



**STAFF REPORT
ACTION REQUIRED**

Review of Regulations Governing Marihuana for Medical Purposes

Date:	June 13, 2016
To:	Licensing and Standards Committee
From:	Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	P:\2016\Cluster B\MLS\LS16012

SUMMARY

This report responds to Licensing and Standards Committee's direction of May 19, 2016 to provide a review of existing medical marihuana regulations, an overview of operations of medical marihuana dispensaries in Toronto, an overview of practices in other jurisdictions, and regulatory mechanisms that may address the recent proliferation of storefront medical marihuana dispensaries. The directive noted specific concerns related to the clustering of medical marihuana dispensaries in Toronto, their proximity to schools and community centres, and the nuisances that they have generated.

This report focuses on an overview of the current legislative framework governing medical marihuana, and the issues surrounding the recent proliferation of storefront dispensaries.

Marihuana, or cannabis, has been listed as a prohibited substance under the *Controlled Drugs and Substances Act (CDSA)* for decades. In 2001, the consumption of marihuana for medical purposes was exempted from the *CDSA* through the promulgation of the *Medical Marihuana Access Regulation (MMAR)*. In 2013, this regulation was replaced with the *Marihuana for Medical Purposes Regulation (MMPR)*.

The City of Toronto does not have the authority to regulate the sale of medical or non-medical marihuana. The City of Toronto did respond to the regulation of medical marihuana by regulating the permissible locations for licensed producers in the Zoning By-law. These producers are defined as Medical Marihuana Production Facilities (MMPFs) in the Zoning By-law.

The storefront medical marihuana dispensaries that have recently emerged in Toronto are operating in contravention of both federal laws and the City's Zoning By-law. Storefront

dispensaries are illegal under the current legislative framework governing the lawful access to medical marihuana. Through the *MMPR*, there are 18 federally licensed producers in Ontario, three of which are located in Toronto. Currently, the licensed producers are the only entities permitted to legally produce and distribute (by mail to authorized users) controlled amounts of dried marihuana, fresh marihuana, and cannabis oil. The three Toronto-based producers are located in industrial areas and comply with the City's Zoning By-law. The recent enforcement activities undertaken by both the City and the Toronto Police Services (TPS) have neither disrupted the operations of the licensed producers nor affected access to medical marihuana produced by the licensed producers.

The Federal Court of Canada held that the *MMPR* infringed the *Canadian Charter of Rights and Freedoms* ("*Charter*"). The Court suspended its declaration of invalidity to give the federal government six months to revise or replace the *MMPR*. The City anticipates that the federal government will revise or replace the *MMPR* by August 24, 2016. Individuals who require medical marihuana may continue to access it via licensed producers. In addition, under the federal regulations, some individuals are authorized to grow their own medical marihuana or utilize a designated grower.

In anticipation of the changes to the *MMPR*, it is recommended that Municipal Licensing and Standards (ML&S) report to Licensing and Standards Committee on October 25, 2016 with an updated review of the legislative landscape pending the revised federal regulation concerning medical marihuana, updated research into the outcomes of municipal regulations enacted in other jurisdictions, and an analysis of appropriate regulatory options, if any.

Legal Services was consulted in the preparation of this report.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards recommends that:

1. Licensing and Standards Committee request the Executive Director, Municipal Licensing and Standards, to report back to the Committee by October 25, 2016, with the outcomes of the federal government's revised regulations, updated research and jurisdictional scans, and an analysis of regulatory options, if any.

Financial Impact

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

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of May 19, 2016, Licensing and Standards Committee directed the Executive Director, ML&S, in consultation with the Medical Officer of Health and the Chief of the TPS, to report on a regulatory framework for marihuana businesses, including a review of the current operations of marihuana businesses in the City of Toronto, a review of regulations in other jurisdictions including Vancouver, and recommendations to address concerns, including the feasibility of licensing marihuana businesses and other regulatory mechanisms to regulate the proximity of these establishments to schools and other educational facilities, childcare and other sensitive uses.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.LS11.7>

At its meeting of April 1, 2014, City Council adopted amendments to the City of Toronto Zoning By-law to define Medical Marihuana Production Facility and to establish zoning regulations to permit these facilities in industrial areas.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PG31.1>

ISSUE BACKGROUND

In recent months, Toronto has seen a sudden surge of storefront businesses identifying themselves as medical marihuana dispensaries. As of May 2016, there were an estimated 78 of these businesses operating in the city. These dispensaries sell dried marihuana, cannabis oils, and marihuana infused edibles, including baked goods, beverages, and candy.

These medical marihuana dispensaries operate in contravention of the *CDSA*. Only federally licensed producers are permitted to produce and distribute marihuana for medical purposes, through the regulation that provides an exemption from the *CDSA*. Medical marihuana sold and purchased at the estimated 78 businesses operating in Toronto are not licensed producers and thereby are not exempted from the *CDSA*. In addition, all of these dispensaries operate at locations in contravention of the City's Zoning By-law.

