



STAFF REPORT ACTION REQUIRED

Zoning Changes for Medical Marihuana Production Facilities

Date:	September 24, 2013
To:	Planning and Growth Management Committee
From:	Chief Planner and Executive Director, City Planning Division
Wards:	All
Reference Number:	P:\2013\Cluster B\PLN\PGMC\PG13073

SUMMARY

The purpose of this report is identify changes to Zoning By-law 569-2013 and other existing zoning by-laws for the former municipalities and propose zoning regulations to permit Medical Marihuana Production Facilities ("MMPFs") in specific zones within the City of Toronto.

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning recommends that:

1. City Council direct City Planning staff to bring forward a draft by-law regulating medical marihuana production facilities in specific zones within the City of Toronto for the December 4, 2013 Planning and Growth Management Committee meeting.
2. City Council direct City Planning staff to schedule a public open house meeting for January 6, 2014.
3. City Council direct City Planning staff to provide notice for a public meeting under the *Planning Act* be given according to the regulations of the *Planning Act*.

Financial Impact

The recommendations in this report will have no financial impact.

DECISION HISTORY

This report responds to the need for any zoning by-law changes needed to regulate the new Medical Marihuana Production Facilities ("MMPFs").

ISSUE BACKGROUND

At the October 19, 2012 City of Toronto Licensing and Standards Committee meeting committee received a staff report updating the members about the upcoming federal regulations for licensed MMPFs.

Health Canada announced the final regulations on June 20, 2013. Municipal zoning by-laws are recognized in these regulations as being part of the licensing process. The license applicant must demonstrate that the proposed facility meets all zoning regulations for the site where it will be located.

At its June 20, 2013 meeting, the Planning and Growth Management Committee received a letter from Councillor Cesar Palacio, Ward 17 – Davenport requesting the committee to review the new federal regulations establishing a system of federally licensed MMPFs and what changes the City of Toronto would be required to implement to regulate and facilitate this land use.

This request resulted from Health Canada's announcement on June 10, 2013 finalizing the *Controlled Drugs and Substances Act, Marihuana for Medical Purposes Regulation* P.C.2013-645 June 6, 2013. This Act lays out the regulatory criterion for applying for and receiving a federal license to establish a facility to produce and distribute marihuana for medical purposes.

COMMENTS

Marihuana is listed as a schedule II narcotic under the *Controlled Drugs and Substance Act* S.C. 1996, c. 19, last amended on November 6, 2012. Contained in this Act are the *Controlled Drugs and Substances Act (Police Enforcement) Regulations* and the more recent *Controlled Drugs and Substances Act Marihuana for Medical Purposes Regulations* ("MMPR").

Health Canada introduced the new MMPR on June 6, 2013. This new regulation permits the establishment of licensed MMPFs by issuing licenses to identified producers. The new federal regulation delegates the permission to regulate the development standards and location of these facilities to the individual municipality through their local zoning by-laws.

Part 1, Sections 12(1) and (2) of the MMPR provide a list of activities a licensed producer may undertake. These activities include the possession, production, selling, providing, shipping, delivering, transporting and destroying of marihuana. They must take place within a highly secured facility. Sales and distribution are restricted to medical patients who have prescriptions issued by medical doctors. The sale and distribution of marihuana to individuals cannot occur with a prescribed individual on site, but must be delivered to the individual's registered address.

The MMPR are divided into seven Parts. Part 1 concerns zoning issues. Of the eight Divisions found in Part 1 the following Divisions will need addressing in the City's zoning by-laws: Division 1 - Permitted Activities and General Obligations; and Division 3 - Security Measures. Division 1 provides information about what constitutes a production facility and some of the physical site requirements. Division 3 provides further detail about security and location of security equipment and devices such as barriers.

The review of the new City-wide Zoning By-law 569-2013 determined that a MMPF does not fit within any existing permitted land use. This was also the case with the old zoning by-laws that continue to apply during the appeal period. No development standards or regulations were found that apply to this use. To remain consistent with the new *Controlled Drugs and Substances Act Marihuana for Medical Purposes Regulations*, this use should be defined and a set of development regulations specific to this use should be established.

