



Corporate Development Committee Report

To: To the Chair and Members of the Corporate Development Committee
From: Jyoti V. Zuidema, Solicitor and Corporate Counsel
Date: December 7, 2018
Subject: CD-18-98, Cannabis Legislation Update
Purpose: For Decision before January 22, 2019 – Opting In or Opting Out of retail cannabis stores

Recommendation

That Report No. CD-18-98 dated December 7, 2018 be received for a decision to be made prior to January 22, 2019 concerning opting in or opting out of retail cannabis stores located within the County.

Should Council decide to “Opt-In,” no Resolution is required. The default is the “Opt-In” position.

Should Council decide to “Opt-Out,” then the following Resolution must be adopted before January 22, 2019 such that the Province receives this Resolution by January 22, 2019:

Whereas the Government of Canada has passed the Cannabis Act, which was also known as Bill C-45, as a law that having come into effect on October 17, 2018, legalized the recreational use of cannabis nationwide in Canada, when combined with Bill C-46, An Act to Amend the Criminal Code of Canada; and

Whereas the Province of Ontario has passed the Cannabis Act 2017 which has come into force on October 17, 2018; and

Whereas the Province of Ontario has directed that Municipalities must decide by January 22, 2019 if they choose to opt-out of permitting physical cannabis retail stores as of April 1, 2019 within their municipality; and

Whereas the Government of Ontario has indicated that if a Municipality chooses to opt-in there is no subsequent opportunity to opt-out,

That the County of Brant advise the Province of Ontario that the County of Brant is opting out of permitting physical cannabis retail stores within the County;

And that the Clerk forward this resolution forthwith to the Alcohol and Gaming Commission of Ontario and the Ministry of Finance to confirm that the County of Brant will not permit cannabis retail stores to be located within its boundary.

Key Strategic Priority

To ensure our community is healthy, safe and progressive.

Financial Considerations

Access to provincial funding is tied to the decision. A discussion on funding is set out later in this report.

Further, with the potential for increased public use, there likely will be an increase in enforcement issues which may necessitate additional staffing resources, specifically by-law enforcement. Issues associated with Public Health, Economic Development, Public Safety and Emergency Services will be on the horizon for municipalities.

Executive Summary

This report is a follow-up of the Report CD-18-85 wherein I set out that municipalities would need to see what position they wish to take in response to the cannabis legislation and directives implemented by the Province on October 17, 2018.

In short, that legislation permits the public use of cannabis, subject specific restrictions (generally: 19 years of age, 30 gram limit, not in vehicles or boats, or around children to name a few). Since the legislation was enacted, regulations have also been enacted. They provide some specific guidance such as distance separation for the use of cannabis (generally: not in municipal recreational facilities and 20 metres beyond and siting of retail facilities at least 150 metres from schools to name a couple).

Municipalities were not given any power with respect to licensing retail cannabis stores or with enacting zoning by-laws to restrict their locations.

“Opt-Out”

Municipalities have until **January 22, 2019** to choose to “Opt-Out.” If the municipality decides to “Opt-Out,” then a Resolution must be passed stating same. That Resolution must be forwarded within three (3) days to the Alcohol and Gaming Commission of Ontario (“AGCO”).

Once a municipality chooses to “Opt-Out,” it will have the ability to reverse that decision but only once. If a municipality chooses to “Opt-Out,” it may not have access to additional funding. Details of that funding are set out further in this report. An advantage of “Opting-Out” is the ability to wait and see what transpires with other municipalities who choose to “Opt-In.”

“Opt-In”

If no decision is made, the default position is to “Opt-In.” If a municipality choose to “Opt-In,” then no resolution is required. This choice is not reversible. An advantage is access to the funding as discussed later in this report.

Whether a municipality chooses to “Opt-In” or “Opt-Out” will not have any bearing on the public’s ability to smoke cannabis and potential complaints which may arise.

Deferral

Council also has the option of deferring this decision should it wish to gauge public opinion and sentiment but then must schedule a special meeting as its first meeting in January 2019 coincides with the January 22nd deadline. The deadline of providing the “Opt-Out” Resolution, should that be determined by Council, remains the same.

