

December 23, 2013

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VIA REGULAR MAIL AND EMAIL

City Clerk's Office
Attention: Nancy Martins, Administrator
Planning and Growth Management Committee
Toronto City Hall
100 Queen Street West, Suite C51
Toronto, ON M5H 2N2

Re: Public Meeting – Proposed Amendments to City of Toronto Zoning By-law 569-2013

Dear Ms. Martins

BACKGROUND

On September 24th, 2013, the City Planning Division released a staff report to the Planning & Growth Management Committee that identifies proposed changes to Zoning By-Law 569-2013 (hereinafter "By-law"). New zoning regulations are proposed to permit federally licensed Medical Marihuana Production Facilities (hereinafter "MMPF") in specific zones within the City of Toronto. The Planning Division concludes that the term "MMPF" does not fit any existing permitted land use in the By-law. As such, the staff report proposes to establish a new, single zoned land use category for MMPFs and a coinciding new single definition that encompasses *both* medical marihuana production facilities and medical marihuana storage and distribution sites (hereinafter "MMSDS"). The new land use category proposed is to be termed "*Medical Marihuana Production Facility*".

REMARKS

It is our respectful opinion that the proposed new definition of MMPFs is excessively broad and fails to take into consideration the substantive differences between the activities fundamental to "production facilities" and the activities fundamental to "storage and distribution sites." This proposed definition of new land use category will see Medical Marihuana *Storage and Distribution* Sites ("MMSDS") being equated with, zoned as, and thus regulated as MMPF. It is our position that the City Planning Division's current definition of MMPFs should exist separate and apart from any definition the Planning Division will arrive at to define Medical Marihuana Storage & Distribution Sites. We further assert that the Storage & Distribution industry is vastly different than the Production industry. The two industries perform different activities and hence should not share the same definition. MMPF and MMSDS should trigger different land use requirements, approaches, plans, and setback regulations.

It is our respectful submission that the newly defined termed "MMPF" that is being proposed by the Planning Division should apply strictly and solely to those premises that engage in the federally licensed production of medical marihuana. That is, an MMPF should exclusively mean

Planning Division for the newly defined MMPFs are appropriate, given the production nature of such facilities. We respectfully request however that MMSDS be afforded its own definition consistent with its warehousing and distribution activities. We respectfully recommend that the new definition for MMSDS generates a zoned land use category that is, by the nature of its stated activities, deemed suitable for accommodation in Commercial Residential Employment (CRE) Zones, in addition to Employment Industrial (E) zones and Employment Heavy Industrial (EH) zones.

LAND USE COMPATIBILITY AND ZONE CATEGORIES

Pharmacies

Pharmacies are located on premises that store and distribute narcotic drugs and yet are permitted land use activities in CRE zones. Shoppers Drug Mart, Rexall Pharmacy, or any other drugstore or pharmacy can be found in CRE-zoned locations across the city. Every pharmacy in Toronto engages in the storage and distribution of a myriad of narcotic drugs on CRE zoned premises. Analogous to all narcotics, marihuana is also listed as a narcotic under the *Controlled Drugs and Substance Act* S.C. 1996, c. 19, last amended on November 6, 2012.

Similar to pharmacies, federally licensed MMSDS do not engage in the production and manufacturing of medicine. Just like pharmacies, MMSDS require written physician prescriptions prior to delivering medicine by courier shipment in accordance with the federal MMPR regulations. They should be treated no differently than pharmacies across the City.

Retail Store Land Use

Unlike the term “Pharmacies” which is not explicitly listed as an example of a permitted use in the CRE zone, “Retail Store” is an explicitly listed permitted use *with no conditions* pursuant to section 50.10.20.10(1)(A) of the By-law. This section states “In the CRE zone, the following uses are permitted under the letter “c” in the zone label referred to in regulation 50.5.1.10(3)(A)(i): “Retail Store”. Due to the fact that CRE zones accommodate “Retail Stores” as a “permitted use”, it follows that drugstores and pharmacies are also permitted uses in CRE zones by virtue of the fact that drugstores and pharmacies both fall under the definition of “Retail Store” and are not listed as exclusions from the definition. The definition of “Retail Store” under section 800.50(720) of the By-law is as follows: “Retail store means premises in which goods or commodities are sold, rented, or leased”.

