



**Date:** March 13, 2017

**RIM No.** 1250-04

**To:** City Manager

**From:** Community Planning Department (RS)

**Application:** TA16-0007

**Owner:** N/A

**Applicant:** City of Kelowna

**Subject:** Text Amendment – Zoning Bylaw

---

### **1.0 Recommendation**

THAT Zoning Bylaw Text Amendment Application No. TA16-0007 to amend City of Kelowna Zoning Bylaw No. 8000 as outlined Schedule "A" and in the Report from the Community Planning Department dated March 13, 2017 be considered by Council;

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

### **2.0 Purpose**

Amend Zoning Bylaw No.8000 to clarify marihuana related regulations and definitions.

### **3.0 Community Planning**

The proposed Zoning Bylaw amendments are primarily meant to clarify that the storefront retail sale or dispensing of marihuana is not a permitted use in various city zoning categories that may be interpreted to allow such a use. At the present time, Health Canada regulations restrict the retail sale of medical marihuana to internet mail order from a licensed production facility, and other forms of retail sales for medical or recreational use is not lawful in Canada. It is the City's position that its sale is not permitted by any land use category. Furthermore, this would also extend to any storefront (retail) sale of marihuana. Nevertheless, various business ventures have been appearing in Canadian communities that are attempting to retail marihuana and marihuana products. Staff are proposing this set of Zoning Bylaw text amendments in order to add further clarity. It is expected that the federal government will introduce new legislation to regulate the production, use and sale of marijuana, and that the provincial government will also introduce some sort of complementary regulatory régime. When this may occur is unknown at time of writing.

In the background section of this report, staff have provided the recent recommendations of a Federal Government task force on the legalization of marihuana. If implemented, those recommendations will likely result in local governments having some measure of land use and business regulation control over the location of marihuana retail/dispensing. It is staff's goal to raise the level of understanding in the

community as early as possible regarding what type of land use process future business operators may need to pursue if higher levels of government choose to allow local land use control. Staff will be working with neighboring municipalities in the spring of 2017 in an effort to approach future regulation with some common principles.

Staff are also working on a report and workshop for Council to discuss the options for tracking and licensing the small scale production of medical marihuana in a residential context. This report will be brought forward to Council in the spring of 2017. The large scale commercial production of medical marihuana is already a regulated land use in Kelowna's Zoning Bylaw. It is permitted in the City's I1, I2, I3 and I4 zones.

#### **4.0 Proposal**

##### **4.1 Background**

During 2016, a Federal Government task force received feedback from a number of different stakeholders, including City Council, on the topic of legalizing marijuana use. While some of the task force direction relates to all Canadians, the report did contain recommendations that will impact municipalities. Those recommendations included:

*The Task Force heard mixed views on the type of retail outlets that should be permitted. Some advocated for a centralized, government monopoly akin to how most provinces and territories manage alcohol sales while others expressed a preference for a private-enterprise model with cannabis-specific storefronts (e.g., dispensaries) or with those for whom profit is not their principal motive (e.g., compassion clubs). Regardless of the model, participants were generally of the view that there should be some sort of storefront retail market, but they also noted concerns regarding the unchecked proliferation of unregulated dispensaries as they exist today.*

*Additionally, the Task Force heard strong support for prohibiting the co-location of cannabis sales with either alcohol or tobacco. Given the wide use and availability of liquor stores, concerns were raised about product promotion and exposing a larger population to cannabis products should sales be co-located, as well as the impact on cannabis consumers who are trying to avoid alcohol. Many also noted that this approach could help mitigate co-use, given what we heard about the risks of co-use on health and, with alcohol, the exponential effect on impairment. In all of the U.S. states that have legalized cannabis, there is a ban on the co-location of sales of cannabis and alcohol.*

*There was strong support for measures to control the density and location of retail stores. These measures prohibit storefronts from being located near schools, community centres and other public institutions. However, concerns were raised about the "downloading" of these regulatory responsibilities and costs to municipalities.*

*The Task Force recommends that retail sales of cannabis be regulated by provinces and territories in close collaboration with municipalities.*

*The Task Force further recommends that the retail environment include:*

- *No co-location of alcohol or tobacco and cannabis sales, wherever possible. When co-location cannot be avoided, appropriate safeguards must be put in place*

- *Limits on the density and location of storefronts, including appropriate distance from schools, community centres, public parks, etc.*
- *Dedicated storefronts with well-trained, knowledgeable staff*
- *Access via a direct-to-consumer mail-order system*

#### 4.2 Description of Proposed Bylaw Changes

Several businesses have sprung up in Kelowna's commercial areas which appear to be operating or planning to operate in the future as marihuana dispensary type businesses. Staff are concerned that those taking the risk to invest in such a way prior to formal law/policy from the Federal/Provincial governments and regulation from local government may run into future conflict with land use regulations. At the present time, marihuana dispensaries wishing to use "storefront" type model are not legal in Canada.

Staff are recommending that Council endorse changes to the definitions of Health Services - Major, Retail Store – Convenience, Retail Store – General, Retail Store – Health Products and Retail Store - Service Commercial to clearly prohibit the retail sale or dispensing of marihuana. This is not new regulation. Since the retail/storefront sale of marihuana is not currently legal in Canada, staff are simply updating to bylaw in order to provide additional clarity for our Community.

Staff are also proposing to update the definition of "Medical Marihuana Production Facility" in order to ensure that the definition remains up to date with the current Health Canada regulations.

#### 4.3 Proposed Future Policy/Regulatory Direction

Staff are currently working with neighbouring municipalities in an effort to move forward with a coordinated approach to future land use regulation for the retail sale/dispensing of marihuana. The exact model of this approach will depend on the regulatory framework introduced by both Federal and Provincial governments.

The recommended regulatory model will very likely include:

- Special zoning designation (similar to Liquor Primary zoning designation)
- Prohibited areas (potentially Bernard Avenue, Ellis Street Pandosy Street retail commercial corridors)
- Minimum distances from public parks and schools

### 5.0 Technical Comments

#### 5.1 RCMP

While the Federal Government is considering the legalization of marihuana, it remains against the law to consume or sell except in accordance with Federal regulations.

#### Report prepared by:

---

Ryan Smith, Community Planning Manager

**Approved for Inclusion:**



Doug Gilchrist, Divisional Director, Community Planning & Real Estate

**Attachments:**

Schedule "A"