



## COMMITTEE OF THE WHOLE

CDR# 2018138

Date: 20181015

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**TO:** Mayor Kogon and Members of Amherst Town Council

**SUBMITTED BY:** Dwayne Pike, Acting Chief of Police

**DATE:** October 15<sup>th</sup>, 2018

**SUBJECT:** Nuisance and Smoking Bylaw to address cannabis cultivation and consumption

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**ORIGIN:** The Federal *Cannabis Act* will legalize recreational cannabis on October 17, 2018. Municipal governments have a role to play in terms of regulating where cannabis can be personally cultivated and consumed in public places.

**LEGISLATIVE AUTHORITY:** Municipal Government Act, in Section 172(1) (a), (c) and (d) authorizes a council to make bylaws for municipal purposes respecting the health, well-being, safety and protection of persons; persons and activities in public places and places open to the public; and nuisances, including burning, odours and fumes.

**RECOMMENDATION:** That Council consider adoption of a Nuisance and Smoking Bylaw to regulate where cannabis may be cultivated for personal use and consumed on municipal property.

**BACKGROUND:** The *Cannabis Act* allows individuals 18 years of age or older to cultivate up to 4 cannabis plants per dwelling-house. The provincial *Cannabis Control Act* will include cannabis in the definition of “smoke”, and prohibits smoking in: provincial parks, beaches, within 20 metres of playgrounds and outdoor sporting events, and 9 metres from public trails. The Amherst Smoke Free Recreational Places Bylaw prohibits smoking in parks and recreational facilities.

The proposed Nuisance Bylaw would replace the Amherst Smoke Free Recreational Places Bylaw and would prohibit all forms of smoking (ex. tobacco, cannabis, and vaping) on all municipal property, except those areas designated for smoking. The new bylaw would also restrict personal cultivation of cannabis to a dwelling or accessory building.

**DISCUSSION:** The odour from smoking and cultivating cannabis are the two anticipated nuisances stemming from cannabis legalization. The proposed Nuisance Bylaw follows the lead of HRM who have taken the same approach to regulating smoking and cultivating cannabis. Smoke and smoking are public health and safety issues. The health impacts from the exposure to second-hand tobacco are well documented. In addition, a ban on smoking, in all its forms, allows for effective enforcement of the restrictions. Differentiating between cannabis smoke and tobacco smoke would make enforcement very difficult. Restricting the cultivation of marijuana to dwelling houses and/or accessory buildings would mitigate complaints of the odour of cannabis from neighbours.



On September 17<sup>th</sup>, 2018 Council was provided with information relating to the drafting of a 'Nuisance' bylaw dealing with the issues of cannabis consumption and use.

Council had some questions and requested more information on issues relating to enforcement, cannabis/smoking restrictions in public and restrictions on where cannabis could be cultivated.

Bylaw enforcement is considered a non-core service for police. In many jurisdictions, bylaw enforcement is covered by bylaw officers or may be contracted out to another service provider such as the Corp of Commissionaires. In Amherst, Police are often utilized to enforce some of the town's bylaws. This includes the Loitering Bylaw, Smoke Free Recreational Places Bylaw and the Taxi Bylaw. The enforcement of the Criminal Code and other related statutes is traditionally the first priority for police, which unfortunately often leaves less resources available to deal with functions that are considered 'non-core' police services.

The same is true in other police Jurisdictions, many of which utilize bylaw officers for non-core services such as parking or bylaw enforcement. The Town of Amherst also has a bylaw officer, who works out of the Police Department, and who may be utilized to deal with this issue. It is unclear whether this resource will be sufficient. In any case, a full discussion on enforcement expectations will be required to determine the resources necessary to enforce this proposed bylaw.

**Truro:** The current applicable bylaw in Truro bylaw deals with tobacco, e-cigarettes and recently included cannabis and includes in the smoking definition "another substance intended to be smoked or inhaled". Smoking is restricted in specific areas of the town as listed in the bylaw. During the day, bylaw officers deal with this issue, with police sometimes receiving calls after hours. The expectation is there will be some changes in relation to cannabis. There is nothing currently in the bylaw about cannabis or cultivation of cannabis.

**New Glasgow:** The smoking bylaw in New Glasgow deals only with tobacco, e-cigarettes and water pipes. Cannabis is not yet included. Restrictions for smoking in the New Glasgow bylaw closely resemble the current Town of Amherst bylaw. There is nothing about cannabis smoking or cultivation. Bylaw officers usually deal only with unsightly premises and parking. Police enforcement of the smoking bylaw is extremely rare.

**Bridgewater:** The Bridgewater bylaw currently covers cannabis consumption and covers any substance that can be smoking. Restrictions on smoking are similar to the current Town of Amherst bylaw. There is nothing in relation to cultivation restrictions. They rely primarily on local business to deal with any issues and if they cannot, then police get involved. Issues at the hospital, malls, etc are expected to be dealt with by their security.

**Kentville:** Kentville is not making any changes to their current bylaw to include cannabis. They will be following the Provincial Smoke Free Places Act for cannabis use while their bylaw will cover tobacco, which is fairly restrictive, but only for tobacco. Use of tobacco is prohibited in public, meaning the streets, roads and includes sidewalks and other areas. They utilize a full time bylaw officer for this purpose who has

been laying some charges, but mostly warnings. Police may assist sometimes. They have nothing in relation to cultivation of marijuana.

**Halifax:** The suggestions for council to consider are modelled after the Halifax bylaw. Halifax bylaws are fairly restrictive and will be primarily enforced by bylaw officers. Their plan included the hiring of 8 additional bylaw officers to enforce the bylaw. Halifax has indicated that while bylaws do not invoke an 'emergency response' if they get a call about smoking, they will look into it, but will not be taking a proactive approach and be out looking for smokers.

**Municipality of Cumberland:** A draft bylaw "protection from second-hand smoke" includes smoking cannabis along with other substances intended to be smoked. Smoking such substances are prohibited in areas that include parks or playgrounds on municipal property, outdoor recreational facilities, the grounds of a municipal building, at events held on municipal property, a street in a school zone or a street along a parade route while the parade is in progress. The bylaw allows for smoking in an enclosed vehicle on the street, noted that cannabis use in a vehicle is prohibited under the Cannabis Act. This bylaw also does not apply to the rights of indigenous peoples respecting cultural practices or ceremonies. There is nothing in this bylaw relating to cultivation restrictions. The RCMP do sometimes get calls on bylaws, but rarely do enforcement and in most cases refer to the bylaw officers.

**FINANCIAL IMPLICATIONS:** Increased costs may be applicable after review with council and discussion on enforcement options.

**COMMUNITY ENGAGEMENT:** To be determined

**ENVIRONMENTAL IMPLICATIONS:**

Health issues relating to second hand smoke and related potential negative health impacts

**ALTERNATIVES:**

1. Approve it as presented
2. Direct staff to complete more research and amend proposed bylaw
3. Not approve bylaw and amend existing 'Smoke Free Recreational Places' bylaw to include cannabis;
4. Not approve draft bylaw

**ATTACHMENTS:** Draft Nuisance and Smoking Bylaw, Halifax Bylaw N-300, Kentville Smoke Free Places Bylaw, New Glasgow – Smoking Bylaw & amendment to Smoking Bylaw, Bridgewater – Protection from Second Hand Smoke Bylaw, Truro – No Smoking Bylaw, Cumberland – Proposed Protection from Second Hand Smoke By-Law