



REPORT FOR ACTION

Provincially-Licensed Cannabis Retail Stores in Toronto

Date: December 6, 2018

To: City Council

From: City Manager

Wards: All

SUMMARY

Provincially-licensed private cannabis retail stores are expected to open in Ontario by April 1, 2019. The Province of Ontario will be responsible for licensing and regulating these stores through the Alcohol and Gaming Commission of Ontario (AGCO). Under the provincial *Cannabis Licence Act, 2018*, municipalities have until January 22, 2019 to pass resolutions to opt-out of having licensed cannabis retail stores located within their municipal boundaries.

This report recommends that Toronto City Council not opt-out of Ontario's retail cannabis regime, thereby allowing provincially-licensed cannabis retail stores to operate in Toronto. Provincial licensing is intended to ensure that operators conduct their business in a responsible and accountable manner, and would support the goals of preventing youth from accessing cannabis and eliminating the illegal cannabis market.

A provincially-licensed regime would provide a government-regulated alternative to the illegal market and implement regulatory controls that are designed to minimize social harms and address safety issues. Provincially-licensed retail stores would be required to have strict controls in place to prevent access and sales to minors and ensure that cannabis products are sourced from federally-inspected, Licensed Producers that adhere to federal health and safety standards. This is an important step towards achieving the objectives of protecting youth and combatting the illegal market.

Prohibiting cannabis retail stores in Toronto would limit Toronto residents' access to legal and government-regulated recreational cannabis; the only other ways to legally purchase recreational cannabis would be online (through the Ontario Cannabis Store) or in other municipalities where there are legal cannabis retailers. It is anticipated that prohibiting legal cannabis retail stores would have the unintended consequence of encouraging the illegal market to continue to operate, either through storefronts selling illegal products or by driving illegal cannabis sales underground. This would undermine

efforts by all levels of government to prevent youth access to cannabis and would require increased municipal and police enforcement to address illegal operations.

This report was prepared in consultation with the City's interdivisional working group on cannabis legalization. Twenty-three City divisions and agencies are participants in this working group, including Municipal Licensing and Standards, Toronto Public Health, Legal Services, City Planning, and the Toronto Police Service.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council not opt-out of provincially-licensed cannabis retail stores in Toronto.
2. City Council authorize the City Manager, in consultation with the Chief Financial Officer, to negotiate and enter into any required agreements to receive intergovernmental funding for implementation of cannabis legalization, with terms and conditions satisfactory to the Chief Financial Officer and the City Solicitor.

FINANCIAL IMPACT

The Province has announced that it will provide \$40 million over two years to municipalities across Ontario for the implementation costs of cannabis legalization.

The Province will provide a first payment of \$15 million to all municipalities in January 2019, on a per household basis. The Province has stated that the City of Toronto will receive \$3,008,705.

A second payment of \$15 million will be distributed after January 22, 2019. The amount of funding that a municipality can expect to receive is tied to whether or not it chooses to opt-out of cannabis retail stores. Municipalities that choose to opt-out of cannabis retail stores can expect to receive \$5,000. The remaining funds will be distributed on a per household basis to municipalities that have not opted-out of cannabis retail stores.

The Province is setting aside \$10 million of the municipal funding to address costs arising from unforeseen circumstances. The details of how these funds will be allocated have not yet been announced.

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

DECISION HISTORY

On October 2, 2017, City Council adopted, with amendments, [LS21.2: City of Toronto Recommendations for Cannabis Legalization](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.LS21.2) (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.LS21.2), establishing the City's position on issues relating to legalization. This included requests to the Province for additional enforcement tools and funding.

On June 12, 2017, the Board of Health adopted, with amendments, [HL20.3: Legal Access to Non-Medical Cannabis: Approaches to Protect Health and Minimize Harms of Use](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.HL20.3) (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.HL20.3), which recommended measures to the federal and provincial governments for use when developing legislative frameworks aimed at further protecting health and minimizing harms of cannabis use. The accompanying staff report provided a public health analysis of federal legislation related to cannabis legalization.

