

From: Paul Bigioni
Director, Corporate Services & City Solicitor

Subject: Cannabis Regulation
- File: L-2000-003-18

Recommendation:

1. That the City of Pickering hereby opts out of having cannabis retail stores located within Pickering;
 2. That City staff be directed to continue working with the Region of Durham on revisions to the Region's Smoking in Public Places and in the Workplace By-law, for the purpose of expanding the list of municipal facilities and properties in which smoking of any kind is prohibited;
 3. That a copy of these recommendations be forwarded to the Region of Durham and to the Alcohol and Gaming Commission of Ontario ("AGCO"), and that the Director, Corporate Services & City Solicitor be directed to notify the AGCO, prior to January 22, 2019, that Pickering wishes to opt out of having cannabis retail stores located within Pickering;
 4. Given that the City can opt in to allow retail cannabis sales at any future date, that City staff be directed to solicit input from residents and stakeholders regarding retail cannabis sales; and
 5. That the appropriate City of Pickering officials be authorized to take the necessary actions as indicated in this report.
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Executive Summary: The Provincial regulations and policies relating to the legalization of cannabis have created a need for municipalities to review the potential impact on their communities and make a decision regarding opting in or out of allowing retail cannabis storefronts in the municipality. This report identifies the issues raised by both the consumption of and the possible retail sale of cannabis in Pickering.

Factors in favour of opting out include uncertainty about how the retail sale of a newly legalized substance will impact the community, the lack of any municipal power to regulate retail sales and the inadequacy of the Provincial public consultation on new retail locations. Factors in favour of opting in and allowing retail sales include Federal and Provincial laws which specifically prohibit sales and marketing to minors and which limit retail sales to commercial and industrial zones, and a significant reduction in available Provincial funding to cover costs associated with the legalization of cannabis.

Taking all these factors into account, it is recommended that Pickering opt out of allowing the retail sale of cannabis at this time. It is always possible to opt in and allow retail sales at a later date, although some Provincial funding will be unavailable if Pickering decides to opt in after January 22, 2019. It must be noted that there are reasonable grounds for deciding either to opt in or to opt out.

Consumption of cannabis in public places is regulated by the *Smoke Free Ontario Act* and by the Region of Durham's Smoking in Public Places and in the Workplace By-law. The Region's by-law is currently being repealed and replaced, and City staff continue to provide input to the Region so that the amended Regional by-law will prohibit smoking of any substance not only inside municipal buildings, but also outside of them.

Based upon the recommendations of Council further to this report, City staff will ensure that information about cannabis sales and consumption is added to the City's website, and that residents are informed about applicable Federal and Provincial regulations.

Financial Implications:

The City of Pickering may experience increased service demands in relation to public consumption of cannabis in parks and other prohibited areas, coordinating enforcement of illegal storefronts with Durham Regional Police, responding to public inquiries about cannabis regulations, and training front line staff, security and by-law enforcement officers in responding to illegal cannabis use on City property.

Before deciding whether or not to opt in to allow retail cannabis sales in Pickering, City Council must be aware of the financial incentive made available by the Province. The Province has announced that it will provide \$40 million in funding to lower and upper tier municipalities over the next two years for the purpose of helping municipalities deal with cannabis legalization. The Province has allocated \$15 million to make a first payment to all municipalities on a per household basis, adjusted so that at least \$5,000.00 is provided to each municipality. On November 26, the Ministry of Finance confirmed that Pickering's share of the first payment will be \$20,213.50. (The payment will actually be \$40,427.00, but half of that amount must be given to the Region of Durham.) This first payment will be made in January, 2019.

A second fund of \$15 million will then be distributed following the January 22, 2019 deadline for opting out. This second fund will only be made available to municipalities that have opted in to allow retail cannabis sales. Funding will be calculated on a per household basis, again adjusted so that at least \$5,000.00 is provided to each municipality. This funding would support initial costs relating to hosting retail storefronts. If Pickering opts in, it will receive another \$20,213.50 out of this second fund, with the Region of Durham receiving the same amount. If Pickering opts out, it and the Region will each receive only \$2,500.

The Province is setting aside an additional \$10 million fund for municipalities for unforeseen circumstances related to the legalization of recreational cannabis. Priority for this funding will be given to municipalities that have opted in to allow retail sales.

In addition to the above funding, the Province has announced that it may share with municipalities some of the Provincial portion of Federal excise duty revenues from cannabis sales. 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% of the surplus only to municipalities that have opted in to allow retail sales as of January 22, 2019. It is impossible to calculate how much (if any) revenue this might generate for the City of Pickering, but Pickering will not have any access to this fund unless it opts in before January 22, 2019.

