



Item.....	
Meeting.....	2018 July 23

## COUNCIL REPORT

**TO:** CITY MANAGER **DATE:** 2018 July 18

**FROM:** DIRECTOR PLANNING AND BUILDING **FILE:** 42000 20  
*Reference:* Non-Medical Cannabis

**SUBJECT:** MUNICIPAL REGULATORY APPROACH TO  
NON-MEDICAL CANNABIS

**PURPOSE:** To provide an overview of federal and provincial non-medical cannabis legislation, and to propose a regulatory approach that addresses the production and sale of non-medical cannabis in Burnaby.

### RECOMMENDATIONS:

1. **THAT** Council approve the non-medical cannabis regulatory approach for Burnaby, as summarized in Section 3.0 of this report.
2. **THAT** Council authorize the preparation of a bylaw amending the Burnaby Zoning Bylaw, as outlined in Section 4.0 of this report, for advancement to a Public Hearing on 2018 August 28.
3. **THAT** a copy of this report be sent to the Liquor Control and Licensing Branch, Attn: Kam Aujla, Assistant Director, 2625 Rupert Street, Vancouver, BC V5M 3T5 and to Burnaby MLA's and MP's.

### REPORT

#### 1.0 INTRODUCTION

The Federal government has now passed legislation legalizing the use of non-medical cannabis by adults. The legislation, which is scheduled to come into force on 2018 October 17, creates a new national framework that provides access to a regulated supply of cannabis, while implementing restrictions to protect youth and minimize the harms associated with cannabis use.

The adopted federal framework creates significant responsibilities for all levels of government. The Federal government will regulate the product itself (matters such as potency, production, and advertising) as well as providing general regulatory oversight by establishing possession and age limits. The Province is authorized to regulate distribution, public use, workplace safety, and impaired driving, as well as supplementing the federal regulations with more restrictive age and possession limitations. The Province has now passed legislation in respect to each of these responsibilities. Municipal regulations stem from the regulatory framework established by the Federal Government and the Province. The City is responsible for zoning, business licensing, and other local matters, to the extent prescribed by the Province.

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Given that both federal and provincial legislation has now been adopted, there is a corresponding need for the City to develop a municipal regulatory approach to address the municipal responsibilities listed above.

This report provides an overview of the adopted federal and provincial legislation, and proposes a municipal regulatory approach to address the production and sale of non-medical cannabis in Burnaby. This report also includes a number of supporting amendments to the Burnaby Zoning Bylaw in relation to the proposed regulatory approach.

## **2.0 OVERVIEW OF FEDERAL AND PROVINCIAL LEGISLATION**

### **2.1 Federal Regulation**

On 2018 June 21, *Bill C-45*, otherwise referred to as the *Cannabis Act*, received Royal Assent and is scheduled to come into force on 2018 October 17. The legislation creates a national legal framework for the production, distribution, advertisement, possession, and use of non-medical cannabis in Canada. In accordance with the Act, commercial production of non-medical cannabis will be permitted subject to a federal license, similar to medical cannabis. The *Cannabis Act*, subject to provincial regulation, also authorizes adults, 18 years of age and over, to purchase up to 30 grams of dried non-medical cannabis or equivalent from a licensed retailer, allows adults to possess up to 30 grams of non-medical cannabis or equivalent in public, and permits households to grow up to four cannabis plants with restrictions on size and transference of unused allotment. Note the sale of cannabis edibles is not permitted under the *Cannabis Act*.

The existing medical system as regulated by the *Access to Cannabis for Medical Purposes Regulation (ACMPR)* will remain in force following the enactment of the *Cannabis Act*. The federal government has indicated that it will initially allow the two systems to operate in tandem and that it intends to evaluate medical cannabis regulation within five years of the *Cannabis Act* coming into force. There is some immediate cross-over between the two systems. Current commercial production license holders under the existing medical cannabis regulatory regime are automatically licensed to continue those activities with respect to non-medical cannabis under the *Cannabis Act*.

