

# Report to Council



**Date:** August 27, 2018

**File:** 1250-04

**To:** City Manager

**From:** Ryan Smith, Community Planning Department Manager

**Subject:** Zoning Bylaw Text Amendment for Cannabis Production and Retail Cannabis Sales

**Report prepared by:** Kimberly Brunet, Planner

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## **Recommendation:**

THAT Zoning Bylaw Text Amendment Application No. TA18-0008 to amend City of Kelowna Zoning Bylaw No. 8000 as outlined in Schedule "A" from the Report from the Community Planning Department dated August 27, 2018 be considered by Council;

AND THAT Zoning Bylaw Text Amendment Application No. TA18-0008 to amend City of Kelowna Zoning Bylaw No. 8000 as outlined in Schedule "B" from the Report from the Community Planning Department dated August 27, 2018 be considered by Council;

AND THAT Zoning Bylaw Text Amendment Application No. TA18-0008 to amend City of Kelowna Zoning Bylaw No. 8000 as outlined in Schedule "C" from the Report from the Community Planning Department dated August 27, 2018 be considered by Council;

AND THAT the Zoning Bylaw Text Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND THAT Council endorses the process for accepting and evaluating rezoning applications for retail cannabis sales as outlined in Schedule "D";

AND THAT Council directs Staff to accept the initial rezoning applications for retail cannabis sales between October 1, 2018 to November 30, 2018;

AND THAT Council directs Staff to prepare an amendment to the Development Application Fees Bylaw No. 10560 to include a fee for a retail cannabis sales subzone under Zoning Amendments;

AND FURTHER THAT final adoption of the Text Amendment Bylaws be considered subsequent to the approval of the Ministry of Transportation and Infrastructure.

**Purpose:**

To amend the Zoning Bylaw by creating a retail cannabis sales subzone, adding cannabis production and retail cannabis sales establishments as permitted uses to specified zones, and to update the existing language from “marihuana” to “cannabis”.

**Background:****Municipal Role**

The Government of Canada has announced that on October 17, 2018, adults will be able to legally:

- possess up to 30 grams of legal dried cannabis or equivalent in non-dried form;
- share up to 30 grams of legal cannabis with other adults;
- purchase dried or fresh cannabis and cannabis oil from a provincially-licensed retailer;
- grow up to four cannabis plants per residence for personal use from licensed seed or seedlings; and
- make cannabis products, such as food and drinks, at home provided that organic solvents are not used

In British Columbia, the Provincial Government will license and oversee the distribution and sale of cannabis, subject to federal conditions. They have established through legislation that the minimum age to purchase or sell cannabis in British Columbia is 19, and established a cannabis retail licensing regime similar to the current licensing regime for liquor. The Provincial Government has also prohibited consumption in certain areas, including the use of cannabis on school properties and in vehicles.

The City of Kelowna has land use authority relating to zoning, business licensing, building code, municipal workplace safety and enforcement of regulations around public consumption. Community Planning Staff recommend making amendments to Zoning Bylaw No. 8000, relating to production of non-medical cannabis in industrial zones, and the retail sale of non-medical cannabis. Further, Staff are recommending updating the existing language in the Zoning Bylaw from ‘marihuana’ to ‘cannabis’, to be consistent with federal and provincial legislation.

**Medical Cannabis**

Medical cannabis will continue to be sold online by federally licensed producers only. The federal government has committed to conducting a review of the medical cannabis system in five years.

With the exception to updating the language from ‘marihuana’ to ‘cannabis’, the amendments to the Zoning Bylaw being considered at this time are for non-medical cannabis only. The one exception is that staff are proposing updating to the current Zoning Bylaw definition of medical cannabis production facilities, to encompass both medical and non-medical cannabis production facilities within the same defined use. The details of this are further outlined in the “Cannabis Production” section below.

**Engagement***Government of Canada and Province of British Columbia*

The Government of Canada and Province of British Columbia have both conducted large public consultations. Federally, the feedback helped shape the Cannabis Act, and in British Columbia, it guided decisions about the Cannabis Control and Licensing Act and the Cannabis Distribution Act.

*City of Kelowna*

To engage with stakeholders, a Public Notice was posted in the Kelowna Daily courier from June 11-13, 2018, and the City website for cannabis production, sales and use was updated. Businesses or other stakeholders interested in participating in the review process of cannabis zoning regulations were invited to contact the Planning Department. Community Planning and Business Licensing staff also contacted business stakeholders who had expressed interest in involvement in the development of regulations over the past few months. A summary of the draft regulations was sent to over forty stakeholders and written feedback was received. Comments provided by both internal and external stakeholders were used to further refine the final version of the Text Amendment being considered by Council.

