

November 30, 2017

REPORT TO THE CHIEF ADMINISTRATIVE OFFICER
FROM THE DEVELOPMENT AND ENGINEERING SERVICES DEPARTMENT

ON

REGULATION OF CANNABIS DISPENSARIES

PURPOSE

To seek Council's approval to amend City of Kamloops Business Licence and Regulation Bylaw No. 9-60 and Zoning Bylaw No. 5-1-2001 in order to effectively manage cannabis dispensaries prior to and after their operations have been decriminalized.

COUNCIL STRATEGIC PLAN

This report supports Council's goals and objectives regarding:

- **Economy** - diversify, strengthen, and fortify our economy through partnerships and effective land use planning by ensuring that cannabis businesses are appropriately located within the city
- **Livability** - ensure Kamloops maintains a high quality of life while meeting the challenge of a growing community by ensuring that the potential impacts of cannabis businesses and use within the City's authority are addressed
- **Governance** - be recognized for excellence in public service in local government by being proactive and innovative in establishing cannabis regulations

SUMMARY

The federal government has committed to the legalization and regulation of non-medical cannabis use by July 2018. As a result, significant changes will be required to federal, provincial, and local laws, regulations, and bylaws within a narrow window of time. Like many local governments across the country, the City has faced challenges in managing illegal storefront cannabis suppliers, commonly known as "dispensaries". All of these dispensaries are prohibited by federal law.

The City's current bylaw regime does not expressly regulate the retail sale of non-medical cannabis, and Business Licences have not been issued for any dispensaries. All of the dispensaries within city boundaries are operating in violation of the City's Business Licence and Regulation Bylaw, and none of the cannabis products supplied by these dispensaries come from a legal source. They are unregulated, and there is no reliable method of ensuring that they are safe for consumption.

In order to effectively manage dispensaries both prior to and after their operations have been decriminalized, staff recommend the bylaw amendments discussed below. The intent of these amendments is to ensure that Council retains the ability to control where non-medical cannabis sales occur, similar to that which govern private retail alcohol sales.

RECOMMENDATION:

That Council authorize:

- a) **Zoning Bylaw Amendment Bylaw No. 5-1-2861, 2017 (Attachment "A"), be introduced and read a first and second time**
- b) **Business Licence and Regulation Bylaw No. 9-60 Amendment Bylaw No. 9-65, 2017 (Attachment "B"), be introduced and read a first and second time**
- c) **a Public Hearing to consider amending Zoning Bylaw No. 5-1-2001 and Business Licence and Regulation Bylaw No. 9-60, as outlined in Attachments "A" and "B"**

COUNCIL POLICY

There is no applicable Council policy.

DISCUSSION**Federal Legislation**

On April 13, 2017, the Government of Canada introduced Bill C-45 (the *Cannabis Act*) to legalize and regulate the production, distribution, sale, and possession of non-medical cannabis. Following Royal Assent, the federal government intends to bring the proposed *Cannabis Act* into force no later than July 2018.

If passed in its current form, Bill C-45 will enable adults (aged 18 years and over) to legally possess, grow, and purchase limited amounts of cannabis. Under this legal framework, non-medical cannabis will be jointly regulated by federal, provincial, and local governments.

The federal government intends to assume responsibility for licensing cannabis producers and regulating production and product standards. The provincial government, in collaboration with local governments, may, under the proposed *Cannabis Act*, take responsibility for the distribution and retail sale of non-medical cannabis. This could include such matters as: retail distribution models, compliance and enforcement regimes, increased minimum age requirements, lower possession amount restrictions, public consumption and personal cultivation restrictions, and amendments to road safety laws.

Provincial regulatory frameworks can take on a variety of different forms, such as the following:

- Alberta has announced a mixed private-public retail system, with the Alberta Gaming and Liquor Commission (AGLC) carrying out oversight and compliance functions as well as managing distribution. Private retail storefronts will be licensed and regulated by the AGLC, and online sales will be operated by the province.

- Manitoba has also announced a hybrid model with the Liquor and Gaming Authority of Manitoba regulating the purchase, storage, distribution, and retail sale of cannabis, and the private sector operating all retail locations.
- In Quebec, all distribution and sale of cannabis will be overseen by the Société des alcools du Québec, the provincial liquor agency.
- Likewise, Ontario is adopting an entirely public model in which the distribution and sale of cannabis will be conducted solely through the Liquor Control Board of Ontario.
- New Brunswick is creating a new Crown Corporation to oversee recreational cannabis sales, but it has announced that it will not run the retail operations.

The remaining provinces continue to work out the details of their regulatory frameworks.