On June 27, 2016, Licensing and Standards Committee deferred consideration of [LS12.1: Medical Marijuana Dispensaries](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.LS12.1) (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.LS12.1) until federal and provincial legislation has been passed on access to medical cannabis. The accompanying staff report provided a review of existing medical cannabis regulations and an overview of the operations of cannabis storefronts in Toronto, with a focus on the legislative framework at that time.

On May 30, 2016, the Board of Health adopted, with amendments, [HL12.2: Legalization and Regulation of Non-Medical Cannabis](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.HL12.2) (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.HL12.2), which made recommendations to the federal government, including urging the federal government to use an evidence-based public health approach to cannabis legalization.

On May 19, 2016, Licensing and Standards Committee deferred [LS11.7: Marijuana Dispensaries](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.LS11.7) (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.LS11.7) and directed the Executive Director, Municipal Licensing and Standards, in consultation with the Medical Officer of Health and the Chief of the Toronto Police Service, to report on a regulatory framework for cannabis storefronts.

On April 1, 2014, City Council adopted [PG31.1: Zoning Changes for Medical Marijuana Production Facilities - Final Report](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PG31.1) (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PG31.1), which made amendments to the City of Toronto Zoning Bylaw to define Medical Marijuana Production Facility and to establish zoning regulations to permit these facilities in industrial areas. A series of technical zoning amendments were approved on July 23, 2018 which, among other things, revised this term to Marijuana Production Facility and broadened the definition to keep up-to-date with the evolving legislation of senior levels of governments.

COMMENTS

The passing of federal Bill C-45, the *Cannabis Act*, legalized cannabis in Canada, effective October 17, 2018. The *Act* legalized the distribution, sale, and consumption of recreational cannabis. Under this legislation, cannabis production is regulated by the federal government, while the Province is responsible for regulating cannabis distribution and retail sales. The production and sale of medical cannabis continues to be regulated exclusively by the federal government.

On October 17, 2018, the Province amended the *Ontario Cannabis Act, 2017* to permit the Ontario Cannabis Retail Corporation (OCRC) and private retailers licensed by the Alcohol and Gaming Commission of Ontario (AGCO) to sell recreational-use cannabis in Ontario. The *Act* was also renamed the *Cannabis Control Act, 2017*.

The cannabis retail regime established by the Province is a significantly different model than previously proposed in 2017 under the former provincial government. The previous model provided for the OCRC to operate recreational cannabis retail stores in addition to online sales, whereas the current model provides for private retail sales. The Province formally announced this change to the retail model on August 13, 2018.

As of October 17, 2018, residents have been able to purchase legal cannabis online through the provincially-run Ontario Cannabis Store, which is the exclusive online retailer of cannabis. Private retail stores for recreational cannabis are expected to be licensed and operating in Ontario by April 1, 2019.

Under the *Cannabis Licence Act, 2018*, municipalities are permitted to pass a resolution to opt-out of having cannabis retail stores operate within their boundaries; this resolution must be made before January 22, 2019. If a municipality does not pass a resolution to opt-out, licensed retail stores will be able to operate within its boundaries and the decision cannot be reversed after the January 22, 2019 deadline. If a municipality passes a resolution to opt-out, it may lift the prohibition at a later date.

Provincial Licensing and Regulatory Framework

In Ontario, private cannabis retailers are required to obtain provincial licences and meet requirements set out by provincial legislation and regulations. The Province's regime does not allow municipalities to determine the number, location, concentration, or manner of operation of private cannabis retail stores. The provincial legislation does not allow municipalities to pass bylaws licensing the sale of cannabis. The provincial legislation also does not permit municipalities to pass zoning bylaws that distinguish cannabis retail from other forms of retail. It is anticipated that there will be an initial surge of applications leading up to April 1, 2019.

