

**Schedule A – Proposed Site Specific Text Amendments**

No.	Section	Current Wording	Proposed Wording	Reason for Change								
1.	Section 9.16- Specific Use Regulations- Retail Cannabis Sales Establishments	Section 9.16.1 Any Retail Cannabis Sales Establishment must be set back a minimum distance of 500 metres from another Retail Cannabis Sales Establishment, measured from closest lot line to closest lot line.	<p><b>9.16.8 Site Specific Regulations</b></p> <p>Regulations apply for Retail Cannabis Sales Establishments on a specific basis as follows:</p> <table border="1" data-bbox="1146 419 2501 753"> <thead> <tr> <th data-bbox="1146 419 1286 447"></th> <th data-bbox="1296 419 1721 447"><i>Legal Description</i></th> <th data-bbox="1731 419 2125 447"><i>Civic Address</i></th> <th data-bbox="2135 419 2501 447"><i>Regulation</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="1146 453 1286 753"></td> <td data-bbox="1296 453 1721 753">Lot B Sections 26 and 27 Township 26 Osoyoos Division Yale District Plan 30302</td> <td data-bbox="1731 453 2125 753">590 Hwy 33 W</td> <td data-bbox="2135 453 2501 753">To allow for a retail cannabis sales establishment within 500 metres of an approved retail cannabis sales establishment at 110-250 Hollywood Rd S</td> </tr> </tbody> </table>		<i>Legal Description</i>	<i>Civic Address</i>	<i>Regulation</i>		Lot B Sections 26 and 27 Township 26 Osoyoos Division Yale District Plan 30302	590 Hwy 33 W	To allow for a retail cannabis sales establishment within 500 metres of an approved retail cannabis sales establishment at 110-250 Hollywood Rd S	To allow for a retail cannabis sales establishment within 500 metres of another approved retail cannabis sales establishment in the Rutland Urban Centre
	<i>Legal Description</i>	<i>Civic Address</i>	<i>Regulation</i>									
	Lot B Sections 26 and 27 Township 26 Osoyoos Division Yale District Plan 30302	590 Hwy 33 W	To allow for a retail cannabis sales establishment within 500 metres of an approved retail cannabis sales establishment at 110-250 Hollywood Rd S									

January 28, 2022

**The City of Kelowna**  
c/o Kimberly Brunet  
1435 Water Street  
Kelowna BC V1Y 1J4

Re: Letter of Rationale in Support of Retail Cannabis Subzone for 590 Highway 33 West, Kelowna, BC

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## A. INTRODUCTION

In early 2018 the City of Kelowna was faced with the Federal legalization of cannabis and the Provincial Government's regulatory regime for permitting retail sales in British Columbia. In response to these significant policy changes, the City Staff were tasked with providing a recommendation to Council on cannabis policy in Kelowna. Following a substantial consultation process, City Staff offered its recommendation in a Report to Council dated August 27, 2018, which formed the basis for the adoption of certain text amendments to the City's Bylaws. Since that time, Council has been faced with numerous applications to seek variances from these Bylaws, which has forced it to address the public policy of its Bylaws. As substantial investors in the Kelowna retail cannabis industry, it has been incumbent for our company to be engaged in all public policy decisions of this local government. This Letter or Rationale is intended to provide our unique industry view on the evolving public policy of this local government and show that our proposed location at 590 Highway 33 West in Willow Park Shopping Centre is consistent with that policy.

## B. WHO WE ARE

Argent Diversified, is a unique investment company, consisting of approximately 100 local shareholders from all walks of life. Argent's main objective is to invest locally and support local commerce. We have business interests and investments in more than 15 local businesses, including FLORA Cannabis. Collectively our organisation employs more than 200 locals. Our board is comprised of Kelowna residents, and I have had the good fortune of being born and raised in Kelowna. In short, our organisation represents the widest and most diverse group of local investors in Kelowna.