The Joint Provincial-Local Government Committee on Cannabis Regulation (JCCR) has been tasked with providing local government input during the development of BC's regulatory framework. To date, the Government of British Columbia has released few details regarding its plan.

Illegal, Unlicensed Dispensaries

In connection with the federal government's promise to decriminalize non-medical cannabis, cities across Canada have seen an increase in illegally operated storefront suppliers commonly known as dispensaries. In Canada, dispensaries are not authorized to sell cannabis for medical or any other purposes, and all cannabis products sold by them are obtained illegally. As noted on the federal Department of Justice website:

Storefront operations selling cannabis, commonly known as "dispensaries" and "compassion clubs" are not licensed by Health Canada under the current law and are illegal. They are supplied by illegal growers and sell untested, unregulated products that may be unsafe and of particular risk to children.

In Kamloops, all dispensaries are operating contrary to federal law and the City's Business Licence and Regulation Bylaw. There is no reliable method of ensuring that these cannabis products are safe for consumption.

The City will not be in a position to adopt zoning regulations for dispensaries until the Government of BC announces its intended distribution model. In order to prevent a situation in which illegal, unlicensed dispensaries are able to establish themselves in the absence of express zoning regulations and then benefit from non-conforming status when zoning is finally updated, staff recommend the bylaw amendments discussed below.

The adoption of these amendments will protect and support the City's ability to regulate dispensaries, both during the transitional period and after decriminalization. Once the province adopts a distribution model, Council will be in a position to create business licence categories and/or zoning restrictions containing the desired level of regulation necessary to effectively manage non-medical cannabis in a manner that accords with the City's priorities.

The suggested text of the amendments is included as Attachment “A”.

- Amend to Exclude Dispensaries from Catch-all Definitions

As discussed above, the City may have a narrow window of time to consider its own policies and bylaw amendments between the date on which the provincial regulatory regime is announced and the date of decriminalization. By adding specific definitions for cannabis-related businesses to the Business Licence and Regulation Bylaw and Zoning Bylaw (without permitting them), the City can ensure that such businesses will not fit within the existing catch-all definitions immediately upon decriminalization and before Council has an opportunity to consider its approach.

- Amend to Add a Business Licence Category for “Commercial Landlord”

Unlicensed businesses can be difficult to regulate and enforce against, as operators are often difficult to trace. However, it is common for such businesses to operate out of commercial lease spaces. The proposed amendments are intended to:

- hold those commercial landlords who permit unlicensed business operations on their property accountable
- provide the City with an additional tool to gain compliance with its regulations
- ensure that commercial landlords are treated in a manner that is consistent with other business owners

A new Business Licence category for “Commercial Landlord” would be added, bringing those owners onto a level playing field with the owners of accommodation rentals and operators of property management businesses (existing categories of similar businesses that already require a Business Licence to operate). Property owners who lease property for commercial operations must obtain a Business Licence and must not allow their property to be used for any unlicensed business operation. Since most commercial leases allow landlords to terminate if a tenant fails to comply with any law, landlords are in a much better position to effect a timely and cost-effective closure of businesses operating in contravention of the City’s licensing and zoning regimes. In instances where owners display an ongoing apathy for complying with these reasonable community rules, penalties can be imposed. This places the onus on the property owner to perform adequate due diligence and ensure that the property is managed in a reasonable and responsible manner.

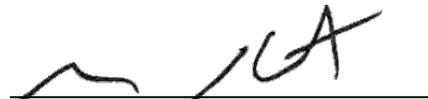
- Increase Fines for Operating Without a Business Licence

The City’s enforcement staff utilize a variety of enforcement tools to compel compliance with the Business Licence and Regulation Bylaw, including issuance of verbal and written notices and orders, issuance of fines, prosecution under the *Offence Act*, and issuance of injunctions. All of these tools are considered by enforcement staff as a continuum of enforcement with the ultimate goal of achieving compliance.

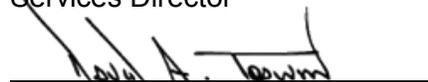
Fines imposed by the courts are based on the circumstances of the particular offence and the offender as well as on the minimum and maximum range set out in the bylaws. Bylaw fines should reflect the importance the City attaches to compliance with the bylaw and should be high enough to act as effective deterrent.

Pursuant to provincial legislation, operating without a Business Licence can carry a fine of up to \$10,000. Currently, the maximum fine for operating without a Business Licence under the City's Business Licence and Regulation Bylaw is \$200. At this level, the fine amount is too low to act as an effective deterrent, and some people, in particular those operating in lucrative industries, it is considered the cost of doing business. The inclusion of a range that allows for a significant fine will reflect the City's position relating to bylaw compliance and will send a strong message to the public regarding the seriousness of operating without a Business Licence, particularly in respect of businesses that can pose a danger to the community.