Extending the definition of “Retail Store” to include MMSDS becomes even more logical and appropriate when one bases the “Retail Store” definition on the root definition of “Retail Trade Sector” in the authoritative land use classification source: the North American Industry Classification System (NAICS) Canada 2012. In NAICS, “Retail Trade Sector” is comprised of establishments primarily engaged in retailing merchandise. This definition includes “Non-Store Retailers” and is comprised of establishments primarily engaged in retailing merchandise by non-store online retail methods. In NAICS, “Non-Store Retailers” expressly include off-site institutional pharmacies. It is respectfully submitted that MMSDS should be similarly classified as “off-site institutional pharmacies”. This core classification of MMSDS will carry over into the definition of “Retail Store” found in section 800.50(720) of the By-law. It is accordingly our position that including MMSDS within the definition of MMPF is inconsistent with City land

use policies as MMSDS relate to pharmacies and, by their very nature, also require physician prescriptions, store medicine, and distribute medical drugs.

Detrimental Effect

When considering the impact on the health and welfare of critically ill patients, retaining MMSDS within the proposed MMPF definition would severely and detrimentally impact on the health of Toronto patients who will be relying on MMPR licensed distribution sites to efficiently and promptly deliver their medication in a timely manner. Pharmacies are conveniently located and scattered in neighborhoods across the City for this very reason, to address the need for an efficient and easily accessible prescription drug distribution process to critically ill patients. MMPR distribution and storage sites should be treated in the same manner as other premises that distribute medicine for the benefit of Torontonians.

Warehouse Land Use

In the event that the Planning Division fails to recognize that MMSDS should be included in the “Retail Store” definition found in section 800.50(720) of the By-law, it is our respectful submission that MMSDS should then be classified as a “Warehouse”, which is a permitted land use under the CRE zone pursuant to subsection 50.10.20.10(1)(C) of the By-law. “Warehouse” is defined in Section 800.50(925) as “premises used for keeping or storing goods or commodities, to which the general public does not have access and, which may also be used for the distribution of the goods or commodities.” It is respectfully submitted that MMSDS can be classified under the “Warehouse” definition on the grounds that the activities it will undertake fit within the activities of a “Warehouse”. MMSDSs will be accepting deliveries of dried and processed medicinal marihuana and the premises will be used for keeping and storing the medicine to which the general public does not have access and which will also be used for the distribution of the medicine exclusively by courier or mail service.

Setback Requirements

Defining MMSDS as falling under either “Retail Store” or “Warehouse” necessarily categorizes it as a permitted land use in CRE zones. As such, the setback requirements in section 50.5.40.70 are applicable to MMSDS. The setback requirements are as follows:

Section 50.5.40.70(1)(a) - a building or structure in the CRE Zone may be no closer than **3 metres** from the original centreline of a lane if the lot abutting the side of the lane is not in the Residential Zone Category, Residential Apartment Zone Category, or Open Space Zone Category.

Section 50.5.40.70(1)(B) - a building or structure in the CRE Zone may be no closer than **3.5 metres** from the original centreline of a lane if the lot abutting the other side of the lane is in the Residential Zone category, Residential Apartment Zone category, or Open Space Zone category.

For the reasons set forth above, it is respectfully submitted that 3 metres, rather than the Planning Division’s proposed 70 metres, is the appropriate minimum separation distance requirement for federally regulated MMSDSs.

