

Zoning Changes for Medical Marihuana Production Facilities – Supplementary Report

Date:	January 29, 2014
To:	Planning and Growth Management Committee
From:	Chief Planner and Executive Director, City Planning Division
Wards:	All
Reference Number:	P:\2014\Cluster B\PLN\PGMC\PG14006

SUMMARY

On January 13, 2014, the Planning and Growth Management Committee adjourned its public meeting on Item PG 30.1, Zoning Changes for Medical Marihuana Production Facilities – Final Report, to the February 27, 2014 meeting with a request that the Chief Planner and Executive Director, City Planning report on a way to treat Medical Marihuana distribution facilities as a regular pharmacy.

The zoning amendment recommends where to permit a medical marihuana production facility within the City of Toronto and at the same time recognize and remain consistent with the federal regulation. The medical marihuana production facility, as defined by the federal regulation, includes producing, processing and distributing medical marihuana. These activities are considered industrial in nature within the context of the zoning by-law. In terms of distribution, the medical marihuana must be securely delivered to the address of the registered client, even if the production and distribution components were separated. There is no personal pick-up permission. This makes the option of operating like a pharmacy impossible. A facility focused solely on distribution must still operate in the same secure fashion as a production facility. A facility with no public access would be inappropriate as a commercial use in the City's CR zones as it would not contribute to the street vibrancy envisioned by the OP for mixed-use areas. For this reason, CR zones permit a mix of both residential and commercial uses in the same building. The federal regulation prohibits a medical marihuana facility in a dwelling place, making a mixed use building impossible in CR zones.

Financial Impact

There is no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

At the January 13, 2014 Planning and Growth Management Committee meeting, the Chief Planner and Executive Director, City Planning was directed to report back to the Planning and Growth Management Committee at its February 27, 2014 meeting on a way to treat distribution facilities as a regular pharmacy.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PG30.1>

ISSUE BACKGROUND

The following is a link to the report dated December 10, 2013 from the January 13, 2014 Planning and Growth Management Committee meeting. A statutory public meeting was held to discuss draft by-laws amending City of Toronto Zoning By-law No. 569-2013; former City of Toronto By-law 438-86; former City of North York By-law 7625; former City of Scarborough Employment District By-law 24982; former City of York By-law 1-83; former Borough of East York By-laws 6752 and 1916 and former City of Etobicoke Zoning Code to define a Medical Marihuana Production Facility (production facility), permit this use in specific zones and a set of conditions and exemptions specific to this use:

<http://www.toronto.ca/legdocs/mmis/2014/pg/bgrd/backgroundfile-65270.pdf>

COMMENTS

At its meeting held on January 13, 2014, the Planning and Growth Management Committee deferred a Final Report on the public consultation process regarding changes to the zoning regulations respecting the new federally-regulated Medical Marihuana Production Facilities and the accompanying draft zoning by-law amendments. The Chief Planner and Executive Director of City Planning was requested to review the federal *Marihuana for Medical Purposes Regulations* (federal regulation) to determine if these regulations would permit a distribution facility to operate in the same way as a pharmacy. A number of questions were raised by speakers and Committee members at this meeting. These include:

- Can medical marihuana be distributed like other medications?
- Do the *Marihuana for Medical Purposes Regulations*, security measures apply to all activities permitted to a licensed producer?
- Can a medical marihuana distribution facility be located in a CR or CRE zone?
- How does a client submit a prescription to a licensed producer?

The Marihuana for Medical Purposes Regulation and Zoning

The *Marihuana for Medical Purposes Regulation* replaces the former *Marihuana Medical Access Program* established in 1999 by the federal government. This program permitted individuals to choose one of the following three options to attain medical marihuana: grow their own marihuana; have access to a federal supply of marihuana; or purchase marihuana from a grower with designated supply for that individual. The program has been amended a number of times since.

In June 2013 the new *Marihuana for Medical Purposes Regulation* was introduced to replace the former *Marihuana Medical Access Program*. The new regulation lays out a set of requirements and regulations to permit the growing of marihuana for medical purposes by what is now defined as a "licensed producer". The regulation sets out requirements for who can apply to become a licensed producer, how they can apply to become a licensed producer, how they must conduct their operation, physical and procedural site and facility security, processes for receiving client applications, shipping and distribution, monitoring and transition provisions from the former program.

The following information was acquired by further review of the federal regulation and supplementary Health Canada publications.