### **2.2 Provincial Regulation**

The Federal government has delegated responsibility for a number of key areas of non-medicinal cannabis regulation to the Province, including the wholesale distribution and retail framework, as well as public use, impaired driving, and workplace safety related regulation. The Province also has the authority to set more restrictive regulations pertaining to age and possession limitations.

On 2018 April 26, the Province introduced three bills (*Cannabis Distribution Act*, *Cannabis Control & Licensing Act*, and amendments to the *Motor Vehicle Act*) to provide for legal, controlled access to non-medical cannabis in British Columbia. The legislation has since been granted Royal Assent by the Lieutenant Governor. However, it is generally recognized that

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subsequent amendments will likely be tabled by the Province to account for refinements and updates to the federal legislation over time, such as the proposed legalization of cannabis edibles in 2019. The Province has stated that it expects to open the first government-operated retail store by late summer, and is working to implement an e-commerce solution to offer online sales to the public.

The following sections provide an overview of the above noted provincial legislation:

### **2.2.1 Cannabis Distribution Act (CDA)**

The *CDA* establishes a public wholesale distribution monopoly to be administered by the Liquor Distribution Branch (LDB), as well as public cannabis retail sales, both in stores and online. These stores will also be operated by the LDB under the brand name of *BC Cannabis Stores*.

### **2.2.2 The Cannabis Control and Licensing Act (CCLA)**

The *CCLA*:

- sets 19 as the provincial minimum age for the purchase and use of non-medical cannabis;
- allows adults (19 and above) to possess up to 30 grams of dried non-medical cannabis or equivalent in a public place, in line with federal legislation;
- establishes a non-medical cannabis use regime similar to current tobacco laws by prohibiting the smoking and vaping of non-medical cannabis everywhere tobacco smoking and vaping are prohibited, as well as at schools and health authority properties, outdoor recreational facilities and indoor public facilities, prescribed areas in parks, in work places and common areas of residential buildings, in places of passenger loading and unloading, such as bus stops, and in vehicles and boats;
- authorizes adults to grow up to four cannabis plants per household provided the plants are not visible from public spaces. Home cultivation will be banned in homes used as day-cares;
- provides enforcement authority to deal with illegal sales and creates a number of provincial cannabis offences which may result in a fine ranging from \$2,000 to \$100,000, imprisonment of three to 12 months, or both; and
- establishes a non-medical cannabis retail licensing regime for non-government stores with similarities to the current licensing regime for liquor.

The *CCLA* also includes consequential amendments to various statutes, including:

- the *Liquor Control and Licensing Act* to ensure administrative consistency between that Act and the *CCLA*;
- the *Residential Tenancy Act (RTA)* and *Manufactured Home Park Tenancy Act (MHPTA)* to prohibit cannabis smoking under existing leases that prohibit smoking tobacco and to prohibit the personal cultivation of cannabis under existing leases, except for federally authorized medical cannabis;

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- the *Police Act* to set provincial priorities for policing and require municipal police boards to take these and the priorities of the municipal council into account as they develop their own priorities;
- the *Community Safety Act* to reflect that with legalization, cannabis will no longer be a controlled substance under the federal *Controlled Drugs and Substances Act*;
- the *Provincial Sales Tax Act* to add a reference to cannabis in the definition of “small seller” consistent with liquor; and,
- the *Business Practices and Consumer Protection Act* to recognize that the *CCLA* is a complete licensing scheme.

With regards to the provincial retail licensing regime noted above, the Liquor Control and Licensing Board (LCLB) will be responsible for issuing provincial licenses for privately operated cannabis stores, with no cap on the number of licenses available. However, provincial licenses will only be issued with support of the local government, which must be based in part on a public consultation process. Local government support is required for both government and private stores. As part of the licensing process, the Province will develop and maintain a database of all cannabis retail employees, and require that all cannabis retail employees undergo a mandatory training program.

