

**To:** Planning Advisory Committee

**From:** Andrew Fisher, Manager of Planning & Strategic Initiatives

**Date:** November 5, 2018

**Subject:** **Amendments to the Land Use Bylaw for Cannabis-related land uses.**

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## **Introduction**

At its Committee of the Whole meeting September 17<sup>th</sup>, Council passed the following motion: *That staff be directed to refer to the Planning Advisory Committee potential planning document amendments that would define licensed production facilities, permit such facilities in industrial zones with minimum setbacks from residential and other sensitive land uses, and define cannabis retail sales and cannabis lounges*

The purpose of this memo is to introduce potential amendments to the Town's planning documents to address the Federal Government's *Cannabis Act*, that took effect October 17, 2018. The *Act* provides a legal framework for the production, distribution, sale, and possession of cannabis for medical and recreational purposes. At the same time, the Provincial Government's *Cannabis Control Act* regulates cannabis distribution and retail sales, and amends the *Smoke-Free Places Act* to control smoking cannabis in public places. Part of the role for Municipal Governments is to regulate where cannabis-related uses are appropriate.

The content and direction provided in this report generally reflects the approach of the Halifax Regional Municipality (HRM). HRM's approach has been to look at amendments to their planning documents to direct licensed production facilities to industrial zones, and define cannabis-related uses (retail and consumption venues) such that they are explicitly prohibited.

Municipal Governments are also responsible for other issues, including but not limited to, cannabis consumption, household cultivation, and enforcement. These issues are being considered separately within a nuisance bylaw.

## **BACKGROUND**

### **Cannabis Act**

Replacing the Access to Cannabis for Medical Purposes Regulations (ACMPR), the *Cannabis Act* allows the cultivation, by a person or persons 18 years and older, of up to 4 cannabis plants per dwelling-house. Sales by individuals is prohibited. Beyond 4 plants, the *Act* restricts cultivation to licensed Production Facilities.

### **Production Facilities**

The *Cannabis Act* regulations include licensing for both large-scale ("standard") and small-scale ("micro") cultivation and processing facilities, and authorizes associated activities such as analytical testing, import/export and research. Licenses would be granted to individuals or

organizations and holding multiple licenses would allow multiple activities to be conducted on one site (i.e. both cultivation and processing). Like the existing licensing requirements under the ACMPR, the Cannabis Act will regulate matters such as required notice to local authorities, physical and personnel security, and good production practices. The regulations would, in part:

- prohibit any licensed activity in a dwelling;
- permit both indoor and outdoor cultivation, but permit only indoor storage and processing;
- require reasonable measures to prevent the escape of odours and pollen from indoor areas; and,
- require physical and personnel security requirements, such as securing the perimeter to prevent unauthorized access with physical barriers and restricting who can access areas where cannabis is present.

Cannabis production is a new and rapidly growing industry with the potential for significant economic impact. Statistics Canada estimated that Canadians spent \$5.6 billion on cannabis for medical and non-medical purposes in 2017. Of the cannabis consumed in 2017 only 10.7% was obtained legally. Under the current licensing regime there are 111 licensed producers authorized by Health Canada, including three in Nova Scotia, an increase from 44 licensed producers in May 2017.<sup>1</sup> As the cannabis industry shifts to reflect the legalization of recreational cannabis it appears likely that the number of production facilities will continue to rise. From an economic development perspective, consideration should be given to where such facilities may be accommodated within the town boundary.

### **Retail Sales and Consumption Venues**

The *Cannabis Act* provides that provinces may take responsibility for distribution and retail sales of cannabis. In anticipation of the *Cannabis Act*, the Province of Nova Scotia adopted the *Cannabis Control Act* on April 18, 2018, to provide for the Regulation and Sale of Cannabis. Portions of the *Cannabis Control Act* came into effect when the *Cannabis Act* was proclaimed on October 17, 2018. The *Cannabis Control Act* will permit retail sales of cannabis and cannabis products through the Nova Scotia Liquor Corporation (NSLC), and amend the *Smoke-free Places Act* to control the public smoking of cannabis. No exemption for cannabis consumption lounges or venues has been proposed. The federal government has indicated that cannabis edible products and concentrates will be legal for sale approximately one year after the *Cannabis Act* has come into force, and the provincial government has not yet proposed additional legislation regarding public consumption of these products. Distribution and sales of medicinal cannabis from a storefront (i.e. dispensaries and compassion clubs) are currently prohibited under federal legislation, and have not been proposed to be legalized by provincial legislation when the *Cannabis Act* comes into effect.

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<sup>1</sup> “Provincial and Territorial Cannabis Economic Accounts, 2017”, available: <https://www150.statcan.gc.ca/n1/daily-quotidien/180430/dq180430b-eng.pdf>

### **Municipal Planning Documents**

As cannabis-related land uses are relatively new, cannabis production, retail sales and consumption venues are not specifically addressed in the Town's planning documents. From a land use perspective, cannabis production facilities are similar in nature to manufacturing or agricultural processing facilities, with strict federal security requirements that tend to push them to an industrial setting.

Sales and distribution of cannabis from a storefront is currently prohibited under federal legislation. Selling cannabis-related paraphernalia (pipes, vaporizers, etc.) is considered a retail use and permitted in commercial zones. Businesses specializing in cannabis-related advice, counselling, or advocacy are generally considered an office use and would also be permitted in commercial zones.

