaterra, Medical Officer of Health. Appendix C is Dr. Salvaterra’s briefing note dated November 7, 2018, in response to staff’s consultation with her.

Subsequent to Dr. Salvaterra's Briefing Note, O.Reg. 468/18 was proclaimed on November 16, 2018, and it addresses in part, some of Dr. Salvaterra's issues:

- the Regulation establishes Cannabis retail store operating requirements including hours of operation (between 9:00 a.m. and 11:00 p.m.);
- limiting sales of cannabis retail stores to cannabis products, accessories and shopping bags;
- establishing minimum distances of retail locations from schools (150 m measured from the property line for stand-alone schools);
- prescribing eligibility for licensing as well as education requirements for operators, managers, and staff.

In its November 14, 2018 publication, "Cannabis Retail Regulations Facts", AGCO advises that:

- AGCO will be publishing a Cannabis Retail Regulation Guide on-line which will be published in chapters as information becomes available, as "much of the process is still in development";
- AGCO plans to accept on-line applications for cannabis-related licences on Monday, December 17, 2018;
- to help potential applicants understand the requirements and prepare their application, AGCO will be providing a "number of supports" before December 17, 2018, including hosting a series of educational webinars and posting a summary of the required application. AGCO will be sharing information about the support "in the following days".

However, even if staff have more information on or after December 17, 2018, Council's meeting schedule does not allow for a thorough review and report in time to meet the Province's deadline of January 22, 2019.

Places to Smoke or Vape Cannabis

The **Smoke-Free Ontario Act, 2017** ("SFOA") has been amended to establish rules for using cannabis, whether medically or recreationally. Cannabis may be smoked and "vaped" in the following locations:

- Private residences (but not residences that are also workplaces (e.g. long-term care and/or retirement homes));
- Many outdoor public places (e.g. sidewalks, parks)
- Designated guest rooms in hotels, motels and inns
- Residential vehicles and boats that meet certain criteria (e.g. have permanent sleeping accommodations and cooking facilities, and are parked or anchored but not being driven)
- Scientific research and testing facilities (if the cannabis use is for scientific research and testing purposes)
- Controlled areas in:

- long-term care homes
- certain retirement homes
- residential hospices
- provincially-funded supportive housing
- designated psychiatric facilities or veterans' facilities

Places Where Cannabis May Not Be Smoked or Vaped

Cannabis may not be smoked or vaped in various indoor locations:

- indoor common areas in condos, apartment buildings and university/college residences;
- enclosed public places and enclosed work places;
- non-designated guest rooms in hotels, motels and inns

Cannabis may not be smoked or vaped at various locations where children may be present:

- at school, on school grounds, and all public areas within 20m of these grounds;
- on children's playgrounds and public areas within 20m of playgrounds;
- in child care centres, or where an early years program is provided;
- in places where home child care is provided — even if children aren't present.

Cannabis may not be smoked or vaped at various care facilities:

- within 9m from the entrance or exit of public or private hospitals, psychiatric facilities, long-term care homes, independent health facilities;
- on outdoor grounds of public and private hospitals and psychiatric facilities;
- in non-controlled areas in long-term care homes, certain retirement homes, provincially-funded supportive housing, designated psychiatric or veterans' facilities, and residential hospices.

Cannabis may not be smoked or vaped in various outdoor locations: in publicly-owned sport fields (not including golf courses), nearby spectator areas or in public areas within 20m of these areas.

Cannabis may not be consumed in a vehicle or boat that is being driven or is at risk of being put into motion.

Cannabis may not be smoked or vaped in various outdoor locations:

- in restaurants and on bar patios and public areas within 9m of a patio;
- on outdoor grounds of specified Ontario government office buildings;
- in reserved seating areas at outdoor sports and entertainment locations;
- on grounds of community recreational facilities, and public areas within 20m of those grounds;
- in sheltered outdoor areas with a roof and more than two walls which the public or employees frequent, or are invited to (e.g. a bus shelter)

City's Smoking By-law 18-070

The SFOA permits a municipality to enact stricter standards for smoking or vaping within the municipality. Municipalities may wish to do so to address the health, safety and well-being of persons and to also address the public nuisance aspects of smoking or vaping.

The **Municipal Act, 2001** ("Municipal Act") restricts a municipal jurisdiction to regulate or prohibit smoking on highways (except in public transportation vehicles and taxicabs on a highway) but does not restrict the smoking or vaping of cannabis on highways (including sidewalks) within the municipality's jurisdiction.