### **Community Planning: Cannabis Production**

Community Planning Staff are recommending amending the current definition of medical marihuana production facilities in the Zoning Bylaw so it encompasses both medical and non-medical cannabis production facilities updating the language from marihuana to cannabis in the bylaw definition. Medical marihuana production facilities are currently a permitted principal use in the I<sub>1</sub> – Business Industrial, I<sub>2</sub> – General Industrial, I<sub>3</sub> – Heavy Industrial and I<sub>4</sub> – Central Industrial zones, and amending this definition would result in both medical and non-medical cannabis production facilities being a permitted principal use in these four industrial zones. There is no biological difference between a cannabis plant grown for medical or for non-medical purposes and production of both medical and non-medical cannabis requires a federal license issued by Health Canada.

To help minimize the number of nuisance complaints that may arise from an increase in cannabis production facilities, Staff recommend introducing a minimum 60 metre setback from properties which have residential as a principal use. This minimum setback for production facilities from residential properties would be regulated in the Zoning Bylaw and enforced through business license applications, as no rezoning application is required for cannabis production facilities. This setback does not currently exist in the Zoning Bylaw for existing for medical marihuana production facilities and would only apply to new cannabis production facilities.

Within the Agricultural Land Reserve the Government of British Columbia has clarified that cannabis production cannot be prohibited if grown lawfully in an open field, in a structure that has a soil base; in a structure that was either constructed or under construction by July 13, 2018 or in an existing licensed operation. Staff are not proposing any changes to the A<sub>1</sub> – Agriculture 1 zone in relation to cannabis production at this time.

### **Retail Cannabis Sales**

Community Planning Staff have considered the inclusion of retail cannabis sales using a similar approach what exists for liquor. To open a retail cannabis sales establishment, a rezoning application to a retail cannabis sales subzone, and Council approval, would be required. Stakeholder engagement helped to inform the zones that are recommended for inclusion. As such, Staff are recommending retail cannabis sales subzones be created, retail cannabis sales establishments be defined, and retail cannabis sales be added as a permitted principal use in the following zones:

- C<sub>3</sub> – Community Commercial;
- C<sub>4</sub> – Urban Centre Commercial;
- C<sub>6</sub> – Regional Commercial;
- C<sub>7</sub> – Central Business Commercial;
- C<sub>10</sub> - Service Commercial;

CD17 – Mixed Use Commercial – High Density; and

CD26 – Capri Centre Comprehensive Development Zone.

Staff also recommend retail cannabis sales be added as a permitted secondary use in the following zones:

C2 – Neighbourhood Commercial;

C9 – Tourist Commercial

I1 – Business Industrial\*;

I2 – General Industrial\*; and

I4 – Central Industrial\*.

*\*To help protect industrial uses, Staff recommend limiting the gross floor area for retail cannabis sales establishments in Industrial zones to a maximum of 250 m<sup>2</sup>*

Local governments have the ability to use land use controls to regulate the location of retail cannabis stores in the community through Zoning Bylaws. The intention of establishing minimum setback distances for retail cannabis stores is to help restrict youth access to cannabis, and to protect young people from promotions or enticements to use cannabis. Consistent with approaches being implemented in other municipalities (see Attachment “A”), Community Planning Staff are recommending establishing several minimum setback distances relating to retail cannabis sales establishments, as outlined below.

Planning Staff recommend establishing a minimum setback distance for retail cannabis stores from public schools, and specific community, recreation and city parks. Staff recommend a distance of 150 metres from elementary schools and specific parks listed in Schedule “A”, and 500 metres from middle and secondary schools. Staff recommend these distances as they still allow for businesses to operate in many areas in our city, while still maintaining a setback from area where children and youth visit. The proposed setback distances are consistent with other municipalities in our province. Attachment “A” compares setback distances that are either established or proposed in different municipalities in British Columbia, and internationally, where cannabis is legal. Staff recommend additional family and other sensitive uses be factored in to how rezoning applications are evaluated, as outlined further below and in Schedule “D”.

Staff also recommend establishing a minimum proximity distance of 500 metres between retail cannabis store locations, to avoid the clustering of multiple stores in specific areas, particularly in urban centres. This intent of this minimum proximity distance is similar to the Provincial Government requirement for a minimum of one kilometer distance between new retail liquor stores.

Staff recommend no retail cannabis sales establishments be located on any lot on Lawrence or Leon Avenue, between Bertram Street and Abbot Street. This is due to concerns about the high concentration of social support services in this area, and wanting to support efforts to revitalize this area of the City’s downtown. A map of this area is shown in Schedule “B”. Staff recommend that support services located outside of this downtown area also be factored in to how rezoning applications are evaluated, as outlined in Schedule “D”.