Can Medical Marihuana be Distributed Like Other Medications?

Committee requested clarification regarding if a medical marihuana distribution facility operates in a similar way to a pharmacy. The federal regulation does not permit retail operation for the distribution of medical marihuana. Section 122 of the federal regulation says that "a licensed producer must not transfer physical possession of the dried marihuana to the client or to an individual responsible for that client other than by shipping it to that person." This section is very specific that the product cannot be picked up by a client or individual responsible for a client. Section 46 restricts access by the public to any part of a facility where cannabis is present. Section 47 requires physical barriers to prevent any unauthorized access by the public.

The federal regulation deals with licensed producers and does not distinguish between a producer and a distributor. Based on the definition and permitted activities of a licensed producer found in Subsection 12(1) in the federal regulation, both are considered activities of a licensed producer and all sections in the regulation apply.

Section 73 deals with shipping. Dried marihuana must be shipped to a client or individual responsible for a client by a method that ensures the tracking and safekeeping of the package during shipping. Since mail boxes and drop boxes can be accessed by more than the client or individual responsible for the client, these two methods of delivery would not comply with Subsection 73(2)(c) of the federal regulation.

Do the Marihuana for Medical Purposes Regulations, Security Measures Apply to All Activities Permitted to a Licensed Producer?

Division 3, Sections 41-51 regulate the site and facility security requirements. Section 42 specifically states that a licensed producer's site must be designed to prevent unauthorized access. Section 44 goes further to state that a licensed production facility must be secured by an intrusion detection system that is monitored at all times. The federal regulation does not distinguish between the many permitted activities of a licensed producer but apply to all the listed activities.

Can a Medical Marihuana Distribution Facility be Located in a CR or CRE Zone?

Section 13 of the federal regulation states that none of the permitted activities a licensed producer may undertake can be conducted at a dwelling place. Both the CR and CRE zones permit dwelling units without condition. A production or distribution facility on a site would prevent any residential units on the site. Further, these facilities must comply with the security measures contained in sections 41-51. Complying with the required security measures would create gaps along the street where no street related activity could occur. CR and CRE zones are intended to encourage interaction between street and buildings promoting an active public environment. A production or distribution facility would promote the opposite.

How Does a Client Submit a Prescription to a Licensed Producer?

Based on the federal regulation, a client, or an individual responsible for the client, must submit their prescription to a licensed producer. The order can be transmitted in writing or by telephone. Each method must be verified and recorded by the licensed producer.

The federal regulation does not list a call centre facility in Subsection 12(1), activities for a licensed producer, but it does list selling. According to correspondence with the Licenses and Permits Division, Office of Controlled Substances, Health Canada, Subsection 23(2) states that, if an applicant for a producer's license intends to undertake any of the activities listed in Subsection 12(1) at multiple locations, a separate application must be made for each location. This means a call centre would require a producer's license and would be subject to the same site security measures and record keeping procedures as any other permitted activity listed in Subsection 12(1).

Summary

In summary, the federal regulation permits dried medical marihuana to be shipped only to a client or client representative and cannot be picked-up or mailed. Subsection 12(1) of the federal regulation lists the activities that a licensed producer may undertake. The activities included in this list are, produce, sell, provide, ship, deliver and transport marihuana. Anyone undertaking any of these activities is called a licensed producer. Any site that a licensed producer operates out of must comply with the federal regulation.

A distribution facility would not be an appropriate or compatible use in either a CR or CRE zone. The site and facility security requirements would cause a negative impact on the street front of the facility causing a negative impact on the streetscape. Both a production and distribution facility would be best suited for location in the E and EH zones.

A licensed producer must not transfer physical possession of dried marihuana to a client or individual responsible for a client. Shipping protocol given in the federal regulation must be followed by a licensed producer. The product cannot be distributed through a pharmacy, retail facility or delivered to a post office box or drop box without being in contravention of the federal regulation.

The federal regulation contains a clear set of regulations concerning facility operation, site security, product distribution and client registration. Any deviation from these regulations would be contrary to the federal regulation and possibly the *Controlled Drug and Substance Act*. The proposed zoning by-law amendments attached to the report titled "Zoning Changes for Medical Marihuana Production Facilities - Final Report" dated December 10, 2013 are consistent with the federal regulation. Any changes that would permit public access to these facilities for the purpose of client pick-up of product would put the Zoning By-law out of compliance and breach of the producer's license.

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