In light of our significant investment in Kelowna businesses, it should come as no surprise that our organisation is keenly interested in the public policy that affects our business. I have appeared before Council on behalf of our organisation on many occasions in the past three years to speak to issues regarding the retail cannabis industry. FLORA Cannabis was among the first to participate in this industry and we consider ourselves pioneers in taking on all the challenges of this entirely new industry in Kelowna. We currently operate three retail cannabis stores in Kelowna under the brand FLORA Cannabis. With three operating locations, we have made the largest investment of capital and resources in this local industry than any other operator. Our company has invested more than \$2M in the local cannabis industry and FLORA employs more than 50 local residents, most of whom are young aspiring businesspeople.

### C. GOVERNMENT POLICY REGARDING RETAIL CANNABIS

As pioneers in this new industry, it has been incumbent upon us to be at the forefront of public policy that will shape the landscape within which we operate our business. I can tell you from extensive experience that the Federal, Provincial, and local governments have struggled to reflect public policy in their decision making. Most retailers locally and provincially are struggling to operate viable businesses within the current policy framework. In a recent survey completed by a retail cannabis advocacy group, more than 64% of British Columbia cannabis retailers who completed the survey said that their businesses are operating at break-even or losing money. More than 79% of operators said they were concerned or very concerned that without regulatory change at the Provincial level, their businesses would not be sustainable. At the Federal and Provincial levels, governments have failed to achieve the policy of eradicating the illegal cannabis marketplace. Since legalisation these governments have not implemented any enforcement measures and it is estimated that the illegal market still comprises more than 70% of cannabis sales in BC.

Perhaps one of the most concerning policy decisions in B.C. was the Province's failure to control the number and location of cannabis stores within BC cities. From our perspective this was a huge mistake on the part of the Province. The Province ought to have known that the excitement of this new industry would lead to an unsustainable number of cannabis retailers in the market, if not controlled. Unlike other governments, the Province has the resources available to it to evaluate the total market size of cannabis consumers. The Province controls all the key economic factors for distributors like pricing, supply chain, product costs and retail margins. The Province has total control over the application process and due diligence on the character and financial viability of its applicants. Despite being the only regulatory body capable of making decisions on the appropriate number of retailers and their proximity to one and other, they failed to do that. As a result, there are now an unsustainable number of retailers in many cities in B.C.

### D. CITY OF KELOWNA POLICY ON RETAIL CANNABIS

This brings me to the role that the City of Kelowna has played in implementing public policy on retail cannabis. In early 2018 the City of Kelowna was faced with the Federal legalization of cannabis and the Provincial Government's regulatory regime for permitting retail sales in British Columbia. In response to these significant policy changes, the City Staff was tasked with providing a recommendation to Council on cannabis policy in Kelowna. Following a substantial consultation process, City Staff offered its recommendation in a Report to Council dated August 27, 2018. The substance of the Staff Report was aimed at protecting potential public nuisance that could be created through retail cannabis sales in Kelowna. The recommendations in the Staff Report can be summarized into four main policy objectives as follows:

1. *Establishing subzones that supported the commercial activity of retail cannabis.*
2. *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.*
3. *Establishing a minimum setback distance for retail cannabis stores from public schools, and specific community recreation and city parks.*
4. *Establishing a minimum proximity distance between retail cannabis store locations, to avoid the clustering of multiple stores in specific areas.*

In response to the Staff Report, the City of Kelowna adopted a text amendment adding *Specific Use Restrictions Bylaw subsection 9.16 Retail Cannabis Sales Establishments* to its Bylaw that includes the following:

*9.16.1 Any Retail Cannabis Sales Establishment must be set back a minimum distance of 500 metres from another Retail Cannabis Sales Establishment, measured from closest lot line to closest lot line.*

*9.16.2 No more than one Retail Cannabis Sales Establishment may exist per lot.*

*9.16.3 Any Retail Cannabis Sales Establishment must be set back a minimum distance of 150 metres from any public elementary school, measured from closest lot line to closest lot line.*

*9.16.4 Any Retail Cannabis Sales Establishment must be set back a minimum distance of 500 metres from any public middle or secondary school, measured from closest lot line to closest lot line.*

*9.16.5 Any Retail Cannabis Sales Establishment must be set back a minimum distance of 150 metres from the [specific] parks, measured from closest lot line to closest lot line.*

It is clear from the Staff Report, and the resulting bylaws that the City of Kelowna was attempting to fulfil its obligations to protect against nuisance through three main policy objectives:

1. To restrict cannabis retail sales to appropriate commercial zones;
2. To prevent clustering of cannabis stores in urban areas; and
3. To protect sensitive uses and groups from exposure to cannabis sales.