Background

For ease of reference, I repeat some of the background information contained in my earlier report. The purpose of the previous October 10, 2018 CDC report was to provide a high-level overview of the history and context of the legislation concerning cannabis production and use.

The intent to have a more fulsome discussion and education session sometime in the New Year is still contemplated.

Legislative History

Generally Canadians have had access to Cannabis for medical purposes dating back to 1999 under the Controlled Drugs and Substances Act.

In 2001, the Marihuana Medical Access Regulations (“MMAR”) were passed under this Act to allow those with authorization from a health care practitioner to possess their own plants for the purpose of producing medicinal marihuana. These regulations were replaced in 2013 by the Marihuana for Medical Purposes Regulations (“MMPR”), where for the first time a licensed producer could possess, sell, provide, test, ship, deliver, transport and destroy marihuana.

In 2016, the Access to Cannabis for Medical Purposes Regulations (“ACMPR”) replaced the MMPR, to allow licensed producers to produce and sell cannabis oil and fresh marijuana leaves in addition to dried marihuana. These regulations have remained in effect to the present.

Health Canada’s defined role is to “license and oversee the commercial industry, and to register and regulate individual cannabis production for personal use” (Health Canada, 2016).

In April of 2017 the federal government introduced Bill C-45 (the Cannabis Act) with the intent of legalizing marihuana in Canada. This Act received Royal Assent on June 21, 2018 and will become effective on October 17, 2018.

The purpose of the Cannabis Act is to regulate the cultivation, processing, distribution, testing and sale of cannabis across the country. In June of 2018, the Federal Cannabis Regulation (SOR-2018-144) was published in the Canada Gazette, providing far greater detail on how activities associated with cannabis production will be licensed, as well as restrictions and security requirements for production sites.

With this release it was also confirmed that the ACMPR from 2016 will be repealed, which means that those currently licensed (for medical purposes) will continue their activity until such license expires, at which time a new license would be required under new regulations.

At the time the Cannabis Act was introduced, the federal government also indicated that sale of cannabis to the general public would be the regulatory responsibility of the provinces and territories.

Following that announcement, the previous provincial government introduced a plan for Ontario that would have ‘Ontario Cannabis Stores’ under the same model as the LCBO. More recently the new governing party in Ontario announced that they will be permitting the online sale of recreational cannabis using the Ontario Cannabis Store as a distributor. Those online sales began on October 17, 2018.

The Province had also committed to provide details with respect to how retail sales of cannabis would be regulated. After consultation with various stakeholders, the Province released a direction that the provincial government will license retail facilities within municipalities through the provincial AGCO. The Registrar of the AGCO will also control the authorization process for operating retail cannabis stores. The Act sets out the powers of the Registrar (to issue, revoke, suspend etc.) licenses and that an appeal mechanism is available to a provincial appeal body: the Licensing Appeal Tribunal.

Bill 36, as it was initially introduced, the *Cannabis Statute Law Amendment Act, 2018* (“the Act”) received first reading on September 27, 2018. It received second reading October 1st and was given Royal Assent on or about October 17, 2018.

The Act contains 4 Schedules:

Schedule 1 amends the *Cannabis Act, 2017*;

Schedule 2 amends the *Cannabis Licence Act, 2018*;

Schedule 3 amends the *Ontario Cannabis Retail Corporations Act, 2017*; and

Schedule 4 amends the *Smoke-Free Ontario Act, 2017*.

With respect to the licensing of retail cannabis stores, if a municipality has not “Opted-Out,” then the stated role of the municipality under the new cannabis legislation is limited to being notified when an application for a retail license has been submitted. Municipalities, like other stakeholders, will have the opportunity to comment on the application. The Registrar of the AGCO will make the determination. Should a municipality “Opt-Out” of having retail cannabis stores within their jurisdiction, then the Registrar will not further process the license application.

Cannabis will continue to be readily available for purchase in other jurisdictions (who choose to allow retail sales) and through the Ontario Cannabis Store regardless if a municipality has chosen to opt-out in hosting retail sales.

Analysis:

The recent legislation does not affect those who have received federal licenses for the following:

- cultivation;
- processing;
- analytical testing;
- sale for medical purposes;
- research; and
- drug license.

