



## Legislation Text

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**TAMRMS#: B06**

### **Business Licence and Tobacco Retail Licensing Bylaws - Cannabis (1st, 2nd and 3rd reading)**

Presented by: Monty Killoh, Business Licensing Inspector

#### **RECOMMENDATION(S)**

1. That Bylaw 33/2018, being Amendment 19 to the Business License Bylaw 43/2000 be read a first time.
2. That Bylaw 33/2018 be read a second time.
3. That unanimous consent be given for consideration of third reading of Bylaw 33/2018.
4. That Bylaw 33/2018 be read a third and final time.
5. That Bylaw 34/2018, being Amendment 1 to the Tobacco Retail Licensing Bylaw be read a first time.
6. That Bylaw 34/2018 be read a second time.
7. That unanimous consent be given for consideration of third reading of Bylaw 34/2018.
8. That Bylaw 34/2018 be read a third and final time.

#### **PURPOSE OF REPORT**

This report brings forward cannabis-related amendments to the Business Licence and Tobacco Retail Licensing bylaws, which regulate business activity within the City of St. Albert. Relevant information related to the impending legalization of cannabis in Canada is also included in the report.

#### **COUNCIL DIRECTION**

On April 23, 2018, the Governance, Priorities and Finance Committee passed the following motion:

##### AR-18-168

That the Committee supports Administration's use of Option 2, from the document entitled "Cannabis Business Licence & Retail Tobacco Licensing Bylaws", provided as an attachment to the April 23, 2018 agenda report entitled "Cannabis Project Update - Public Participation", as a basis for drafting amendments to the Business Licence and Tobacco Retail Licensing bylaws for consideration by Council on June 25, 2018.

On June 18<sup>th</sup>, 2018, the Governance, Priorities and Finance Committee passed the following motions:

**AR-18-268**

That the Governance, Priorities and Finance Committee directs Administration to recommend for Council Consideration on June 25<sup>th</sup>, 2018, Bylaw 33/2018, being Amendment 19 to the Business Licensing Bylaw 43/2000, as presented to the Committee on June 18, 2018.

That the Governance, Priorities and Finance Committee directs Administration to recommend for Council consideration on June 25, 2018, Bylaw 34/2018, being Amendment 1 to the Tobacco Licensing Bylaw 25/2017, as presented to the Committee on June 18, 2018.

That Bylaw 33/2018, being Amendment 19 to the Business License Bylaw 43/2000 be amended to as follows:

- a) *Adding the following definition for “Public Nuisance”:*
  - “Public Nuisance” means any of the following:*
    - i. the production of any generally offensive odours; or*
    - ii. the generation of unreasonably loud, raucous or unusual noise which annoys, disturbs, or detracts from the comfort, repose or peace of any other person of ordinary sensitivity;*
- b) *Adding the following provision to Section 14.1:*
  - (4) In the event that, in the opinion of the License Inspector, the sale and/or display of Restricted Products has caused a Public Nuisance to the immediate area surrounding the premises from which Restricted Products are sold, the License Inspector may impose the following conditions on the related Business License in addition to any other conditions that may be imposed under this Bylaw:*
    - i. a requirement that no sales of Restricted Products can occur between the hours of 10:00PM and 10:00AM; and*
    - ii. a requirement that all Cannabis must be held in sealed containers or sealed packaging while it is stored, displayed, or otherwise kept at the premises from which it is sold.*
- c) *That all sections and subsections be renumbered accordingly.*

## **BACKGROUND AND DISCUSSION**

In April 2017, the federal government introduced Bill C-45 (*The Cannabis Act*) to legalize the sale and use of cannabis for recreational purposes. While the bill added high-level regulations such as taxation, cultivation and personal possession limits, most regulatory questions - including those related to the retail sale of cannabis - were left to the provinces to address.

In November 2017, the Province of Alberta introduced Bill 26: *An Act to Control and Regulate Cannabis*, which was legislation to regulate the distribution and sale of cannabis in Alberta through the existing *Gaming and Liquor Act*. In February 2018, the Alberta Gaming & Liquor Commission (AGLC) updated their *Alberta Gaming, Liquor and Cannabis Regulation* to regulate the private

retailing of recreational cannabis. The legislation contains regulations that cover financial/criminal background checks for retail licensees and their employees/associates, security requirements for cannabis retail stores, as well as operational regulations such as display requirements for cannabis, limits on what can/can't be sold at a cannabis retail store, and permitted hours of operation.