Provincial Licensing

The AGCO is responsible for issuing a Retail Operator Licence to businesses that qualify for a licence. With a licence, an operator can identify a proposed location for a store and apply to the AGCO for a Retail Store Authorization. Sales and transfers of the licences are prohibited and a market concentration limit of 75 retail stores province-wide

per operator has been set. There is no set cap on licences and the number of licences and store authorizations that will be issued within the province is not yet known.

Provincial regulations restrict a cannabis retail store from being located within 150 metres of public and private schools. The AGCO will enforce this distance buffer between cannabis retail stores and schools proactively through their licensing and store authorization process. The distance buffer is measured from:

- The property line, if the school is the primary or only occupant of a building; or
- The boundary of any space occupied by the school within the building, if the school is not the primary or only occupant of a building.

The definition of schools for this purpose does not include colleges or universities. The regulations do not establish a separation distance between cannabis retail stores.

The AGCO will provide a 15-day notification period to receive public input, including any input from the affected local or Regional municipality, for a proposed store site. The public notice of a proposed cannabis retail site will be posted on the building and on the AGCO's website.

Interested parties, including members of the public and City Councillors, have the ability to make submissions directly to the AGCO. Although municipalities are included in the parties that have the right to make submissions to the AGCO, the 15-day notification period would not allow time for City staff to report and receive direction from City Council in order to make submissions on behalf of the City.

When reviewing feedback from the public notice process, provincial legislation states that the AGCO must determine if the application is in the public interest. In doing so, it will consider matters related to protecting public health and safety, protecting youth and restricting their access to cannabis, and preventing illicit activities related to cannabis. Unlike decisions made by the AGCO for liquor licence applications, store authorization decisions made by the AGCO cannot be appealed through the Licence Appeal Tribunal.

Provincial regulations also outline instances in which applicants will be denied a licence. These include: being associated with organized crime, being charged with or convicted of offences under the *Cannabis Licence Act, 2018*, or cannabis-related criminal offences. Notably, illegal cannabis retailers who were operating after October 17, 2018 are not eligible for Ontario cannabis retail licences.

Provincial Regulations

The Province has put in place a number of regulatory controls and requires that cannabis retail stores:

- Are standalone; that is, they cannot be a part of a store or added to stores that sell other products, including pharmacies and stores selling alcohol;
 - cannot allow anyone under the age of 19 to access the premises;
 - are only permitted to sell legally-sourced cannabis and cannabis accessories;
- and

- only operate between 9:00 a.m. and 11:00 p.m., consistent with the Province's new alcohol retail hours.

Cannabis retail stores are also subject to restrictions on promotion and display set out in the federal *Cannabis Act*. Amongst other things, the *Cannabis Act* does not permit cannabis, cannabis packaging, or cannabis accessories to be displayed in such a way that may be seen by a young person.

In addition to the above, regulations under the *Cannabis Licence Act, 2018* prescribe specific conditions with which retailers must comply to keep their licence or authorization. For example, retailers are required to verify the age of customers upon entry, to conspicuously display their store authorization, and to display a notice of suspension, if applicable, in a conspicuous place that is visible from the exterior of the store's public entrance. The AGCO has also indicated that it will be releasing details on additional standards for retail store operations.

Cannabis Quality Control

The AGCO will regulate the quality and safety standards of the products by requiring retail stores to purchase products from the OCRC. The OCRC will source its supply from federal Licensed Producers that meet federal health standards for cannabis products. Regulations require that the provincial cannabis retail seal be prominently displayed and visible on the exterior of the store to help consumers identify legitimate, provincially-authorized retailers that source cannabis products from Licensed Producers.

The *Cannabis Licence Act, 2018* allows Licensed Producers to operate one store onsite at their production facility. Such production facilities are permitted in some of Toronto's industrial zones, but not all of these zones permit retail stores.

Training Requirements

Provincial regulations provide the AGCO authority to approve training courses and programs for cannabis retailers in Ontario. These regulations also require any individual with a Retail Store Authorization licence, as well as cannabis retail managers and all retail employees to complete this approved training.