In our opinion as operators in this industry, these policy objectives, and the resulting Bylaw, were reasonable and effective. I have offered my personal accolades to the City and Staff for their thoughtful policy approach on multiple occasions. In addition to having well-defined bylaws to address potential public nuisance, Council has since supported variances to these bylaws. In doing so, Council has shed further light on the City's cannabis policy, which I have attempted to summarize below.

#### 1. December 2019 Public Hearing

The first opportunity that this Council had to consider a variance application was for the location at 1632–1650 Pandosy St. in December 2019. In this application the majority of Councillors voted in support of the variance. Council seemed persuaded that increased density in the downtown core could justify another location. Council was also considerate of the location on Leon Avenue and expressed that new development in these areas would be positive for the City.

I had the opportunity to speak at the December 2019 Public Hearing and expressed our view that Council should not consider a variance to its policy this early in the process. At the time of that application there were not yet any stores operating in Kelowna. The City had not yet had the opportunity to evaluate the potential nuisance of retail cannabis in its community. I argued that permitting a variance at this early stage would be significantly unfair to the initial applicants who were forced to comply strictly with the Bylaw. The strict adherence to the Bylaw's proximity restrictions faced by early operators meant that they were forced into substandard retail locations. In short, had the proximity restrictions not been in place, many retailers, including us, would have selected other locations to operate their businesses. Despite recognizing the potential unfairness to existing operators,

Council approved the variance on the basis of the unique location of this store and the public interest of revitalizing the neighbourhood.

## 2. July 2021 Public Hearing

More recently in July 2021, I attended the public hearing for the variance applications at 266 and 526 Bernard Avenue. In my comments to Council, I was clear that our company took no position of support or opposition to the applications themselves. Instead, I urged Council to be clear in its policy for considering these applications so that operators in Kelowna could have a transparent policy from which to plan our businesses. Council ultimately approved the variances. In doing so, Council allowed a variance to the proximity restrictions of a public park and a variance to the proximity restrictions between stores. The variances permitted in that meeting allowed for the operation of 5 retail cannabis locations in the downtown core and allowed for a cannabis store immediately adjacent to a public park.

Despite my efforts at the Public Hearing to flush out the policy reasons behind Council's support of the variance applications, our organisation is still unclear on what policy bases Council will consider for variances. Having attended the meeting personally and having reviewed the video archive of the meeting recently, it appears that the main rationale for supporting the variance rested on the character, entitlement and overall likeability of the applicants. There seemed to be strong favor for the applicants being small local business owners who "deserved" an opportunity participate in the market. Several Council members were sympathetic to the fact that these applicants were excluded from the initial intake of applications and that they had proven themselves to be deserving business owners in Kelowna with a positive track record.

Other Councillors seemed annoyed by the fact that previously approved applicants were slow to open stores and may have participated in so called "horse trading" by buying and selling stores in the downtown core. The rationale expressed by some Councillors was that if others were not going to take advantage of the business opportunity, then others should be afforded an opportunity to do so.

One Councillor offered an economic argument that the downtown core was a popular tourist hub, and that this inordinately large customer base could be supported by multiple stores in the immediate area.

Councillors who did not support the variance application expressed their concern over the unfair treatment of prior applicants who have complied strictly with the Bylaw. Concern was also expressed by Councillors that cannabis is akin to liquor and should be subject to strict proximity restrictions to account for the unique nature of regulated sales.