As with the application of all bylaws, the fines will be used as part of a balanced, fair but firm enforcement strategy where appropriate. Fines may not be used in every instance, and consideration will be given to the circumstances of the non-compliant behaviour



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Development and Engineering
Services Director



Approved for Council

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RJM/kjm

Attachments

CITY OF KAMLOOPS

BYLAW NO. 5-1-2861

A BYLAW TO AMEND THE ZONING BYLAW
OF THE CITY OF KAMLOOPS

The Municipal Council of the City of Kamloops, in open meeting assembled, enacts as follows:

1. This bylaw may be cited as "Zoning Bylaw Amendment Bylaw No. 5-1-2861, 2017".
2. Bylaw No. 5-1-2001, as amended, is hereby further amended as follows:
 - a) Division Four, Definitions, as amended, is hereby further amended by adding the following:

“Retail Cannabis Sales” means a business that sells cannabis but excludes the sale of cannabis for exclusively medical purposes where that sale is made in accordance with federal medical cannabis or medical marihuana enactments and regulations.’
 - b) Division Four, Definitions, as amended, is hereby further amended by repealing the definition for Retail Trade and re-enacting it as follows:

“Retail Trade” means the provision for retail sale of new or second-hand household or personal goods or merchandise to the end consumer, but specially excludes automobile sales, motorcycle sales, recreational vehicle sales, pawnshops, retail liquor sales, and retail cannabis sales.’

READ A FIRST TIME the _____ day of _____, 2017.
READ A SECOND TIME the _____ day of _____, 2017.
PUBLIC HEARING held the _____ day of _____, 2017
READ A THIRD TIME the _____ day of _____, 2017.
ADOPTED this _____ day of _____, 2017.

MAYOR

CORPORATE OFFICER

CITY OF KAMLOOPS

BYLAW NO. 9-65

A BYLAW TO AMEND THE CITY OF KAMLOOPS
BUSINESS LICENCE BYLAW

The Municipal Council of the City of Kamloops, in open meeting assembled, enacts as follows:

1. This bylaw may be cited as "Business Licence and Regulation Bylaw No. 9-60 Amendment Bylaw No. 9-65, 2017".
2. City of Kamloops Business Licence and Regulation Bylaw No. 9-60, 2012, as amended, is hereby amended as follows:
 - a) Division Two, Definitions, is hereby amended by adding the following:

"CANNABIS" means cannabis as defined in the *Controlled Drugs and Substances Act* and includes any products containing cannabis.

"COMMERCIAL LANDLORD" means a person or entity who holds a legal or beneficial interest in any premises within city boundaries and leases, lets, or rents such premises to any other person or entity for the purposes of operating a business.

"RETAIL CANNABIS SALES" means a business that sells cannabis but excludes the sale of cannabis for exclusively medical purposes where that sale is made in accordance with federal medical cannabis or medical marihuana enactments and regulations.'
 - b) Division Five, Specific Business Regulations, is hereby amended by adding the following:

"Commercial Landlord

522. As a condition of continuing to hold a Business Licence in respect of carrying on business as a commercial landlord, no Business Licence holder or business shall permit a commercial tenant or renter to carry on business on the business holder's premises without a valid Business Licence."

- c) Schedule "A", Business Licence Fees and Business Categories, is hereby amended by adding the following:

"4.1. COMMERCIAL LANDLORD

A person or entity carrying on the business of leasing, letting, or renting one or more premises within City boundaries to any person(s) or entity(ies) for the purposes of operating a business:

	PRIMARY FEE	SECONDARY FEE
a) Each Commercial Landlord:	\$67.20	n/a*

- d) Schedule "B", Fine Schedule, is hereby amended by repealing the Fine amount for a "No Business Licence" offence and re-enacting it as follows:

<u>Offence</u>	<u>Section</u>	<u>Fine</u>
"No Business Licence	400	Not less than \$200 and not more than \$10,000"

READ A FIRST TIME the _____ day of _____, 2017.

READ A SECOND TIME the _____ day of _____, 2017.

READ A THIRD TIME the _____ day of _____, 2017.

NOTICE PUBLISHED the _____ day of _____, 2017.

SECOND NOTICE PUBLISHED the _____ day of _____, 2017.

PUBLIC SUBMISSIONS Received by Council on the _____ day of _____, 2017.

ADOPTED this _____ day of _____, 2017.

MAYOR

CORPORATE OFFICER