The ability under the *Cannabis Act* to hold multiple licenses means cannabis production companies will still be able to cultivate and process cannabis for public consumption on one

site. Municipalities must prepare for the reality that increased access to cannabis means they will likely see more production or more applications for production within their boundaries.

Cannabis use by individuals for recreational purposes is controlled in a similar fashion as alcohol and tobacco. In other words, there are some safeguards as to where individuals can use cannabis freely. The *Smoke-Free Ontario Act, 2017* is amended by the Act and sets out where one can or cannot smoke or hold a lighted tobacco product. The same provisions apply to cannabis such that smoking cannabis in certain places would be against the law (i.e. childcare centers, enclosed public spaces or enclosed workplaces to name a few).

Minimum age requirements similar to that for alcohol (i.e. 19 years old), limits on the amounts of possession (30 grams) and impaired driving offences are still applicable. In very plain and general terms, what this means is that individuals can smoke cannabis in the areas where tobacco is smoked. The issue of second-hand cannabis smoke and its effects may need to be discussed at some time in the future. Municipalities have the ability to impose stricter smoking rules through its by-laws. Currently the County has not enacted a municipal smoking by-law. The enforcement of a smoking by-law will also be left to the municipality and there would be additional costs associated with such enforcement.

The Province suggested that fines imposed through municipal *Provincial Offences Act* processes would be available to municipalities to use. However, those fines would need to be collected and there can be significant challenges associated with the collection process.

Staff have organized a “Cannabis Working Group” comprising of members of the Brant OPP, Planning, Fire, Building, Communications, Legal By-Law Enforcement and the County Solicitor. The purpose of the working group is to circulate pertinent information as it becomes available and ensure each department’s response to various issues does not conflict or undermine the efforts of another department. It is expected that through this working group, further discussion with Council and/or its Committees will occur to address the following:

- A communications strategy in co-ordination with the County’s stakeholders to provide consistent messaging on cannabis use. This information should be provided by Communications; and
- The challenges which may be faced by the Brant County detachment of the OPP, given that nuisance complaints arising from cannabis use will likely be directed to both the OPP and County.

Funding:

Staff recently attended the Recreational Cannabis Legalization Forum hosted by the Association of Municipal Clerks and Treasurers on Ontario (AMCTO). The Forum was attended by numerous municipal leaders, prosecutors and panelists representing various municipalities and government agencies such as the Alcohol and Gaming Commission of Ontario, the Attorney General, the Ministry of Finance and Ontario Provincial Police.

Exercising the “Opt-Out” option surrounding Cannabis retail sales would allow municipalities to make a more informed decision by allowing additional time to review the impending provincial regulations and retail licensing regime. However there are funding implications with this approach as at the above-noted session, the province had indicated that municipalities who opt-out will not receive more than \$10,000 regardless if they choose to “Opt-In” at a later date.

It should be noted that as of the date of this report, the County has received correspondence from the Province indicating that the funding allocation for the County will be \$35,787.00

which based on 14,034 households at \$255.00 per 100 households. This payment should be received by the County sometime early January 2019.

The province indicated that it will provide \$40 million over 2 years to help municipalities with the implementation costs of recreational cannabis legalization with each municipality receiving at least \$10,000. If Ontario's portion of the federal excise duty on recreational cannabis over the first two years of legalization exceeds \$100 million, the province would provide 50% of the surplus to municipalities that have not "Opted-Out" as of January 22, 2019. Municipalities who have not "Opted-Out" will receive a portion of the provincial funding on a per household basis.

All of which is respectfully submitted,

Jyoti V. Zuidema

County Solicitor and Corporate Counsel

With contribution from Greg Bergeron, Supervisor of Enforcement and Regulatory Services

Interdepartmental Considerations

To be brought forward at later date.

Attachments

None

Copy to

1. M. Bradley, CAO
2. SMT

File

In adopting this report, is a bylaw or agreement required?

By-law required (Yes/No)

Agreement(s) or other documents to be signed by Mayor and /or Clerk (Yes/No)

Is the necessary by-law or agreement being sent concurrently to Council? (Yes/No)