## 3. November 2021 First Reading

Council's most recent hearing on a proposed cannabis location was on November 1, 2021, where it considered the application for a property on Powick Rd. In that hearing the applicant challenged the policy of measuring proximity from lot line to lot line, as opposed to door to door. Much of the applicant's presentation and the ensuing discussion centered around this point. Council was ultimately not persuaded that an alternate form of measurement of proximity distances was appropriate. Those Councillors who did not support the variance expressed an interest in following the Bylaw strictly and maintaining their previous voting position on this issue. Others seemed concerned that there may be too many cannabis stores in the market already and that supporting further variances could lead to a

saturation in the market. One Councillor expressed concern that the unique nature of cannabis as a controlled substance required exceptional consideration regarding oversaturation.

## E. OUR INDUSTRY VIEW ON CANNABIS PUBLIC POLICY

It is our view that the August 27, 2018 Staff Report, and the ensuing text amendments to the Bylaw, comprise the full scope of the City's cannabis policy. We submit that the City of Kelowna's cannabis policy is intended to avoid the potential public nuisance of cannabis retail sales in the city.

### 1. Controlling the Cannabis Market in Kelowna

Despite the shortcomings of the Province to effectively regulate the cannabis market, it is our view that the policy of controlling the cannabis market does not, and should not, fall on local governments. Local governments simply do not have the resources or the access to information to evaluate and make policy decisions on these matters. This is not a critique, but rather a reality of the resources and mandate of all local governments. To make effective policy decisions regarding the distribution of cannabis, local governments would require detailed information on pricing, supply, logistics and market size. These economic factors would then need to be balanced with systemic issues like mental health and addiction. Local governments are simply not resourced to make decisions on these matters.

This is not to say that local governments do not have a vested interest in how cannabis is sold in their communities. They very much do. Local governments should be concerned about the potential nuisance of this sensitive industry in their communities, and they should establish policy that seeks to prevent nuisance. Such policy should consider restrictions on locations to prevent against unsightly clusters of stores and protect sensitive areas like schools and public parks. However, local governments should not be tasked with decisions relating to the economic viability of the industry or competitive environment in which retailers operate. Cannabis retailers in BC are effectively distributors of the Province and as such, the Province should rightfully be tasked with the social and economic policy regarding cannabis distribution.

### 2. Accessing the Qualifications of Operators

It is also our view that the intention of the City's cannabis policy was not to evaluate the character, financial ability, or moral entitlement of the applicants. These considerations form no part of the city application process for retail cannabis and there is no mention of these things in the 2018 Staff Report or the Bylaws. The City does not perform any independent background checks or any other due diligence to evaluate the applicant's ability to run an effective business. The fact is that the City does not have the resources or the processes to undertake such investigation. Character or merit-based decisions would require evidence and cross-examination akin to a court of law.

I can tell you from experience that the Province undertakes a detailed due diligence process to approve operators to sell retail cannabis, which far exceeds the capabilities of local government. This includes character assessments, criminal records, financial assessments, income tax reporting and banking. It is our view that all citizens in Kelowna should have an equal right to participate in the cannabis industry if they meet these strict requirements of the Province. Given the role that the Province takes in this industry and the obvious limitations and mandate of local government, I submit that it is not the policy of this local government to regulate the cannabis industry or to evaluate the character of the operators.

## F. OUR POLICY ARGUMENT IN SUPPORT OF OUR LOCATION

In light of the foregoing, I will not use this Letter of Rationale, or my limited time at the First Reading, to try and persuade Council that our company is “entitled” to a variance, either because of our pioneering role in the industry or our significant financial investment in this industry in Kelowna. I will certainly not try to persuade you, through letters of support and a line-up of character witnesses, that we are of strong moral character. I believe our reputation in Kelowna speaks for itself. Our argument in favor of supporting a variance for our proposed location instead will be limited to addressing the purpose and intent of the City of Kelowna’s cannabis Bylaw and showing how our proposed location meets the policy intent of the Bylaw.