A new defined term that captures the activities undertaken by a licensed producer of a medical marihuana should have the following wording:

Medical Marihuana Production Facility

means premises used for growing, producing, testing, destroying, storing, or distribution of medical marihuana or cannabis authorized by a license issued by the federal Minister of Health, pursuant to section 25 of the Marihuana for Medical Purposes Regulations, SOR/2013-119, under the Controlled Drugs and Substances Act, SC 1996, c 19, as amended.

After reviewing the federal regulation for MMPFs, four areas of concern related to land use planning need to be addressed through the City's zoning regulations. These are: a) the proximity of these facilities to a dwelling place; b) types of activity associated with these facilities; c) location of the activities on the site; d) and site/facility security.

Part 1 Section 13 of the MMPR states that no activity may occur at a dwelling place. This eliminates all Residential Zone categories and Residential Apartment Zone categories. Sensitive uses such as schools, day nurseries, and places of worship are also considered non-compatible abutting uses. In addition, the Commercial, Commercial Residential, Commercial Residential Employment and Institutional Zone categories permit uses that would be negatively impacted by this type of facility. They are removed from consideration.

Two zones in By-law 569-2013 are suitable for accommodation of MMPFs. The Employment Industrial (E) zone and the Employment Heavy Industrial (EH) zone can best accommodate the requirements and regulations within the MMPR. The equivalent industrial zones in the former general zoning by-laws will also require amendments to accommodate this new use for properties that have not been brought into By-law 569-2013.

Part 1, Sections 14 and 15 of the MMPR state that all activities involved in a MMPF, including storage, must be conducted indoors and must adhere to the security directives found in the Regulation. This part of the MMPR created a conflict with existing zoning regulations pertaining to the placement of structures in required building setbacks from property lines. The most effective solution to this conflict is to create a Medical Marihuana Section in Chapter 150 of the new City-wide Zoning By-law 569-2013 with regulations addressing location of activity on site, open storage, loading, separation distances from sensitive uses, and setbacks (Attachment 1). Similar regulations and standards should be added to the older by-laws to keep them consistent. The following wording will address this issue:

- a) A **medical marihuana production facility** must be in a wholly enclosed building.
- b) Open storage is not permitted with a **medical marihuana production facility**; and
- c) Loading spaces for a medical **marihuana production facility** must be in a wholly enclosed building

The MMPR specifically addresses site security and the location of certain security equipment. The placement of this equipment will be in conflict with minimum setback requirements in all the zoning by-laws. The following wording should be added to the new and old by-laws to remedy this conflict:

A building or structure used for security purposes for a medical marihuana production facility:

- (A) may be in the **front yard**; and
- (B) does not have to comply with required minimum **front yard, side yard and rear yard building setbacks**.

MMPFs are intended to be highly secure areas under the MMPR. To assist in maintaining a higher level of security for these sites, it is recommended that they be separated from publicly accessible uses as well as residential areas. A 70 metre separation distance from lots with residential use and sensitive uses would satisfy this concern. This distance for a setback is based on the Provincial D-6 Guidelines for separation distance and is consistent with a Class II industrial use. This can be achieved by adding the following:

A lot that has a medical marihuana production facility must be:

- (A) At least 70 metres from a lot in a:
 - (i) Residential Zone category;

- (ii) Residential Apartment Zone category;
- (iii) Commercial Residential Zone category;
- (iv) Commercial Residential Employment Zone category;
- (v) Institutional Zone category; or
- (vi) Open Space Zone category; and

(B) At least 70 metres from a lot with a:

- (i) public school;
- (ii) private school;
- (iii) place of worship; or
- (iv) day nursery

The *Controlled Drugs and Substance Act*, Part II outlines the rights a police force has to undertake search, seizure and detention and the procedures they must follow for these activities. The *Controlled Drugs and Substance Act (Police Enforcement) Regulations* addresses the responsibilities and procedures given to police forces under the Act. The establishment of a cross departmental working group consisting of City Planning, Toronto Building, Municipal Licensing & Standards, Fire Services, and Toronto Police Services should be established to monitor this issue and develop further policies and regulations as may be needed in the future.