Administration has thoroughly reviewed the provincial legislation and policies that will regulate the legal cannabis retail industry, and is satisfied that these requirements address current best practices and policies for business licensing in St. Albert, and that they address concerns expressed throughout the City's public engagement campaign. As such, at the April 23<sup>rd</sup> GPFC meeting, Administration recommended that Council support having minimal regulations for cannabis retail stores, with the following amendments to the *Business License Bylaw* and the *Tobacco Retail Licensing Bylaw*:

- Define "Cannabis," and add it as a restricted product in the *Business License Bylaw*;
- Define "Cannabis Accessories," and include it as a replacement for the existing products defined under "Restricted Products" in the *Business License Bylaw*;
- Add a specific fee for "Cannabis Retail Stores" in Schedule "A" of the *Business License Bylaw*;
- Remove a sub-section of the definition of "Tobacco Product" from the *Tobacco Retail Licensing Bylaw* that refers to cannabis-related accessories.

#### Business License Bylaw Amendments - Restricted Products

The City of St. Albert's *Business License Bylaw* regulates business activity that occurs within the City of St. Albert. Traditionally, there have been few industry-specific regulations that have been added to the bylaw. Such regulations have addressed concerns regarding business activity that is not regulated by any other level of government that could potentially have a negative impact on quality of life and safety for residents in St. Albert.

Regarding regulations for cannabis retail stores, the provincial government's regulations for store security, owner/employee background checks, and stringent operational requirements will create an operational environment that is heavily regulated and enforced by the province. Currently, these provincial regulations address the types of concerns that Administration would typically address through *Business License Bylaw* regulations, and therefore Administration does not recommend adding and/or duplicating these regulations.

The Bylaw's "restricted products" section has existing regulations for the retail sale of products associated with cannabis use (such as pipes, bongs, etc.), the sale of which is not regulated by other levels of government. The regulations require that businesses selling such products do not sell them to minors, and that they can only display the products in a way that does not permit anyone to see them from outside the business premises.

As these regulations have been reviewed and approved by Council, Administration recommends that "cannabis" be added to the definition of "restricted products," so that the same municipal regulations that apply to stores selling products associated with cannabis use also apply to stores that sell cannabis. This would fit with Administration's current licensing practices and policies for businesses in the cannabis industry.

Currently, “devices intended to facilitate smoking activity” and “detoxifying products” are defined as “restricted products.” In order to provide increased clarity regarding the intent of the “restricted products” section to regulate cannabis-related businesses, Administration recommends that these two definitions are removed and replaced with a single defined category of “cannabis accessories,” using the following definition taken from the federal government’s *Cannabis Act*:

- “Cannabis Accessory” means a thing, including rolling papers or wraps, holders, pipes, water pipes, bongs and vaporizers, that is represented to be used in the consumption of cannabis or a thing that is represented to be used in the production of cannabis.

The province’s *Gaming and Liquor Act* and its cannabis amendments allow for AGLC to dictate new policy - or amend/remove existing policy - regarding the operation of cannabis retail stores without legislative consent. One such policy will allow for cannabis retail stores to have “sensory display containers” (otherwise known as “sniff jars” or “display pods”); this will allow patrons to sample cannabis in unsealed containers, which may result in odour complaints from neighboring businesses/residents, as has been observed in other jurisdictions where cannabis has been legalized and such containers are permitted.

In reaction to this situation and other possible negative impacts on the immediate area surrounding cannabis retail stores (e.g., noise complaints regarding a cannabis retail store that chooses to stay open until 2:00AM), Administration provided the Governance, Priorities and Finance Committee with a motion in the “Alternatives and Implications Section” of the June 18<sup>th</sup> report (AR-18-268 ) that would amend Bylaw 33/2018 and allow Administration to place specific conditions on business licences for businesses that sell “restricted products,” whenever such businesses have caused a “public nuisance” (defined as the production of any generally offensive odours, or the generation of unreasonably loud, raucous or unusual noise which annoys, disturbs, or detracts from the comfort, repose or peace of any other person of ordinary sensitivity). Council supported the motion, and as such, the proposed amending bylaw includes the ability for the licence inspector to place the following conditions on a business licence for a store that sells restricted products, should the business cause a “public nuisance”:

- A requirement that no sales of Restricted Products can occur between the hours of 10:00PM and 10:00AM; and
- a requirement that all Cannabis must be held in sealed containers or sealed packaging while it is stored, displayed, or otherwise kept at the premises from which it is sold.