### 1. VARIANCE BEING SOUGHT

Our proposed location falls within the appropriate City zone. Our proposed location complies with the minimum distances from sensitive uses and sensitive groups. The only variance required for our proposed location is the 500m restriction on proximity of stores. It is clear from the August 27, 2018 Staff Report that the policy of the 500m proximity restriction is to prevent the clustering of stores in urban areas.

### 2. WHAT CONSTITUTES A CLUSTER OF STORES?

The 2018 Staff Report states that:

*“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.”*

While it is clear from this recommendation that the policy is intended to protect against the clustering of stores, it is unclear to us as operators on what constitutes a cluster. A strict reading of this recommendation and the resultant Bylaw would suggest that any two stores within 500m of each other constitute a cluster. I have argued (unsuccessfully) in the past that this is a clear and objective regulation that serves to provide certainty to operators. If applied strictly, all current and prospective operators in the City would have a clear understanding of the City’s policy and could plan their businesses accordingly. However, it is clearly not the City’s policy to apply a strict test on what constitutes a cluster.

Council has clearly stated that it is prepared to consider variances to this policy. This is an inherent part of the City process to afford applicants the opportunity to present circumstances where the strict application of the Bylaw is not consistent with its underlying policy. Council has now approved 3 variances that has resulted in there being 5 locations in the downtown core, resulting in four stores that are within a single 250m radius of each other. I do not mention this to suggest that the City has permitted a public nuisance through clustering in the downtown core. On the contrary, the City has determined that a group of 5 stores in this urban area does not create a cluster. It follows that it is the City’s policy that there are subjective, site-specific factors that should be considered in determining if a group of stores comprise a cluster. The fact that stores are within 500m of each other is not reason enough to conclude that they create a public nuisance. As such, I submit that it is the policy of this Council that a strict application of the 500m proximity bylaw is not appropriate and that subjective and site-specific factors must be considered.

### 3. WHAT PUBLIC HARM IS CREATED BY A CLUSTER OF STORES?

In addressing the subjective and site-specific factors for determining if a public nuisance is created through clustering, I would like to raise the underlying question of why should the City of Kelowna be concerned about a clustering of stores? Through our ongoing involvement in the City's policy on retail cannabis we have identified 5 possible reasons for protecting against a cluster of stores:

1. To protect against competition between cannabis retailers.
2. To protect against bad business decisions of cannabis retailers.
3. To protect against saturation in the retail cannabis market.
4. To limit free access to cannabis by consumers.
5. To hide the sale of cannabis from public view.

I will share our view on each of these reasons in support of our position that the City should not be concerned about a cluster of stores.

#### a. To Protect Against Competition?

We submit that the policy to prevent a clustering of stores is not intended to protect the business interests of competing stores. As I have outlined above, this cannot possibly be within the scope of local government's duty or obligation. Local government's duty should not extend to the protection of a limited number of specific business owners, particularly while in doing so they are limiting the opportunity of others to participate in the industry and limiting competition that would provide more choice and value to consumers. If anything, the protection against unhealthy competition is the sole responsibility of the Province that governs and regulates this industry.

#### b. To Protect Against Bad Business Decisions?

Similarly, we submit that the policy objective is not to protect prospective cannabis retailers from their own poor business decisions. While this may have been a concern in the early days of this industry when overexuberance may have led to an inordinate rush for rezoning, we submit that this is no longer a concern. There is no denying that if Kelowna had a cannabis retailer on every street corner, the cannabis market could not support it. In this case the City could be faced with numerous failed businesses. That being the case, it is not for the City to try and control micro and macro economic factors that affect specific business owners. This is not the role of local government and local government is not equipped to make economic decisions affecting a specific industry. We submit that private businesspeople are in the best position to decide if a proposed retail location is economically viable without interference from local government.

#### c. To Protect Against Saturation?

There was concern raised at the November 1, 2021 Council Hearing that Kelowna may be facing an oversaturation of cannabis stores. However, we submit that the policy objective against clustering is not to protect against a saturation of stores. The concept of saturation implies that there is an economic breaking point where a certain number of stores are not financially viable in a given market. We submit that the determination of what constitutes saturation requires a detailed understanding of micro economic factors of cannabis retailers and the macro economic factors of supply and demand that is



beyond the scope of local government. Cannabis is a unique industry, and it is our position that private operators and the free market should be responsible for dealing with saturation.