The rules governing cannabis stores will have some similarities to those governing liquor stores, and both public and private retailers will have similar operator rules. Specifically, the LCLB will limit store hours between 9 am – 11 pm (subject to local government regulation), and minors and instore use will be prohibited. The Province will also require that urban stores be self-contained businesses, selling only federally regulated, provincially sourced cannabis, and cannabis related accessories. The Province is still assessing security requirements for stores, but they will not be regulating the location of stores. Rather local governments are exclusively responsible for regulating the number and location of stores. Local governments may also supplement the provinces store operator rules, such as by limiting operating store hours.

### **2.2.3 The Motor Vehicle Act (MVA)**

The *MVA* establishes a new 90-day administrative driving prohibition for any driver whom police reasonably believe operated a motor vehicle while affected by a drug or by a combination of a drug and alcohol, based on analysis of a bodily substance or an evaluation by a specially trained police drug recognition expert. The Act also requires that new drivers in the Graduated Licensing Program be subject to a zero-tolerance restriction for the presence of THC (tetrahydrocannabinol — the active ingredient in cannabis). In addition to these measures, the Province has stated that it will also increase training for law enforcement to deal with impaired driving.

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### **3.0 RECOMMENDED MUNICIPAL REGULATORY APPROACH**

The Province has provided latitude for local governments to regulate various aspects of cannabis regulation, including zoning for cannabis production and retail stores. As such, there is a corresponding need for the City to develop a regulatory approach that addresses these regulatory responsibilities. The following sections provide an overview of the recommended municipal regulatory approach.

#### **3.1 Production**

##### ***3.1.1 Previous Zoning Amendments – Commercial Production***

On 2018 March 12, Council approved a zoning amendment to permit cannabis production facilities in the M1 through M5 Industrial Districts provided the use is included as part of a comprehensive development plan subject to the CD (Comprehensive Development) District. Cannabis production facilities, as approved through a site specific rezoning, allow for the commercial production, finishing, packaging, warehousing, and/or distribution of both medical and non-medical cannabis, subject to federal and provincial regulatory compliance. Cannabis production facilities do not allow for retail sales, other than online sales as permitted in accordance with the *ACMPR*. To date, the City has not received any rezoning applications to permit a cannabis production facility.

With regards to inspections and enforcement procedures for commercial cannabis producers, the Federal government has developed their own rigorous inspections and enforcement procedures, and as such, staff do not see a need for additional inspections and enforcement procedures over and above existing municipal and federal procedures.

##### ***3.1.2 Home Production***

With regards to home production of non-medical cannabis, the growing of up to four cannabis plants is permitted by federal and provincial legislation and thus may be permitted as an accessory use in each dwelling unit, subject to compliance with applicable federal and provincial regulation. The growing of more than four cannabis plants within a property for non-medical purposes would require a federal license, and from a zoning perspective would be considered a cannabis production facility.

##### ***3.1.3 Production and Use in City Owned Rental Properties***

As noted in Section 2.2.2 of this report, except for federally authorized medical cannabis, cannabis production is prohibited under existing lease agreements, and cannabis smoking and vaping is prohibited under existing leases that prohibit the smoking or vaping of tobacco. Provincial regulation also authorizes landlords to prohibit the production and/or smoking of non-medical cannabis in new lease agreements for their properties. Accordingly, as a starting point, staff will be prohibiting all non-medical cannabis production, smoking, and vaping, in all new lease agreements for City owned residential properties. This is considered appropriate given the potential impact and liabilities arising from such activities.

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### 3.2 Sale

Once the provincial cannabis retail framework is fully established, there will likely be demand for legal non-medical cannabis and cannabis related accessories, as well as demand for store locations within the City. Currently, the Burnaby Zoning Bylaw does not include any specific zoning provisions related to cannabis retail stores. As such, there is a need to clarify the City's approach to cannabis stores in Burnaby.