COMMERCIAL OR INDUSTRIAL ZONING CATEGORIES

The Planning Division proposes that Commercial Residential Employment zone categories (CRE) permit uses that would be negatively impacted by all MMPF type of facilities (including MMSDS). As such, the CRE zone category has been removed from consideration. Instead, they propose that the activities conducted at both MMPF and MMSDS should fall within the Industrial zone category, specifically the Employment Industrial (E) zone (General Manufacturing & Industrial) and the Employment Heavy Industrial (EH) zone, (Heavy Manufacturing and Industrial) 1.40.60(3)(B) and (C). In addition, the Planning Division proposes that both MMPFs and MMSDSs should be considered as Class II Industrial land uses as defined in the Ministry of Environment Guidelines, Procedure D-1-3, "Land Use Compatibility: Definitions". The definition of a Class II Industrial Facility refers to "medium scale processing and manufacturing with outdoor storage of wastes or materials (i.e. it has an open process) and/or there are periodic outputs of point source or fugitive emissions for noise, odour, dust and/or vibration, and low probability of fugitive emissions."

It is our respectful submission that designating MMSDS as consistent with Class II Industrial Facilities is inappropriate and in fact, incorrect. MMSDSs are not licensed to engage in medium scale processing and manufacturing, MMSDSs are not licensed to have outdoor storage of wastes or materials, and they do not pose a risk of outputs of point source or fugitive emissions. The potential for exposed risk to the public would be considerably less than for MMPFs. MMSDSs operate in a manner similar to other pharmacies, with only storage, packaging, and distribution occurring on the premises. Thus, they are ill-suited to being categorized as an Industrial Facility in the Employment Industrial or Employment Heavy Industrial Zone Categories.

In the event that the Planning Committee fails to recognize that MMSDS land use activities are not consistent with the Ministry of Environment Guideline's Class II Industrial Facility category, nor with the By-law's "Employment Industrial Zone Category", it is our respectful submission that the Planning Division place MMSDS under the Employment Light Industrial (EL) Zone. This zone provides "areas for light manufacturing, industrial and other employment uses that co-exist in close proximity to sensitive land uses, such as residential and open space." See 1.40.60(1)60.10 and 1.40.60(3)(A).

It is our respectful submission that in this event, MMSDSs would be classified as a "Warehouse" based on the definition provided above, which is a permitted use in the Employment Light Industrial zone (EL) with no conditions, pursuant to section 60.10.20.10 of the By-Law. In this case, the setback requirements for EL zone would apply. See section 60.10.40.70 (1) to (4).

Finally, to the extent that the proposed definition of MMPF is not revised as outlined herein and instead includes the MMSDS distribution and storage activities (which are conducted by pharmacies across the City on a daily basis and accordingly sanctioned by the City), it is our respectful submission that any inconsistent approach undertaken by the City in relation to these activities, simply because of the character of the medication (prescription opioids vs. prescription cannabis), to the extent that it discriminates against patients in the accessibility of their medication (i.e. discrimination against a disabled person in respect of an essential service and product) may trigger a violation under the Charter of Rights and Freedoms as well as under the Ontario Human Rights Code.

RECOMMENDATIONS

For the reasons set forth in this submission, it is accordingly our respectful submission that your office revise the proposed By-law as follows:

The definition of Medical Marihuana Production Facility in section 800.50 (473) be revised to read as follows:

(473) (1) Medical Marihuana Production Facility means premises used for growing, producing, destroying, testing, storing and distributing 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.

The definition of Medical Marihuana Storage and Distribution Site should be added to section 800.50 to read as follows

(473) (2) Medical Marihuana Storage and Distribution Site means premises used for storing and distributing 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.

CONCLUDING REMARKS

We trust that our concerns and the matters outlined herein will be given due consideration prior to the Planning and Growth Management Committee's meeting on January 13, 2014. Should you require any additional information please do not hesitate to contact the undersigned. In closing, we would welcome the opportunity to meet with you to discuss the Staff Report in greater detail and assist you in the review and consideration of these recommendations.

We would like to officially place these submissions on the record in order to secure our eligibility to launch an appeal if need be. Therefore, please note that these submissions are intended for distribution to the entire Planning and Growth Management Committee and to Council proper.

Trusting the foregoing meets with your approval, I remain,

Yours truly,



Ron Marzel