Legal Age

Individuals will need to be 19 years of age and older to buy cannabis. This aligns with the provincial minimum age for the sale of tobacco and alcohol. The maximum fine for any retailer who sells cannabis to a minor is \$250,000.

Provincial Enforcement

Once provincially-licensed retail stores begin operating in Ontario in 2019, the AGCO will only enforce regulations related to licensed stores. The AGCO will not enforce against illegal storefronts selling cannabis without a provincial licence. Enforcement will continue to be the responsibility of local law enforcement authorities, including Municipal Licensing and Standards (MLS). This is consistent with how the AGCO enforces liquor licensing; the AGCO assumes responsibility for the licensed locations, but municipalities are responsible for any unlicensed illegal locations.

Update on Illegal Storefronts and Enforcement Actions

Since the spring of 2016, MLS and the Toronto Police Service have pursued joint enforcement activities against operators and landlords where cannabis products were illegally being sold. These illegal storefronts operate in contravention of federal laws, provincial laws, and, in some cases, Toronto Municipal Code Chapter 545, Licensing, for the sale of food in the form of cannabis edibles.

MLS has pursued the following enforcement activities:

- Continuous inspection of all reported storefronts.
- Notified property owners and business owners of their illegal activities through caution letters regarding zoning violations.
- Execution of search warrants under the *Planning Act* in response to being obstructed from entry.
- Conducted additional MLS bylaw enforcement actions following the execution of search warrants by Toronto Police Service relating to illegal cannabis storefronts.
- Laid charges related to zoning, licensing, and obstruction violations against employees, managers, business owners, and property owners.
- Notified mortgagees of the use of financed properties for illegal purposes.
- Commenced applications in Superior Court pursuant to the *City of Toronto Act* seeking interim and permanent injunctions regarding two chains of illegal storefronts, resulting in interim closure orders that remain in effect (e.g. <http://canlii.ca/t/h6mhv>).

Between March 16, 2016 and November 23, 2018, approximately 1,260 charges have been laid against storefront owners, operators, employees and landlords. These charges have resulted in 548 convictions and total fines imposed of \$724,200.

The *Cannabis Control Act, 2017* provides authorities with enhanced enforcement tools to address illegal storefronts; these include seizure authority and the ability to issue interim closure orders against the premises. The *Cannabis Control Act, 2017* also provides for significant fines and potential incarceration for contraventions of the *Act*. For a corporation, the maximum fine for a first offence under sections 6 or 13 (applicable to illegal storefronts) is \$1,000,000, with a further \$500,000 per day for repeat or continuing offences. For an individual convicted of the same offences, the maximum fine for a first offence is \$250,000 and with a further \$100,000 per day for repeat or continuing offences.

On the day prior to legalization, staff identified 92 illegal storefronts that were reportedly operating in Toronto. On the day of legalization, staff attended each of these locations and determined that 56 of these illegal storefronts were not operating on that date. As of November 27, 2018, staff estimate that 11 storefronts continue to operate illegally.

In the six weeks following legalization, MLS staff undertook the following enforcement actions using the enhanced enforcement tools provided by the Province:

- Conducted 989 inspections of illegal storefronts;
- Sent 76 advisory letters to landlords; and

- Assisted the Toronto Police Service with the execution of 67 search warrants.
- Staff continue to re-inspect these locations to ensure compliance, identify newly-opened storefronts, respond to complaints received related to cannabis storefronts, and work with the Toronto Police Service in an effort to enforce against these illegal storefronts.

Key Considerations

Provincial Regulatory Standards

Recognizing that legal recreational cannabis is a new market, the City identified and communicated a number of municipal concerns and considerations to the Province prior to legalization. The City has advocated for robust regulatory controls in order to prevent youth from accessing cannabis, and to minimize social harms and address safety issues. The provincial legislation and regulations address the key concerns communicated by City staff to the Province.

Monitoring and enforcement of the regulatory requirements will be critical to ensuring the regulations are effective in preventing youth access to cannabis, quality control, and other safety concerns. The effectiveness of the regime will depend, in part, on the AGCO's licensing enforcement approach.

