

Preparing for the Legalization of Recreational Cannabis

The *Cannabis Act* received Royal Assent on June 21, 2018 and is now law. The Act comes into force on October 17, 2018. Although it might appear that the main purpose of the Act is to legalize recreational marijuana use, the Act also proposes to prevent underage use, regulate advertising and promotion of cannabis, educate the public about health concerns surrounding marijuana usage and control the quality of the cannabis that is available. The main concerns for municipalities seem to be public safety, education and the associated costs.

Many aspects of enforcement, regulation and licensing for marijuana production, distribution and consumption will fall to local governments to maintain and oversee. Municipalities should consider organizing a committee such as the “integrated cannabis legislation team” reportedly created by the City of Ottawa and led by the emergency and protective services department. The team has representatives from several city departments, including legal services, planning, police and public health¹.

With the legalization of marijuana fast approaching, the Federation of Canadian Municipalities (FCM) has released a **Municipal Guide to Cannabis Legalization**². The guide was developed to assist municipalities in preparing for the additional responsibilities that will accompany cannabis legalization, including the following:

Zoning

Municipalities will be responsible for determining where cannabis can be produced, distributed, sold or consumed. Some of the tools available to municipalities would be creating construction and safety standards that can be enforced regarding home cultivation of cannabis. Municipalities should consult provincial land use laws for guidelines concerning cannabis cultivation in certain areas.

Monitoring of provincial and federal regimes when developing private production guidelines is also recommended in the Guide. Be aware of what the municipality can and cannot regulate with regard to land use planning in their jurisdiction.

When making prohibitions on land use, municipalities should be specific and refrain from simply omitting activities from a list of permitted uses which could leave rules open to interpretation.

The Guide also suggests researching existing commercial cannabis production facilities to determine impacts on land use and developing local regulations. Municipalities are encouraged to consider the capacity of utility systems when determining permitted land uses.

Retail Locations

If a municipality wishes to prevent the clustering of an excessive number of cannabis retail stores, it can use local land use regulations. This approach can also be used to group retail stores into a desired area and separate them from other land uses.

Municipal staff in the U.S. or larger cities where they have experience regulating retail cannabis sales could be used as a resource.

Home Cultivation

The home cultivation amendments made by the Senate that would allow provinces to decide if they will allow home cultivation were rejected by the House of Commons so that provinces do not have the option of banning residents from growing up to four cannabis at their home. Municipalities should consider implementing a process for licensing personal home cultivation and whether to allow cannabis production in dwellings due to the land use management issues that may arise.

¹ <http://ottawacitizen.com/news/local-news/municipal-governments-need-to-decide-how-far-to-go-on-cannabis-regulations-guide-says>

² <https://fcm.ca/Documents/issues/Cannabis-Guide-EN.pdf>

Alberta and Quebec are the only provinces that have banned home cultivation and it has been suggested that this could expose them to a legal challenge where the federal legislation would prevail.

Business Licensing

Municipalities are advised to review business licensing rules including business licences for peripheral businesses that will surface to sell supplies for consumers who choose to grow cannabis at home as well as existing garden centre operators who may get the required nursery licence through Health Canada.

Building Codes

The Ontario Real Estate Association (OREA) has made some suggestions for protecting home buyers when purchasing a home in which marijuana may have been grown. They recommend that grow operations should be designated as unsafe under the Ontario Building Code. OREA would also like to see a requirement for municipal authorities to register work orders for any requisite remediation work. These are suggestions that have been supported by members of the legal community and are steps that municipalities could consider when reviewing local building code standards.

The Canadian Bar Association suggests that if a person plans to make modifications to a residence or outbuilding that affects the electrical system or might impact neighbors, they can be required to obtain permits from local government to ensure compliance with electrical and safety standards. A permit scheme could protect against safety issues in residential neighborhoods without impeding personal access to marijuana. The scheme could require proof that hydroponic gardens meet electrical code, security measures are in place and outdoor gardens are effectively secured. It could impose caps on amounts that can be stored or the number of plants that can be grown to ensure growth does not approach an industrial scale in residential areas.³

Nuisance

Municipalities should prepare themselves for an increase in nuisance calls from residents whose enjoyment of their premises may be diminished by the odour of cannabis smoke.

Policies and procedures could include a reasonable distance from the outdoor entertaining areas of neighbours and provide officers with guidelines for determining unreasonable frequency of the odour that would constitute nuisance. As claims begin to be decided in Court, case law will set precedents that can be followed.

Regulations Around Public Consumption

Municipalities should already have public smoking and alcohol consumption by-laws in place so they will not need to re-invent the wheel. Use these existing by-laws as a template or starting point when developing recreational marijuana by-laws. The fact that marijuana smoking combines the factors involved in tobacco consumption and alcohol consumption will complicate the process. Networking with nearby municipalities could be a valuable resource and ensure continuity.

Personal Possession and Public Consumption

Some municipalities are considering licensing and regulating cannabis consumption lounges because of the fear that current rules that intend to restrict consumption of marijuana to private residences will push people who cannot use cannabis in their own homes to places where it would create a problem, like public parks or their cars.

Enforcement

FCM recommends that municipalities use their local police force and the RCMP as a resource. They need to consider what changes will occur once cannabis has been legalized.

By-law enforcement officers will need to be trained.

Municipalities should look to provincial and federal regulations when drafting municipal enforcement policies and determining how their municipality will work within these regulations.

Municipal Cost Considerations

Related to Local Policing

Municipalities will need to determine where they will get the financial resources for increased staff and training. The cost of the cannabis law changes has been estimated as high as \$8 million in large cities.⁴

³ <https://www.cba.org/CMSPages/GetFile.aspx?guid=c0efad9e-31b6-4cf1-9ab4-858743eec975>

⁴ <https://www.cbc.ca/news/canada/ottawa/mayor-watson-asks-province-8m-marijuana-impacts-1.4512810>

The concern with leaving many matters solely at the discretion of the provinces and territories, opposed to the federal government mandating more specific guidelines for all provinces to follow, is the likely inequities across borders which could lead to black markets in jurisdictions with more restrictive measures. A consistent regulatory scheme across all jurisdictions would be ideal. For this reason, discussions with neighbouring municipalities will be helpful.

Until regulations have been finalized, it may seem pointless to create policies, by-laws, etc. but municipalities can be putting their minds to the changes and creating draft policies that can be finalized as regulations are created.

For more information, municipalities can consult the Municipal Guide to Cannabis Legalization released by the Federation of Canadian Municipalities. Some individual provinces have also developed guides which can be found online.

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