The 2018 Staff Report stated that the *“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”*. This statement may imply that the number of liquor stores is intended to be a benchmark from which to determine saturation in Cannabis stores. We have identified 36 liquor stores in Kelowna, compared to 24 approved cannabis stores. If the number of liquor stores is the appropriate benchmark for determining saturation, then we submit the cannabis market is not saturated.

d. To Protect Against Free Access by the Public?

Some Councillors have correctly noted that cannabis is a controlled substance, and as such, it needs to be treated differently than other retail business in Kelowna. While this may be true, we submit that the policy of avoiding a cluster of stores is not to restrict access to cannabis. The question of whether retail cannabis should be permitted in Kelowna is now a foregone conclusion. The Federal and Provincial governments responsible for the regulation of controlled substances have determined that Canadians have the right to free access to cannabis. We believe that this social policy is consistent with the views of the City of Kelowna and its citizens.

e. To Hide a Stigmatized Product from Public View?

An argument can be made that the City should be concerned about the “appearance” of a cluster of cannabis retail stores. Given that this is not a concern with any other businesses, this argument necessarily implies that cannabis is a stigmatized product that should be hidden from public view. While we recognize that a minority of the population still recognizes the stigma of cannabis, we submit that this is not a policy consideration of this City. This Council has been very considerate not to stigmatize cannabis in its ongoing policy discussions. On the contrary, some Councillors have openly expressed their interest in eliminating cannabis stigma. It is our position that any concern about the “appearance” of a cluster of cannabis stores perpetuates the stigma of cannabis and this is not the policy objective of Council.

4. OUR LOCATION DOES NOT CREATE A CLUSTER OF STORES

In light of the foregoing, it is our position that there is no public harm in creating a cluster of cannabis stores. However, that does not change the fact that that the City’s policy is intended to protect against a cluster of stores. Regardless of what view one takes on the underlying reasons for this policy, we submit that our proposed location does not create a cluster of stores.

Our proposed location is within a new mixed-use development located in Willow Park Shopping Centre. The Willow Park Shopping Centre is located in one of the most densely populated urban centres in Kelowna. In the shopping centre alone, there are 18 separate businesses, including two hair salons and 4 restaurants. The new building that will house our proposed store will be home to 95 new residential dwellings and 10,000 square feet of new commercial space at the time we open. There are more than 30 business on the properties comprising the intersection at Highway 33 and Hollywood. There are 6 restaurants, including 4 national chains, 2-dollar stores and 2 grocery stores.

Willow Park Shopping Centre sits on one of the busiest commercial intersections in all of Kelowna. The intersection is 6 lanes wide heading East to West and 4 lanes wide heading North to South. The intersection sees over 40,000 AADT along Highway 33 and 17,000 AADT along Hollywood Rd.

There are no other retail cannabis stores in Willow Park Shopping Centre. In fact, there are no other retail cannabis stores in the entire area comprising the north side of Highway 33 in Rutland. In all of Rutland, which services the communities of Springvalley, Black Mountain, Tower Ranch and Belgo, there are currently only 2 retail cannabis stores.

For the purpose of our internal analysis of the economic viability of this site, we have determined that there are 4036 residential dwellings within a 500m radius of the intersection of Highway 33 and Hollywood Rd., which are currently serviced by a single store. When looking at the broader area of Rutland and its supporting communities, the total number of residential dwellings is over 14,000, or approximately 7,000 dwellings for the two stores servicing this area. This is approximately 9.87 times more residential dwellings per store than the downtown core, making it the highest density per store in all of Kelowna. We do not present this information for the purposes of proving the economic viability of the store, but rather as a stark indication that three cannabis stores serving the entire Rutland area and its supporting communities does not create a cluster.