Not opting-out of the Province's retail model will provide Toronto with a regulated alternative to the current illegal market, which includes controls intended to prevent sales to minors and to ensure that licensed retailers only sell cannabis products from federally-inspected, Licensed Producers.

Addressing the Illegal Market

Based on staff's experience with the illegal market since 2016, it is anticipated that banning legal retailers would have the unintended consequence of encouraging the illegal market, including through the operation of illegal storefronts. If the City were to prohibit cannabis retail stores, it is expected that the illegal market would continue to operate at some level, to serve residents who want to purchase cannabis in-person within Toronto. City residents would not have access to stores that are regulated by provincial and federal laws and, therefore, not subject to product quality control.

The ongoing proliferation of illegal sales does not support the overall policy objectives of legalization and regulation. In addition, ongoing proliferation of illegal storefronts would require greater municipal and police enforcement actions to address illegal sales.

A regulated marketplace would support government goals of preventing youth access to cannabis, combatting the illegal market, and establishing safe access to recreational cannabis.

Funding for Municipalities

The Province has announced that it will provide \$40 million over two years to help municipalities across Ontario with the implementation costs of cannabis legalization. The Province has stated that municipalities must use this funding to address the

implementation costs that directly relate to the legalization of recreational cannabis. Examples provided by the Province of permitted costs include increased enforcement, increased response to public inquiries, increased paramedic and fire services, and bylaw and policy development. The Province will be distributing this amount on a per household basis as follows:

First Payment of Funds

For the first payment of funds in January 2019, the Province will distribute \$15 million between all municipalities, based on 2018 Municipal Property Assessment Corporation (MPAC) household numbers. The Province will make adjustments to provide at least \$5,000 to each municipality. The City of Toronto will receive \$3,008,705.

Second Payment of Funds

For the second payment of funds, the Province will distribute \$15 million between all municipalities based on the following:

- If a municipality has not opted-out of cannabis retail stores, it will receive funding based on the 2018 MPAC household numbers, adjusted so that at least \$5,000 is provided to each municipality.
- If a municipality has opted-out of cannabis retail stores, it will receive a maximum of \$5,000. Municipalities that opt-out by January 22, 2019, and then reverse that decision at a later date would not be eligible for additional funding.

The amount that Toronto can expect to receive from this second payment will depend on whether or not City Council chooses to opt-out of provincially-licensed cannabis retail stores.

Assessment of Funding Impacts

To assess the impact of this funding, the Province has requested that the Association of Municipalities of Ontario and the City of Toronto work with the Ministry of Finance to establish a process by which a sample group of municipalities will provide information on the use of funds and impact of funding. More information will be available as this process is developed.

Funding for Unforeseen Circumstances

The Province is setting aside \$10 million of the municipal funding to address costs arising from unforeseen circumstances. Priority will be given to municipalities that have not opted-out. The details of how these funds will be allocated have not yet been announced.

Federal Excise Duty

If Ontario's portion of the federal excise duty on recreational cannabis over the first two years of legalization exceeds \$100 million, the Province will provide 50 percent of the surplus only to municipalities that have not opted-out.

Federal/Provincial/Territorial Finance Ministers have agreed to review the cannabis excise tax regime and revenue sharing model as implementation occurs. City Council has requested that federal and provincial governments provide full cost recovery of the City's role in implementation and enforcement.

Next Steps

Once Council has made a decision on the recommended approach, staff will plan for enforcement, communication, and public education needs accordingly.

Should Council decide to opt-out of provincially-licensed cannabis retail stores, staff will then assess the impacts on resource demands as they relate to continued enforcement against illegal storefronts and report back to Council on the necessary resources to address these demands.

CONTACT

Tracey Cook
Executive Director, Municipal Licensing and Standards
Telephone: 416.392.8445
Email: Tracey.Cook@toronto.ca

SIGNATURE

Chris Murray
City Manager