It is recognized that the prohibition of cannabis stores in Burnaby is unlikely to impact demand for legal cannabis. Rather, it will require Burnaby residents to either purchase cannabis online from the Province, or travel to a neighbouring municipality to purchase legal cannabis. It is also recognized that the unrestricted permittance of cannabis stores in Commercial Districts, without supporting development guidelines, may result in an unbalanced proliferation of stores, with the potential for disruptive impacts on surrounding communities.

As such, staff recognize the need for a balanced approach to cannabis stores within Burnaby that allows for reasonable access to legal cannabis, while limiting the potential impacts on communities.

#### 3.2.1 Recommended Retail Approach

Given the above considerations, staff recommend focusing the initial phase of cannabis store implementation to government owned and operated cannabis stores, and zoning for such stores in a similar manner to liquor stores, given that both liquor and cannabis are regulated and distributed in a comparable way by the Province. The process for having liquor stores approved in Burnaby provides staff and Council the opportunity to evaluate each proposal on its own merits within the context of a rezoning application. This enables staff and Council to influence the number and location of stores within the City based on a land use rationale and supporting development guidelines. Staff believe this controlled zoning process to be appropriate for cannabis stores. Furthermore, a Public Hearing, which is a required component of the rezoning process, provides a familiar opportunity for local residents to provide comment on each cannabis store proposal. This ensures an appropriate level of community awareness, engagement and consensus.

This measured implementation of cannabis stores will allow the City to assess the impacts of such uses on surrounding neighbourhoods and ensure protection of the community, while ensuring local communities have reasonable access to legal cannabis products.

To implement this approach, a number of amendments are required to the Zoning Bylaw. Specifically, it is proposed that a definition for government operated cannabis stores be established in Section 3.0 of the Zoning Bylaw, and that new sub-districts be established in the C2 and C3 Districts, similar to Liquor stores, to permit government operated cannabis stores. For clarity, it is also proposed that a definition for private cannabis stores be established in Section 3.0 of the Zoning Bylaw, so that private cannabis stores are clearly distinct from general retail stores, which are permitted more broadly in Commercial Districts. The proposed Zoning Bylaw amendment language is provided in Section 4.0 of this report.

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### ***3.2.2 General Guidelines for Assessing Cannabis Store Rezoning Applications***

It is proposed that guidelines be developed to support staff and Council in assessing the suitability of cannabis store rezonings. However, given that aspects of the provincial retail framework are yet to be finalized, it is proposed that the municipal guidelines be forwarded to Council in tandem with the first government cannabis store rezoning application, for Council's review and approval. The development guidelines will closely resemble those applicable to liquor store rezonings given that both liquor and cannabis are regulated products and would be zoned for in a similar manner. More specifically, it is recommended that the development guidelines include locational criteria such as observance of an appropriate setback and orientation to conflicting land uses, criteria on store size, and operational criteria such as operating hours. In addition, safety and security requirements would be reviewed and addressed by the Provincial licencing branch advancing the government store location through the rezoning process.

As the four town centres in Burnaby have the highest concentration of population and the broadest range of supporting commercial services, it is considered appropriate to focus the initial role out of cannabis stores in these locations only, with a limit of one BC Cannabis Store per town centre.

### ***3.2.3 Ongoing Review of Proposed Retail Approach***

The retail approach as presented above, should be viewed as the first step in a controlled implementation of cannabis stores to allow time for the City to evaluate the community response to cannabis legalization. Indeed, it is recognized by all levels of government that there will likely be a continuing evolution of response and regulations as the cannabis industry and Canadian society at large adjusts and incorporates changes and lessons learned over time.

It is recommended that only government operated cannabis stores be permitted at this time. In future, subject to further review, it is recognized that supporting private cannabis stores could serve a supplemental role to government operated cannabis stores. However, Council's review and approval would be required for any change to the current proposed policy and regulations.

### ***3.2.4 Business Licensing and Municipal Inspections and Enforcement***

Provincially operated businesses do not require a municipal business license to operate, and as such, the City has not established a business license fee for government operated businesses such as BC Liquor Stores. It is recommended that this same approach also apply to government operated, BC Cannabis Stores.