Our proposed location conflicts with the proximity restrictions for a single cannabis store, EggsCanna, which lies on the opposite side of both Highway 33 and Hollywood Road. EggsCanna is contained within its own retail centre. At worst, it can be argued that adding this location would create a cluster of two servicing this large commercial area. We question whether two of anything can comprise a cluster? Unlike the downtown locations that received variances, from no vantage point could any member of the public see our store and the EggsCanna store in a single line of view. In addition, it is reasonable to expect that the existing EggsCanna location will serve eastbound traffic on Highway 33 and our proposed location will serve the westbound traffic.

It is clear from the enormous size of the commercial area at this intersection, and the large number of shoppers that it supports, that this area was purposely designed to support a large volume of commercial activity. The vast number of businesses in this area alone works to ensure that 2 retail cannabis stores will not “appear” as a cluster or create a public nuisance.

## G. APPLICATION HISTORY OF OUR PROPOSED LOCATION

In making your decision on this application, we acknowledge that a variance application was narrowly rejected for the Willow Park site in 2019. While we supported Council’s decision to deny the variance at that time, we do not feel that this decision has any bearing on the decision before you. The 2019 application was coming straight on the heels of the City’s cannabis policy roll-out. At that time, there were no cannabis stores operating in Kelowna. The City had no opportunity to evaluate if its current policy would be effective and it had no opportunity to evaluate the potential public nuisance of retail cannabis in Kelowna.

I think Council will agree with us that the roll-out of retail cannabis in Kelowna has been very successful. I commend our team and our fellow retailers for their efforts in making this a success. There are no notable instances of increased crime or loitering around stores. There are no notable increases of cannabis use in public spaces. There are no notable instances of increased access by youth. All the stores have presented a high-quality professional storefront experience that have contributed to the success of

their commercial neighbours. In short, we are now in a completely different position to evaluate the rules needed to effect policy. In addition, our proposed location is situated in a new building that was not considered at the time of the first application. This new building will bring increased density and commercial activity to further mitigate any risk of public nuisance.

## **H. CONCLUSION**

The legalization of cannabis and the development of a retail sales regime in British Columbia marks a rare instance in recent history of the introduction of an entirely new industry to consumers. Federal, Provincial and local governments have been tasked with implementing new policy to address a plethora of public policy concerns. Cannabis retailers have borne the brunt of the growing pains stemming from this new regulatory environment and most of us are struggling to survive. The Province's failure to protect its retailers from the over-exuberance of the market in the early days has resulted in an oversaturation of operators in most cities, including Kelowna. Any attempts by local governments to curtail the cannabis market or control the market forces has only exacerbated the problem. Early operators naively relied upon a strict application of local bylaws, only to have those bylaws varied or altogether abandoned. Rather than effectively protecting against saturation, most bylaws instead forced operators into substandard retail locations at inordinately high lease rates.

We have brought forward an application to be considered for a Bylaw variance that we believe is consistent with the public policy of this local government. In making your decision we argue that it would be inappropriate and inconsistent to deny our application solely on the basis that our location does not comply strictly with the Bylaw. Not only has Council already abandoned that approach, that approach would be inconsistent with sound policy-based decision making. By Council's own admission, it has the discretion to consider and approve variances that are consistent with public policy.

It has been almost three years since the initial intake of cannabis applications and the City has been witness to more than two years of retail cannabis operations in the City. In light of this, there was some discussion at the recent Council hearings that perhaps now is the time to consider a reform of the City's Bylaw. We submit that the current Bylaw does not require reform. Setting an objective minimum proximity between stores and sensitive uses is very transparent. Any applicant considering opening a store should have an objective standard to base its decision making on. That being the case, prospective applicants know that they can present site-specific considerations that will be considered. This is effective policy, provided that Council's consideration of the application is site-specific. Applicants should be made to demonstrate that their proposed site will not create a cluster. I believe that we have done that in this case. The highly commercialized urban centre at the corner of Highway 33 and Hollywood Road was purposely designed for retail density. The service area of this commercial development is among the largest in the City and the commercial buffering of a major intersection and business center will ensure that this location will not cause a nuisance by creating the appearance of a cluster of stores.