The establishment of setbacks is anticipated to limit the number of locations where the retail sale of non-medical cannabis occurs. It is still expected to allow for a number of locations within the City of Kelowna, in existing areas of commercial and industrial zoning, to meet the needs of the City’s residents. Medical cannabis will continue to be legally sold online by federally licensed producers only. A map layer has been created, showing all locations where a Retail Cannabis Sales Establishment would be permitted or

prohibited from operating, and draft maps of the areas where cannabis retail sales establishments may be permitted are included in Attachment "B".

### **Rezoning Applications and Process**

Community Planning and Business Licensing Staff have received a significant number of inquiries relating to the retail sales of cannabis in the city of Kelowna. To establish a fair and transparent manner for determining how rezoning applications will be accepted and processed, Staff are asking for Council to endorse the application process and requirements, outlined in Schedule "D". This includes the creation of a multi-departmental Evaluation Committee and a scoring matrix, to prioritize which applications are most consistent with regulations and established criteria. Staff are seeking Council endorsement to accept rezoning applications to a retail cannabis sales subzone from October 1, 2018 to November 30, 2018, and to begin evaluating and processing applications after this date. Staff are also seeking Council direction to prepare amendments to the Development Application Fees Bylaw to reflect this process.

### **Licensing**

Staff are preparing amendments to the Business License and Regulation Bylaw, which will be brought forward for Council consideration at a future date. The following licence requirements will be included:

**Cannabis Production:** Minimum 60 metre setback from any property that have residential as a principal use. A federal production licence, and a City of Kelowna business licence would be required to operate.

**Retail Cannabis Sales Establishments:** The Provincial Cannabis Control and Licensing Act establishes a cannabis retail licensing regime similar to the current licensing regime for liquor. The Liquor Control and Licensing Branch (LCLB) will be responsible for licensing non-medical cannabis private stores and monitoring the non-medical cannabis retail sector. A provincial non-medical cannabis retail licence and a City of Kelowna business licence would be required to operate. The LCLB will be responsible for licensing and monitoring the retail sector, which will consist of private stores and government-operated stores. The Province will not issue a non-medical cannabis retail licence without the support of the local government.

### **Consumption**

The Parks and Public Spaces Bylaw prohibits the smoking or vaporizing of marihuana or any other substance in any park or public space, except in a designated smoking area. Cannabis would be included in the definition as "any other substance", or the Parks and Public Space Bylaw could be amended to replace "marihuana" with "cannabis".

The Province's Cannabis Control and Licensing Act further regulates consumption in public. It prohibits smoking and vaping of cannabis everywhere tobacco smoking and vaping are prohibited, as well as at playgrounds, sports fields, skate parks and other place where children commonly gather. The use of cannabis is also prohibited on school properties and in vehicles. Landlords and strata councils will be able to further restrict or prohibit non-medical cannabis smoking and vaping at tenanted and strata properties.

The province will not be licensing consumption lounges at this time, and they are currently not permitted, as they are focused on gradually introducing a safe and responsible retail non-medical cannabis sector. They may give consideration to other types of licenses at a later date. Further, consumption of any kind, including providing samples, is not permitted in retail cannabis stores.

### **Capacity / Enforcement**

As with other levels of government, the City of Kelowna may need to increase or create staff capacity to deal with issues arising from cannabis production, retail sales, licensing and consumption. Licensing fees will focus on cost recovery for licensing and enforcement needs.

**Internal Circulation:**

Bylaw Services Manager  
Business License Manager  
City Clerk  
Communications Advisor, Community Engagement  
Parks Services Manager  
Policy & Planning Department Manager  
Sport & Event Services Manager

**Existing Policy:** Related Policy (Liquor Licensing Policy & Procedures – Policy No. 359)

**Financial/Budgetary Considerations:** It is anticipated there will be increased costs for enforcement. These estimated costs will be offset by development application and business license fees.

**Personnel Implications:** Short term impacts are anticipated in development application and business license processes.

**Considerations not applicable to this report:**

**Communications Comments:** N/A

**External Agency/Public Comments:** N/A

**Legal/Statutory Authority:** N/A

**Legal/Statutory Procedural Requirements:** N/A

**Alternate Recommendation:** N/A

**Submitted by:**

R. Smith, Community Planning Department Manager

**Approved for inclusion:**

D. Edstrom, Acting Divisional Director, Community Planning & Strategic Investments

**Attachments:**

Schedule "A" – Summary Table of Proposed Text Amendments to Zoning Bylaw No. 8000

Schedule "B" – Summary Table of Proposed Text Amendments to Zoning Bylaw No. 8000

Schedule "C" – Summary Table of Proposed Text Amendments to Zoning Bylaw No. 8000

Schedule "D" – Rezoning Application Process and Requirements

Attachment "A" – Comparison Table of Setback Distances in other BC Municipalities

Attachment "B" – Draft Maps of Areas Where Retail Cannabis Sales Establishments May Be Permitted