Since Smoking By-law 18-070 does not presently prohibit the smoking or vaping of cannabis, staff recommend that it be repealed and replaced with a by-law to regulate the smoking of cannabis in the same way that it regulates the smoking of tobacco. The recommended form of by-law is attached as Appendix A.

Smoking or vaping of cannabis will not be permitted in the following locations:

- in any building or on any land owned by the Peterborough Public Health or by the Peterborough Regional Health Centre;
- within a nine (9) metre radius surrounding any entrance, exit, or air intake of any building owned by:
 - a. The City;
 - b. The Peterborough Utilities Group;
 - c. The Peterborough Utilities Commission;
 - d. The Peterborough Public Library Board; or
 - e. The Corporation of the County of Peterborough located within the City.
- within any designated smoking area within Riverview Park and Zoo, Del Crary Park or any other City park with a designated smoking area.
- within a nine (9) metre radius of any of the following:
 - a. any public playground, beach, wading pool or splash pad; or
 - b. any sport field or skateboard park.
- within or upon any portion of a public road allowance which has been closed in accordance with a road closure permit issued by the City Clerk's Office.

Staff will continue to study and consult with the community respecting the City's standards established under the City's Smoking By-law including whether to recommend for Council's consideration stricter standards than those established under the SFOA.

Potential Cost Implications

In the Association of Municipalities of Ontario (AMO) October 3, 2018 publication, “Briefing: Municipal Governments in the Ontario Recreational Cannabis Framework”, AMO notes that the transition to recreational cannabis will impact local services and municipal functions including policing, public health, by-law enforcement and potentially paramedic services. AMO notes the provincial government’s commitment to provide municipal governments with \$40 million of Ontario’s portion of the federal excise tax on cannabis with a 50/50 provincial-municipal split if Ontario’s revenues exceed \$100 million in the first two years. The commitment is

- \$40 million over two years to municipal governments;
- At least \$10,000 for each municipal government with \$5,000 distributed to all municipalities as soon as possible;
- Another \$5,000 will be distributed in 2019; and
- For municipal governments allowing retail cannabis stores, additional funding will be distributed on a per household basis. The Province will also maintain a contingency fund to support additional and unanticipated costs.

AMO notes that the provincial funding provides an incentive to municipal governments to allow private cannabis retail in their community and recommends that municipal governments track any costs for the additional work undertaken relating to the transition to legal recreational cannabis.

Summary

Although staff is aware that information from the AGCO and the province is still in development, this report recommends that Council not opt out of having cannabis retail stores within the City of Peterborough and that a new Smoking By-law be passed that regulates the smoking of cannabis in the same way that the existing Smoking By-law regulates the smoking of tobacco.

Submitted by,

Patricia Lester
Commissioner of Corporate and Legislative Services

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Attachments:

Appendix A: Proposed Smoking By-law 18-0XX

Appendix B: AMO's Submission to the Standing Committee on Social Policy,
October 11, 2018.

Appendix C: November 7, 2018 Briefing Note by Dr. Salvaterra, Medical Officer
of Health

Appendix A: Proposed Smoking By-law 18-XXX



The Corporation of the City of Peterborough

By-Law Number 18-XXX

Being a By-law to repeal By-law 18-070 and enact City of Peterborough Smoking By-law Number 18-XXX

Recitals

- A. Subsection 10(2) of the Municipal Act, 2001, S.O. 2001, c.25 as amended (the “Act”), permits Councils of local municipalities to pass by-laws and make regulations for the health, safety and well-being of persons within the municipality;
- B. It has been determined that tobacco products, vapour products, electronic cigarettes, and second hand smoke are a health hazard because of its impairment, adverse effect and risk to human health, and is a public nuisance because of its irritating and discomforting properties to the inhabitants of the City of Peterborough;
- C. It is desirable for the health, safety, and well-being of the inhabitants for of the City of Peterborough to regulate where people may use tobacco products, and vapour products, in order to better protect persons from conditions injurious to health resulting from smoking and or from second-hand smoke in accordance with the provisions of this by-law;

Now therefore the Corporation of the City of Peterborough enacts as follows:

Article 1 – Definitions

- 1.1 **By-law Enforcement Officer** – means a person that is employed and appointed by Council of the City of Peterborough to perform the duties of enforcing City By-Laws.