### **Amendments to Planning Documents**

The approach being considered by HRM is to amend planning documents to accommodate production facilities in industrial zones and mixed-use zones that permit industrial uses. The city is also looking at definitions for cannabis-related uses including retail sales and consumption venues to provide clarity within the regulations.

### **Cannabis Production Facilities**

HRM staff have proposed that the following definition of "Cannabis Production Facility" be added to their LUBs:

*CANNABIS PRODUCTION FACILITY* means premises used or occupied by a person or organization licensed by the Government of Canada for the production of cannabis or cannabis products,

- (a) including
  - (i) where cannabis or any of its derivatives, such as resin or oils, is grown, cultivated, harvested, manufactured, processed, packaged, or labelled, and
  - (ii) associated activities permitted by the federal license, such as research and development, storage, and destruction, and
- (b) excluding
  - (i) industrial hemp, and
  - (ii) premises used for personal production permitted by federal legislation.

The definition reflects the language of the *Cannabis Act* regulations, with exemptions for industrial hemp and personal production. Industrial hemp can be grown as a typical agricultural crop and does not require the same regulations as cannabis production facilities. Personal production refers to provisions of the *Cannabis Act* which would allow up to four plants to be grown by an individual, not subject to licensing.

HRM staff have proposed the following LUB amendment for production facilities in Industrial Zones that establish a minimum setback of 70 metres from residential and other sensitive uses. A sample LUB amendment is as follows:

#### **CANNABIS PRODUCTION FACILITIES**

Where a lot containing a cannabis production facility abuts a lot

- (i) zoned or used for residential purposes, or
- (ii) that is used for a daycare, community centre, school, religious institution, public park or playground,

such facility, including any building or outdoor area used as a cannabis production facility, shall be set back a minimum 230 feet (70 metres) from the abutting lot line.

The attached map estimates the areas of town remaining when the 70 metre buffer is applied to residential and other sensitive uses. Most of the industrial park, South Albion, Robert Angus Drive, and the inner area of the former ENHEAT site remain.

#### **Cannabis Retail Sales and Consumption Venues**

As noted previously, the Province of Nova Scotia intends to conduct retail sales of cannabis through the NSLC, and online. No legislation permitting private retail sales from storefronts other than the NSLC, nor cannabis consumption lounges has been introduced in Nova Scotia. Given the above considerations, with regard to cannabis retail sales and consumption venues HRM is proposing to add the following definitions to their LUBs:

*CANNABIS LOUNGE* means premises where the primary purpose of the facility is the consumption of cannabis, cannabis products or any of its derivatives such as oils or edible products. A cannabis lounge may or may not include cannabis retail sales.

*CANNABIS RETAIL SALES* means premises used for the retail sale of cannabis, cannabis products or any of its derivatives, such as oils or edible products, to the general public.

#### **MPS Amendments**

HRM staff have proposed MPS amendments intended to clarify the Municipality's position on cannabis-related land uses. In review of these amendments, Town staff do not feel they are needed or appropriate for the Amherst context. However, it may be appropriate to allow licensed production facilities in location less than 70 metres from residential and sensitive uses, possibly by development agreement (DA). In this case, MPS amendments to allow for consideration by DA would be required.

#### **Relevant Policy**

Any planning document amendment must conform to the policies of the MPS. In this case Policy A-5 *Amendment Criteria* is the relevant most relevant.

**A-5** It shall be the intention of Council, when considering an amendment to this or any other planning document, including the entering into or amendment of a development agreement, to consider the following matters, in addition to all other criteria set out in the various policies of this planning strategy:

- (a) That the proposal conforms to the general intent of this plan and all other municipal bylaws and regulations.
- (b) That the proposal is not premature or inappropriate by reason of:
  - (i) the financial capability of the Town to absorb any costs relating to the development;
  - (ii) the adequacy of municipal water, sanitary sewer and storm sewer services;
  - (iii) the adequacy of road networks, in, adjacent to, or leading to the development;
- (c) That consideration is given to the extent to which the proposed type of development might conflict with any adjacent or nearby land uses by reason of:
  - (i) type of use;
  - (ii) height, bulk and lot coverage of any proposed building;
  - (iii) parking, traffic generation, access to and egress from the site;
  - (iv) any other matter of planning concern outlined in this strategy.

Within Policy A-5, subsection (c) is most relevant. The attached draft amendments are intended to address potential land use conflicts by requiring a minimum 70 metre setback from other 'sensitive' land uses. Cannabis lounges and retail sales are restricted to those operated by the NSLC. As impact of the legalized cannabis is better understood going forward further changes to planning documents may be warranted.

### **Conclusion**

Amending the town's Land Use Bylaw to address cannabis-related land uses in a manner similar to HRM's approach appears reasonable. The attached draft LUB amendments reflect HRM's approach by using similar wording inserted in the various sections of the Amherst LUB.

### **MOTION OPTIONS:**

- Option One: I move that the Planning Advisory Committee recommend that Council amend the Land Use Bylaw to regulate cannabis-related uses as shown in the Attachment.
- Option Two: I move that the Planning Advisory Committee defer a recommendation to Council and request that staff provide more information or changes to the draft amendments.
- Option Three: I move that the Planning Advisory Committee recommend that Council **not** amend the Land Use Bylaw to regulate cannabis-related uses.

**STAFF RECOMMENDATION:** Option One.