The License Inspector is permitted under Section 10 of the current Bylaw to impose conditions with regard to existing business licenses and the operations of the applicable business; however, listing these specific conditions gives clarity to the retail cannabis industry as to operational expectations and situations under which conditions may be imposed. For example, a cannabis retail store that generates a large quantity of odour-related complaints would be subject to the imposition of the “sealed packaging” condition, while a cannabis retail store that generates no such complaints or causes no obvious “public nuisance” could operate without any such restrictions.

It should be noted that Section 17.(1)(d) of the *Business License Bylaw* allows for businesses to appeal any condition imposed on a business licence, and that this section of the bylaw sets parameters for how to handle appeals, including the requirement that the Chief Administrative Officer

appoints an appeal committee comprised of three residents.

Administration anticipates that the legal cannabis industry will expand and change over the following few years. Keeping cannabis-related regulations in the “restricted products” section of the bylaw ensures that future regulatory issues related to the cannabis industry can be addressed by amendments to this section of the Bylaw. For example, Council may consider additional regulations for the retail sale of cannabis edibles, or the operation of cannabis “lounges,” both of which may become legal business establishments in St. Albert within the next few years.

### Business License Bylaw Amendment - Fee for Cannabis Retail Stores

Responses to the City’s *Cannabis Survey* indicated that there was strong support by residents to charge cannabis retail stores a higher licensing fee than what is charged to other businesses. Currently, there are only 3 “categories” of yearly licensing fees applicable to businesses in St. Albert:

- \$140.76 - the standard licensing fee paid by all “in-town” businesses (i.e., businesses with an operating address within City boundaries);
- \$714.00 - an additional licensing fee that businesses selling “tobacco product” are required to pay *in addition* to the standard licensing fee;
- \$682.38 - the standard licensing fee paid by all “out-of-town” businesses (i.e., businesses without an operating address in St. Albert that provide services to residents/businesses in St. Albert).

In deciding what licensing fee should be applicable to cannabis retail stores, administration considered the following factors:

- Existing licensing fee policies in St. Albert;
- Resident support for a higher licensing fee for cannabis retail stores;
- Estimates of how many cannabis retail stores will open in St. Albert, and the total revenue that could be collected from these businesses.

Based on these factors, Administration is recommending that cannabis retail stores are charged \$854.76. in yearly licensing fees. This fee is identical to the total yearly fees paid by businesses that sell tobacco product; therefore, this proposed fee both aligns with existing licensing fee policies, as well as with resident support to charge a higher licensing fee for cannabis retail stores.

Administration has estimated that approximately ~5-15 cannabis retail stores may apply for licences within the first year of legalization. If the City approves 10 cannabis retail stores licences, approximately \$8,547.60 would be collected in licensing fee revenue if the proposed licensing fee is applied. While Council may desire to use licensing fees to recover some of the costs associated with cannabis legalization, Administration recommends that this policy is not applied for the collection of fees from cannabis retail stores. In January, Administration presented estimates of the costs of cannabis legalization to the GPFC committee, with \$1.6 million being the lowest estimate for recurring costs; if licensing revenue were to be used to cover this cost, yearly licensing fees for individual cannabis retail stores would need to be over \$100,000.00.

### Tobacco Retail Licensing Bylaw Amendment - Definition of “Tobacco Product”

The *Tobacco Retail Licensing Bylaw* currently defines “Tobacco Product” as:

- (i) tobacco in any form including, but not limited to, cigarettes, pipe tobacco, loose tobacco, plugs of tobacco, chewing tobacco and snuff; and
- (ii) merchandise used to make cigarettes, including, but not limited to, rolling papers, tubes, and filters; and
- (iii) any device intended to facilitate smoking activity, including pipes (metal/ glass blown, plastic, wood), water bongs and vaporizers.

The purpose of the *Tobacco Retail Licensing Bylaw* is to regulate businesses that sell tobacco products (as defined above). While section (i) of the definition applies directly to tobacco itself, sections (ii) and (iii) apply to products that do not contain tobacco, but are sometimes used in conjunction with tobacco.

These same products are also used in conjunction with cannabis, and provincial regulations will allow cannabis retail stores to offer these products - “cannabis accessories” - for sale in addition to cannabis. Left unchanged, the *Tobacco Retail Licensing Bylaw* would apply to cannabis retail stores that sell cannabis accessories, and therefore these cannabis retail stores would be required to obtain a Tobacco Retail Licence despite being specifically forbidden from selling products containing Tobacco by provincial legislation. Consequently, Administration recommends that sections (ii) and (iii) of the definition for “Tobacco Product” are removed, and that the definition applies only to products that contain tobacco.