- 1.2 **Cannabis** – has the same meaning as in subsection 2 (1) of the **Cannabis Act** (Canada).
- 1.3 **City** – means The Corporation of the City of Peterborough or the geographical boundary of the municipality as the context requires.
- 1.4 **Council** – means the Council of the City of Peterborough.
- 1.5 **Electronic Cigarette** – means a vaporizer or inhalant-type device, whether called an electronic cigarette or any other name, that contains a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled by the user of the device directly through the mouth, whether or not the vapour contains nicotine.
- 1.6 **e-substance** – means a substance that is manufactured or sold to be used in an electronic cigarette.
- 1.7 **Peterborough Utilities Group** – means City of Peterborough Holdings Inc. and any of its subsidiary companies.
- 1.8 **Tobacco Product** – includes Cannabis and means any product that contains tobacco, in any processed or unprocessed form that may be smoked, inhaled or chewed, including snuff, but does not apply to products intended for use in nicotine replacement therapy.
- 1.9 **Vapour Product** – means an electronic cigarette, an e-substance, or any component of an electronic cigarette.

Article 2 – Prohibitions

- 2.1 No person shall smoke or hold a lighted Tobacco Product or use an Electronic Cigarette, e-substance, or Vapour Product in any building or on any land owned by the Peterborough County-City Health Unit or by the Peterborough Regional Health Centre.
- 2.2 No person shall smoke or hold a lighted Tobacco Product or use an Electronic Cigarette, e-substance, or Vapour Product within a nine (9) metre radius surrounding any entrance, exit, or air intake of any building owned by:
- a. The City;
 - b. The Peterborough Utilities Group;
 - c. The Peterborough Utilities Commission;
 - d. The Peterborough Public Library Board; or

- e. The Corporation of the County of Peterborough located within the City.
- 2.3 No person shall smoke or hold a lighted Tobacco Product or use an Electronic Cigarette, e-substance, or Vapour Product within the Riverview Park and Zoo except in an area designated to allow smoking.
- 2.4 No person shall smoke or hold a lighted Tobacco Product or use an Electronic Cigarette, e-substance, or Vapour Product within a nine (9) metre radius of any of the following:
 - a. any public playground, beach, wading pool or splash pad; or
 - b. any sport field or skateboard park.
- 2.5 No person shall smoke or hold a lighted Tobacco Product or use an Electronic Cigarette, e-substance, or Vapour Product within any City park except in an area designated to allow smoking.
- 2.6 No person shall smoke or hold a lighted Tobacco Product or use an Electronic Cigarette, e-substance or Vapour Product within Del Crary Park, except within the designated smoking area, outlined on the map attached hereto as Schedule "A".
- 2.7 No person shall smoke or hold a lighted Tobacco Product or use an Electronic Cigarette, e-substance, or Vapour Product within or upon any portion of a public road allowance which has been closed in accordance with a road closure permit issued by the City Clerk's office.
- 2.8 Notwithstanding Articles 2.3, 2.5 or 2.6, no person shall smoke or hold lighted Cannabis or use an Electronic Cigarette, e-substance, or Vapour Product containing Cannabis within any designated smoking area.

Article 3 – Enforcement

- 3.1 This by-law may be enforced by any:
 - a. Person holding the title of Tobacco Enforcement Officer who is employed by the Peterborough County City Health Unit;
 - b. Police Officer; or
 - c. By-law Enforcement Officer appointed by Council.

Article 4 – Exceptions

- 4.1 This by-law does not apply to any portion of a public road allowance that has not been closed to through traffic or to any private property.

Article 5 – Penalty

- 5.1 Every person who contravenes any provision of this By-law is guilty of an offence and is liable to a fine, and such other penalties, as provided for in the **Provincial Offences Act**, R.S.O. 1990, c. P.33, and the **Municipal Act, 2001**, as each may be amended from time to time.

Article 6 – Duty to Identify

- 6.1 Where a Tobacco Enforcement Officer, Police Officer or By-law Enforcement Officer has reasonable grounds to believe that an offence has been committed by a person, they may require the name, address and proof of identify of that person and the person shall supply the required information. A failure by the person to supply the required information constitutes a hindrance or obstruction of the Officer.

Article 7 – Severability

- 7.1 In the event any provision of this By-law is deemed invalid or void, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect unless the court makes an order to the contrary.

Article 8 – Short Title

- 8.1 This By-Law may be referred to as the Smoking By-Law.

Article 9 – Effective Date and Repeal

9.1 This By-Law and the attached Schedule, comes into effect on the day it receives third reading.

9.2 By-law 18-070 is repealed, effective the date this by-law comes into effect.

By-law read a first, second and third time this 10th day of December 2018.

Diane Therrien, Mayor

John Kennedy, City Clerk

Schedule A: By-law 18-_____
Designated Smoking Area for Del Crary Park