Current Regulatory Framework

Federal Laws Governing Medical Marihuana

The *CDSA* prohibits possession, trafficking, import and export, and production of controlled substances, including marihuana, unless authorized by regulations. In this context, the *MMPR*.

Since 2001, the consumption of medical marihuana has been permitted in Canada, when the federal government established the *MMAR*. The *MMAR* established guidelines for Canadians to get authorization to possess legal medical marihuana for therapeutic purposes. An individual with certain medical conditions who had obtained support from a physician could get permission from Health Canada to be an authorized medical

marihuana user. These users obtained their medical marihuana directly from Health Canada, could grow it themselves, or have a designated individual grow it on their behalf.

In 2013, the federal government established the *MMPR* which replaced the *MMAR*. The regulations set rules for the production, distribution, and use of medical marihuana. The federal government oversees medical marihuana producers through a licensing regime that involves a rigorous application process. Licensed producers are subject to requirements related to good production practices; packaging, labelling and shipping; import and export; security; record keeping and reporting; and distribution.

A health care practitioner who determines that an individual will benefit from the use of medical marihuana to treat a medical condition is able to authorize the patient to do so by providing the patient with a medical document. These patients can access medical marihuana from authorized licensed producers that will deliver it in controlled amounts, by mail.

There are 31 authorized licensed producers in Canada, 18 of which are located in Ontario, and three in Toronto. Health Canada reports that they are currently processing 400 applications for licensing. According to Health Canada, in April 2016, there were a total of 59,967 registered medical marihuana clients in Canada (34% increase from April 2015). Licensed producers delivered 40,279 shipments of medical marihuana in April 2016 (32% increase from April 2015). 23,255 of these shipments were to clients in Ontario. Health Canada estimates that at least 11 licensed producers offer some type of compassionate pricing scheme for low income persons who use marihuana for medical purposes.

The federal government does not authorize licensed producers to provide marihuana for medical purposes through storefront dispensaries.

Zoning By-law

The City of Toronto does not oversee the production or distribution of medical marihuana. Subsequent to the release of the *MMPR* and after a planning review, the City did amend the Zoning By-law to define Medical Marihuana Production Facilities (MMPFs) and prescribed where the use is permitted, including separation distances from sensitive uses.

MMPFs are defined in the Zoning By-law as premises used for growing, producing, testing, destroying, storing, or distribution of medical marihuana or cannabis authorized by a licence issued by the federal Minister of Health, pursuant to section 12 of the *MMPR*, under the *CDSA*.

MMPFs are only permitted in Employment Industrial zones (E zones). Separation distances within the E zone must be:

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

- (iii) Commercial Zone category;
 - (iv) Commercial Residential Zone category;
 - (v) Commercial Residential Employment Zone category;
 - (vi) Institutional Zone category; and
 - (vii) 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; and
 - (iv) day nursery.

Consequently, premises used for growing, producing, testing, destroying, storing, or distribution of medical marihuana or cannabis must comply with the City's Zoning By-law, including that the premises be located only in Employment Industrial zones.

MMPR Charter Challenge

While the *MMAR* (in place from 2001 to 2013) permitted patients and designates to grow marihuana for personal medical use, the federal government later prohibited this in the *MMPR*. In *Allard v. Canada*, the *MMPR* was challenged on the basis that it infringed section 7 of the *Charter*. Section 7 of the *Charter* protects an individual's life, liberty and the security of the person. In its February 24, 2016 decision, the Federal Court found that the *MMPR* infringed section 7 of the *Charter* by, among other concerns, prohibiting authorized users from growing medical marihuana for personal use and restricting access to medical marihuana in a manner that was not justifiable. The federal government was given six months to respond to this decision and enact a new or parallel medical marihuana regime.

The federal government did not appeal the decision and has committed to revising the *MMPR* by August 24, 2016. The revised regulation is expected to ensure that access to medical marihuana by authorized users is not arbitrarily restrictive. There has been no indication from the federal government as to what specific changes may appear in the revised regulations. It is unknown at this time, if the nature and extent of changes to the *MMPR* may impact the City and could necessitate or eliminate the need for municipal regulatory action.

Legalization of Non-Medical Marihuana

The Liberal Party of Canada's 2015 election platform contained a commitment to the legalization of non-medical marihuana. On their website, the Liberal Party of Canada pledges to "remove marijuana consumption and incidental possession from the Criminal Code, and create new, stronger laws to punish more severely those who provide it to minors, those who operate a motor vehicle while under its influence, and those who sell it outside of the new regulatory framework." They also commit to creating a "federal/provincial/territorial task force, and with input from experts in public health, substance abuse, and law enforcement, will design a new system of strict marijuana sales and distribution, with appropriate federal and provincial excise taxes applied."

Since the election, the federal government has committed to legalizing and regulating non-medical marihuana by spring of 2017.

During this time that the federal government is working through these regulatory changes to the *MMPR* and legislation around non-medical marihuana, the City of Toronto has seen an increased prevalence of illegal medical marihuana dispensaries that are operating in contravention of existing federal laws.