With regards to operating rules, and inspections and enforcement procedures for cannabis stores, the Province has established comprehensive regulations in this respect. Furthermore, the City, where appropriate, can supplement the Province's operator rules through the rezoning process, such as further limiting store hours. As such, staff do not see a need at this time for amendments to the Business License Bylaw or additional municipal inspections and enforcement procedures

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in regard to cannabis stores. However, should any issues arise in future; additional measures can be considered through the rezoning process to limit community impacts.

### **3.3 Public Use**

The Province will regulate the smoking and vaping of non-medical cannabis in a similar manner to tobacco, except with additional locational prohibitions as noted in Section 2.2.2 of this report. Given the relatively comprehensive provincial regulation in this regard, staff recommend this approach apply directly in Burnaby. Going forward, staff will continue to monitor the effectiveness of provincial regulations in this regard, and report back to Council if supplemental measures are warranted.

## **4.0 RECOMMENDED BYLAW AMENDMENTS**

1. **THAT** the term “Cannabis Store, Government” be defined in Section 3.0 of the Zoning Bylaw with wording similar or the same as the following:

**“CANNABIS STORE, GOVERNMENT” means a retail store established by the government under the Cannabis Distribution Act, as amended or replaced from time to time, for the sale of cannabis and cannabis accessories to consumers, but does not include a licensee cannabis store.**

2. **THAT** the term “Cannabis Store, Licensee” be defined in Section 3.0 of the Zoning Bylaw with wording similar or the same as the following:

**“CANNABIS STORE, LICENSEE” means a retail store licensed under Part 4 of the Cannabis Control and Licensing Act, as amended or replaced from time to time, for the sale of cannabis and cannabis accessories.**

3. **THAT** Section 302.1 (C2 District) of the Zoning Bylaw be amended by inserting sub-section 302.1E with wording the same or similar to the following:

*302.1E Uses Permitted in a C2i Zoning District:*

- (1) *Uses permitted in Community Commercial District C2.*
- (2) *Government cannabis stores.*

4. **THAT** Section 303.1 (C3 District) of the Zoning Bylaw be amended by inserting sub-section 303.1I with wording the same or similar to the following:

*303.1I Uses Permitted in a C3i Zoning District:*

- (1) *Uses permitted in Community Commercial District C3.*
- (2) *Government cannabis stores.*

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## 5.0 CONCLUSION

As discussed, changes in federal and provincial legislation have required the City to update its policies and regulations in respect to non-medicinal cannabis. The forgoing municipal approach balances a mix of diverse considerations associated with non-medical cannabis legalization, and draws on the City's experience with liquor and tobacco to help shape a measured and balanced approach to the production, sale, and public use of non-medical cannabis in Burnaby.

It is noted that the overall regulatory approach as presented in this report, should be viewed as the first step in a gradual, long-term regulatory process that will likely evolve as all levels of government, the cannabis industry, and Canadian society at large adjust and acclimatize to the new realities of non-medical cannabis legalization. Staff from all involved divisions will continue to monitor the progression of federal and provincial cannabis regulation, the effectiveness of the above-recommended municipal regulatory approach to assess the implications for future municipal regulation.

It is recommended that Council approve the municipal regulatory approach to non-medical cannabis as outlined in Section 3.0 of this report, and that Council authorize the preparation of a bylaw amending the Burnaby Zoning Bylaw, as outlined in Section 4.0 of this report, for advancement to a Public Hearing on 2018 August 28.

Lou Pelletier, Director  
 PLANNING AND BUILDING

MN:tn

cc: Director Corporate Services Director Public Safety and Community Services Director Parks, Recreation and Cultural Services Director Human Resources Chief Licence Inspector City Solicitor	Director Finance Director Engineering Officer-in-Charge – RCMP Fire Chief Chief Building Inspector City Clerk
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