

Briefing Note

Bill 36, Cannabis Statute Law Amendment Act

Date:	November 7, 2018
To:	Mayor and Council, City of Peterborough (c/o David Potts, City Solicitor)
From:	Dr. Rosana Salvaterra, Medical Officer of Health

Recommendations:

1. That the City of Peterborough By-Law Number 18-070 be amended such that references to “medical cannabis” are replaced with “cannabis” (non-specific) and that a definition of cannabis be enacted to refer to the definition in the federal *Cannabis Act*.
2. That the City of Peterborough use a precautionary approach to hosting physical cannabis retail stores, resolving to host such outlets only after details regarding specific operating parameters, siting requirements, and public notice processes are known. Given Council’s meeting schedule and the deadlines imposed by the provincial government enacting such a recommendation would require that the City of Peterborough resolve to opt-out of hosting cannabis retail outlets at this time, revisiting the decision after specific regulations are released and related matters clarified to their satisfaction.

Background:

Cannabis for non-medical use is now legal in Canada subject to the federal *Cannabis Act* (Bill C-45). Under the federal framework individual provinces are responsible for regulating cannabis distribution, retail sales, and rules regarding public consumption.

In Ontario, legislation introduced by the previous provincial government in December 2017 established the Ontario Cannabis Store (OCS) with exclusive rights to sell cannabis in the province and restricted consumption of cannabis for non-medical purposes to private residences. In August 2018, the new provincial government announced their intention to overhaul the previous cannabis sales system and develop a mixed (public and private) cannabis retail system. *The Cannabis Statute Law Amendment Act, 2018* (Bill 36) received royal assent on October 17, 2018 and serves to bring the mixed cannabis retail system into effect and makes further changes to the province’s smoke-free legislation.

Changes introduced through Bill 36 make the smoking and vaping of cannabis (medical and non-medical use) subject to the same prohibitions as the smoking and vaping of tobacco products as set out in the *Smoke-Free Ontario Act* (with some further restrictions on cannabis consumption in boats and motor vehicles and workplaces). Further changes grant the OCS exclusive rights as the

wholesaler and online retailer of cannabis in the province, and set out the parameters for the licensing of private cannabis retail storefronts to be regulated by the Alcohol and Gaming Commission of Ontario (AGCO).

These changes carry with them implications for municipal governments with regard to cannabis retail sales and public consumption. Under the provincial framework municipalities have until January 22, 2019 to opt-out of hosting physical retail stores in their territorial boundaries. Municipalities can also enact by-laws to further restrict smoking and vaping in public places. These changes also carry with them implications for local public health agencies who play a significant role in smoking enforcement and population health promotion and protection.

Given these implications, and our commitment to working collaboratively with our municipal partners, we welcome the opportunity to comment on your pending decisions regarding smoking by-laws and the municipal opt-out option. In what follows you will find our rationale and supporting evidence, for your consideration.

Municipal Smoking By-Law:

Studies have shown that smoke-free policies can reduce smoking rates, youth initiation rates and increase quit attempts. Smoking restrictions have also been associated with improved health outcomes, such as reductions in heart disease and respiratory illness. We believe the *Smoke-Free Ontario Act (SFOA)* should serve as a minimum standard, and are supportive of developing further smoking and vaping restrictions through by-laws.

Peterborough Public Health is responsible for enforcing the *Smoke-Free Ontario Act* in our health unit area. As of October 17, 2018, the SFOA has incorporated a new restriction making all community recreational facilities owned by the Province, municipalities, charities or non-profit organizations smoke- and vape-free. This restriction applies to all of the outdoor property and includes a 20-metre buffer that would most likely incorporate the sidewalk. Some municipalities will be including this restriction in their new by-laws to ensure that enforcement will be done by city staff.

The Province is providing new signage to assist with enforcement efforts. However, with new provincial restrictions and the potential for municipalities to enact stricter smoking by-laws, it is likely that regardless of who does the enforcement, additional funding and resources will be required. To date, no additional funding has been dedicated to local boards of health in Ontario for cannabis-related enforcement, education, or health promotion activities.

We support the staff recommendation to enact stricter by-laws on places to smoke and vape within the City of Peterborough. We suggest that By-Law Number 18-070 be amended such that references to “medical cannabis” are replaced with “cannabis” (non-specific) and that a definition of cannabis be enacted to refer to the definition in the federal *Cannabis Act*. We look forward to working with the City of Peterborough to develop an adequately resourced by-law enforcement plan.

Municipal Opt-Out Option for Private Cannabis Retail:

Research on the impacts of different cannabis retail systems is limited. However, the findings of the federal Task Force on Cannabis Legalization and Regulation indicate general support for some kind of

storefront retail as a means of ensuring access and limiting the illicit market. Additionally, though the Canadian Public Health Association's policy statement on cannabis legalization (2017) recognizes the value of an e-commerce approach to retail sales and government-run cannabis retail centres, it further acknowledges that retail sales demand may exceed the capacity of e-commerce sales and mail delivery and that consumers may wish to view and purchase products in person.

Evidence from alcohol and tobacco sales suggests that in order to protect and promote public health, restrictions should be placed on the operation and siting of retail stores. Research from other substance fields suggests that privatization can lead to more outlets, longer hours of operation, increased promotions and increased sales and use. Research further suggests that restricting the density and proximity of substance-related retail outlets to sensitive uses (such as schools and other youth-serving facilities) may help to limit access by youth and other vulnerable populations.

Although enforcement related to licensed retailers will fall to the AGCO, it is most likely that there will be additional costs to municipalities for enforcing legalized cannabis. While provincial funding provides incentives for municipalities who allow retail storefronts, given that residents will likely be able to purchase cannabis in neighbouring municipalities and certainly online, there will continue to be costs associated with enforcement, education, and health promotion for municipalities that opt-out of hosting retail storefronts.

At the time of writing, provincial regulations to address store operating parameters, distance requirements from schools, and public notice processes are still subject to stakeholder consultation and not yet known, and are anticipated to be released in December 2018. Additionally, no dedicated funding has yet been provided to local public health agencies for enforcement, education, and health promotion activities. To address these concerns Peterborough Public Health has submitted a letter to the provincial Legalization of Cannabis Secretariat outlining considerations for cannabis retail operating parameters, distance requirements, and public notice processes. An additional letter has been sent to the Minister of Finance regarding funding for enforcement and health promotion activities.

While it would be Peterborough Public Health's position to support the hosting of cannabis retail storefronts in local municipalities as a mechanism for curbing the illicit market and providing for consumer access to regulated products, given the uncertainty that remains about the provincial regulations for cannabis retail outlets we suggest taking a precautionary approach to this issue.

Under the provincial process set out in *Cannabis License Act, 2018* municipalities have until January 22, 2019 to pass a council resolution should they wish to opt-out of hosting cannabis retail outlets in their territorial boundaries. Municipalities who do not opt-out through resolution in advance of the January 22 deadline will not be able to revisit this decision. However, municipalities who do opt-out by the deadline are able to revisit their decision and lift that prohibition by subsequent resolution. Should the City of Peterborough elect to opt-out of cannabis retail at this time, Council may revisit this decision once the full scope of regulation and notification processes are known.