COMMENTS

There were 78 illegal medical marihuana dispensaries identified as operating in Toronto. Councillors and residents have raised concerns over these businesses operating in contravention of federal regulations and City By-laws and their close proximity to schools, community centres, and each other. Concerns also include health concerns relating to the sale of unregulated marihuana infused food products, neighbourhood nuisances, exposure and sale to minors, and general concerns of safety (e.g. increased crime in neighborhoods, robberies, etc.).

Enforcement Efforts to Date

TPS and ML&S have worked collaboratively and each have respectively issued notices to the owners of the properties where medical marihuana dispensaries have been found to be operating. These letters advised the property owners that sale and distribution of marihuana out of a storefront is unlawful as it contravenes federal laws, and that the use of a property for the distribution of medical marihuana through a storefront is a contravention of the Zoning By-law. The letters provided the property owners with time to take the necessary steps to remedy the infraction, and also indicated that the property owner may face charges if the operation of the storefront dispensaries continues.

Due to the on-going violations of the *CDSA* and municipal By-laws, on May 26th officers from TPS and ML&S attended 43 of these businesses throughout the city and issued charges to business owners for Criminal offences, Zoning By-law contraventions, and Licensing By-law contraventions. ML&S will continue its enforcement efforts against all medical marihuana dispensaries that continue to operate in contravention of City By-laws. The operators of dispensaries and property owners found to be in contravention of City By-laws will face charges and further enforcement action, as appropriate.

As a result of these enforcement actions, staff have confirmed that as of June 8th, 34 of these 43 businesses have not reopened since these charges were laid on May 26th.

Jurisdictional Scan

Staff have begun to undertake a review of jurisdictions in Canada and the United States to gain insight on the prevalence of medical marihuana businesses in other jurisdictions and regulatory efforts in place to oversee these businesses. Vancouver and Victoria are amongst the jurisdictions that have taken an approach to develop business licensing and zoning regimes to oversee businesses engaging in the advocacy of medical marihuana use, but not the actual sale of marihuana.

Vancouver, BC

As a response to public and councillor concerns, on April 28, 2015, staff in Vancouver prepared a report to Council on medical marihuana-related businesses. At the time of this report, there were over 80 medical marihuana-related businesses in the city. City Council received the staff report about the proposed regulations and referred the report to a public hearing. After this decision, the number of medical marihuana-related businesses grew to over 100 by the time Council adopted new regulations for Medical Marijuana-Related Business on June 24, 2015. The Vancouver License By-law defines "Retail Dealer – Medical Marijuana-related" as any person who carries on a retail business in which the use of marihuana for medicinal purposes is advocated. The definition of Medical Marijuana-Related business does not capture the sale of medical marihuana.

Though staff in Vancouver have only recently issued the first of these licences, there are approximately 55 other businesses that are being processed, have yet to obtain a licence, or are continuing to operate in contravention of the By-law. Eleven of these locations have received development permits. Some others have ceased operations.

Staff in Vancouver report that the round of applications that closed in August 2015 drew in 176 applications from existing and prospective business. Of these applications, only 10 were for businesses that meet the zoning regulations. Preliminary applications that did not meet zoning requirements were refused, 60 of which have appealed to the Board of Variance. The City has 240 individuals who have added their names to a waitlist for future application periods. Given the zoning and separation requirements, City staff have estimated that that there could be approximately 90 medical marihuana-related businesses in Vancouver.

On May 31, the City of Vancouver filed for injunctions to close 17 businesses that have not met the licence requirements and have refused to stop operating. The City continues to ticket businesses that are operating in contravention of the By-law. Some of these businesses have had their leases terminated by property owners.

Victoria, BC

On May 14, 2015, Victoria City staff were directed to conduct consultations and report back with recommendations on amendments to mitigate community impacts and a compliance and enforcement strategy. In April 2016, staff reported 35 medical marihuana-related businesses operating in Victoria. The Victoria Police Department has received complaints of: nuisances such as odours and increased foot traffic, impacts on surrounding businesses, concerns of food safety, crime, and sale to persons without medical need.

On May 12, 2016, Victoria City Council directed staff to report back with a proposed new Medical Marijuana-Related Business Regulation Bylaw. This By-law is expected to go to City Council in June 2016.

Next Steps

The City of Toronto has no authority to regulate the sale of medical or non-medical marihuana by dispensaries, an activity prohibited by federal laws. ML&S continues to enforce the municipal By-laws as they are applicable today to these non-compliant operations.

Staff will report back to Licensing and Standards Committee once the federal government has released its revised *MMPR*. In the interim, staff will continue to research the issues surrounding medical marihuana dispensaries, monitor outcomes in jurisdictions like Vancouver and Victoria, and further engage Health Canada.

Staff will consolidate research, analyze regulatory options given the revised legislative landscape and work with the Toronto Police Service, City Planning, Legal Services, and Toronto Public Health to prepare a report to Licensing and Standards Committee for October 25, 2016.

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SIGNATURE

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