CONTACT

Joe D’Abramo, Director (Acting)
Zoning By-law and Environmental Planning
City Planning Division
Telephone (416) 397-0251, Fax (416) 392-3821
E-mail: jdabrammo@toronto.ca

SIGNATURE

Jennifer Keesmaat, MES, MCIP, RPP
Chief Planner & Executive Director
City Planning Division

ATTACHMENTS

Attachment 1 - Draft By-law

[P:\2013\Cluster B\PLN\PGMC\PG13073]

Attachment 1 – Draft By-law

Authority: Planning and Growth Management Committee ~ as adopted by City of Toronto Council
on ~, 20~
Enacted by Council: ~, 20~

CITY OF TORONTO

Bill No. ~

BY-LAW No. --20~

To amend Zoning By-law No. 569-2013, as amended, to include permission for a Medical Marihuana Production Facility.

WHEREAS authority is given to Council by Section 34 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, to pass this By-law; and

WHEREAS Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*;

The Council of the City of Toronto HEREBY ENACTS as follows:

(1) By-law 569-2013 is amended to insert Section 800.50 (473) so that it reads:

- (473) **Medical Marihuana Production Facility**
means premises used for growing, producing, testing, destroying, storing, or distribution of medical marihuana or cannabis authorized by a license issued by the federal Minister of Health, pursuant to section 25 of the Marihuana for Medical Purposes Regulations, SOR/2013-119, under the Controlled Drugs and Substances Act, SC 1996, c 19, as amended.

(2) Bylaw 569-2013 is amended to insert Section 150.XX so that it reads:

150.XX Medical Marihuana Production Facility

150.XX.20 Permitted Uses

150.XX.20.1 General

- (1) **All Activities in an Enclosed Building**

A **medical marihuana production facility** must be in a wholly enclosed building.

- (2) **Open Storage**

Open storage is not permitted with a **medical marihuana production facility**.

150.XX.40 Building Requirements

150.XX.40.1 General

- (1) **Separation Distance**

A lot that has a **medical marihuana production facility** must be:

(A) at least 70 metres from a lot in a:

- (i) Residential Zone category;
(ii) Residential Apartment Zone category;

- (iii) Commercial Residential Zone category;
 - (iv) Commercial Residential Employment Zone category;
 - (v) Institutional Zone category; or
 - (vi) Open Space Zone category; and
- (B) at least 70 metres from a lot with a:
- (i) public school;
 - (ii) private school;
 - (iii) place of worship; or
 - (iv) day nursery.

150.XX.60 Ancillary Building

150.XX.60.10 Location

- (1) Location of building or structure Used for the Purpose of Site and Facility Security
A building or structure used for security purposes for a medical marihuana production facility:
- (A) may be in the **front yard**; and
 - (B) does not have to comply with required minimum **front yard, side yard and rear yard building setbacks**.

150.XX.90 Loading

150.XX.90.10 Location

- (1) Loading Space Location
 Loading spaces for a medical **marihuana production facility** must be in a wholly enclosed building.

(3) Bylaw 569-2013 is amended to insert the following regulation to regulation 60.20.20.20(1), so that it reads:

Medical marihuana production facility (2)

(4) Bylaw 569-2013 is amended to insert the following regulation to regulation 60.20.20.100, so that it reads:

(2) Medical Marihuana Production Facility

In the E zone, a medical marihuana production facility must comply with the specific use regulations in Section 150.XX.

(5) Bylaw 569-2013 is amended to insert the following regulation to regulation 60.30.20.20(1), so that it reads:

Medical marihuana production facility (3)

(6) Bylaw 569-2013 is amended to insert the following regulation to regulation 60.30.20.100, so that it reads:

(3) Medical Marihuana Production Facility

In the E zone, a medical marihuana production facility must comply with the specific use regulations in Section 150.XX.

ENACTED AND PASSED this ~ day of ~, A.D. 20~.

ROB FORD,
Mayor
(Corporate Seal)

ULLI S. WATKISS,
City Clerk