Administration has reviewed the City’s current 34 businesses that sell tobacco, and found that each business sells “tobacco in any form” (section (i) of the definition), therefore the proposed amendment would have no impact on the existing Tobacco Retail Licensing Program. Additionally, it is highly unlikely that a business would sell products meant to be used in the consumption of tobacco without selling tobacco itself. As such, this amendment would have no impact on future revenue opportunities for the City.

## **STAKEHOLDER COMMUNICATIONS OR ENGAGEMENT**

A Public Participation Plan was developed and funding for it was approved by Council on March 5, 2018. The funding was used to conduct two surveys, one by invitation to 4,000 randomly selected households and one open to all stakeholders in the community. Both surveys were conducted online between March 21, 2018 and April 4, 2018. Additionally, World Café style discussions were held with randomly selected residents and with business owners/industry stakeholders. The public participation results were presented to the Governance, Priorities and Finance Committee on April 23, 2018.

Feedback from the public participation results, as well as from the Governance, Priorities and Finance Committee was taken into account and incorporated into the recommendations presented by Administration. For example, public engagement results suggested that cannabis retail stores have the same operational hours as liquor stores, and that they pay a higher licensing fee than the standard licensing fee; both of these findings are reflected in the amended bylaws.

## **IMPLICATIONS OF RECOMMENDATION(S)**



Financial:

Should Council approve the proposed Business Licensing fees for cannabis retail stores, the City will collect approximately \$5000.00 - \$10000.00 in additional licensing fee revenue each year, depending on the number of cannabis retail stores that choose to operate in St. Albert. This would result in an approximate increase of less than 1% of annual Business Licensing revenue.

Legal / Risk:

Municipalities must ensure that all bylaws are in place by the time federal cannabis legislation comes into force.

Program or Service:

With minimal operational requirements in the proposed bylaw amendments, there will be a negligible impact on the ability of the Business Licensing Department to process, issue and approve business licences. The amount of business licences issued on an annual basis increases by 50-100 each year, therefore an increase of ~10 licences will not require additional administrative resources.

Administration anticipates that there will be a large volume of applicants to consult, applications to process, and licences to issue within the first few weeks that the City will begin accepting applications for cannabis retail stores. Although this may require more administrative resources than usual during this time-frame, Administration expects the volume of work to diminish once the initial applications have been processed and approved.

With regards to the conditions in the “restricted products” section of the amended *Business License Bylaw*, there may be an increase in the amount of resources required to effectively implement, monitor, and enforce such conditions; this is dependent on the amount of cannabis retail stores that will be operating in St. Albert, as well as the volume and nature of complaints the City receives regarding the operation of such businesses. Additionally, should any cannabis retail store challenge the conditions placed on their licence (which is allowed under Section 17.(1)(d)), an appeal committee must be formed as per the parameters set out in Sections (2),(3),(4),(5),(6),(7),(8),(9),(10) and (11) of the bylaw.

Organizational:

Administration will need to coordinate between internal departments, as well as external agencies (e.g., AGLC) to ensure that all municipal and provincial requirements for cannabis retail stores are being met. Administration will also need to monitor the operation of cannabis retail stores and their impact on the community post-legalization to assess if further regulations and/or bylaw amendments are required.

## **ALTERNATIVES AND IMPLICATIONS CONSIDERED**

Council could direct Administration to remove the “restricted products” conditions that were not a part of the original recommendation that was provided in the June 18<sup>th</sup>, 2018 Governance, Priorities and Finance Committee report (AR-18-268). Council could decide to implement these types of condition-based regulations - or make such regulations a permanent requirement for all cannabis retail stores - at a later date, based on feedback from the community and Administration as they monitor the operation of cannabis retail stores in St. Albert after cannabis has been legalized.

## **STRATEGIC CONNECTIONS**

City of St. Albert Strategic Plan (Policy C-CG-02) - Pillars of Sustainability

Economic

We prosper and excel through a strong and diverse economy that is supported by forward thinking commerce, outstanding local businesses and a dynamic downtown core.

Long Terms Plans (e.g. MDP, Social Master Plan, Cultural Master Plan, etc.)

N/A

Council Policies, Bylaws, or Federal/Provincial statutes:

*Business License Bylaw 43/2000*

*Tobacco Retail Licensing Bylaw 20/96*

*An Act to Control and Regulate Cannabis*

*Gaming and Liquor Amendment Regulation*

*Gaming and Liquor Statutes Amendment Act, 2018*

*An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts*

Report Date: June 25, 2018

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Committee/Department: Economic Development

General Manager: N/A

City Manager: Kevin Scoble