With respect to all of the funding facilities described above, the Province will not allow the funds to be put into a municipality's general revenues. The funding is to be specifically applied toward costs directly related to the legalization of cannabis, such as increased enforcement, response to public inquiries, increased paramedic and fire services and by-law/policy development.

It must also be noted that the 50/50 share of funding between the City and the Region can be adjusted on mutual agreement. Given that the regulation of smoking generally lies within Provincial and Regional jurisdiction, an adjustment of funding shares in favour of the Region might be fair, and the City's share could be reduced accordingly.

Most of the responsibility for addressing cannabis issues will fall upon the Region through the role of Durham Regional Police, the Region's Tobacco Enforcement Unit, Public Health Education initiatives, Emergency Medical Response, and the Provincial Offences Courts. In this regard, it must also be noted that if the City opts out, the reduction in Provincial funding will impact not only the City but the Region as well.

Discussion: Following the legalization of cannabis sales and use, Ontario municipalities must consider a variety of health and enforcement issues. Public concerns are expected in relation to retail sales (both legal and illegal), public consumption, odours, and home cultivation.

Retail Sale of Cannabis:

The key decision now facing City Council is whether or not to allow the retail sale of cannabis in Pickering. Pursuant to the *Cannabis Licensing Act (Ontario)*, the Province has given the City the option to opt out of allowing the retail sale of cannabis in Pickering. The City must notify the AGCO by January 22, 2019 as to whether it will opt in or opt out. If no notification is received by the AGCO by January 22, Pickering will be deemed to have opted-in, and the retail sale of cannabis will be allowed in Pickering.

If allowed in Pickering, retail cannabis sales would be governed by the Criminal Code, the *Cannabis Act (Canada)*, the *Cannabis Licensing Act (Ontario)* and Provincial regulation O. Reg. 468/18. Under the *Cannabis Licensing Act (Ontario)*, municipalities cannot impose additional regulations on retail cannabis sales. This means that Pickering cannot enact official plan policies, zoning by-laws or licensing restrictions on cannabis sales. If Pickering experiences problems of any kind with retail cannabis sales locations, it has no legal authority to change the rules by which retail vendors operate.

Dr. Robert Kyle, Commissioner and Medical Officer of Health at the Region of Durham has expressed concern with retail cannabis storefronts being located near child care centers, beer and LCBO stores, tobacco and vaping product retailers, gaming facilities, healthcare facilities, long term care homes, recreation centers, arcades, amusement parks, and high priority neighbourhoods. The information provided by the Province indicates that although no new zoning by-laws will be permitted in relation to cannabis, retail cannabis storefronts will be required to be located on properties with commercial or industrial designations. If this is the case, there should be no concern about storefronts adjacent to recreation centers, long-term care and child care centers, as these uses are not permitted in the City's commercial or industrial zones. Furthermore, there should be no concerns about proximity to arcades, amusement parks, or high priority neighbourhoods, as Pickering does not currently have any such uses. Dr. Kyle's concerns about proximity to tobacco and vaping retailers, beer and LCBO stores and gaming sites (such as Durham Live) can be answered by the fact that such uses are accessible only by adults. The primary goal of protecting youth should therefore still be achieved.

If Pickering were to opt-in to permit retail cannabis sales, the Province's public notification process for proposed retail locations may be inadequate. The AGCO has confirmed that there will be no direct notification to municipalities of proposed retail cannabis stores in their municipality. The only notification will be a placard posting and a notice on the AGCO website for 15 days. This will be the only opportunity for public and municipal comments. While concerns were raised to the Province regarding this extremely limited timeframe for comment, the Province chose not to change or extend it. The tight timeframe for comments makes it very difficult for municipalities to prepare a report to Council and seek Council direction regarding any new retail location. If the municipality chooses to opt-in, it is recommended that Council delegate the authority to comment to staff. It must be noted also that, even if a municipality has site-specific concerns about a proposed retail location, the AGCO registrar has no authority to exceed the standards set out in the legislation. This means that concerns expressed by the City will be of limited relevance, regardless of how long the notification period is.

Before deciding whether or not to opt in to allow retail cannabis sales in Pickering, City Council must be aware of the financial incentive made available by the Province. The Province has announced that it will provide \$40 million in funding to lower and upper tier municipalities over the next two years for the purpose of helping municipalities deal with cannabis legalization. The Province has allocated \$15 million to make a first payment to all municipalities on a per household basis, adjusted so that at least \$5,000.00 is provided to each municipality. On November 26, the Ministry of Finance confirmed that Pickering's share of the first payment will be \$20,213.50. (The payment will actually be \$40,427.00, but half of that amount must be given to the Region of Durham.) This first payment will be made in January, 2019.

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With respect to all of the funding described above, the Province will not allow the funds to be put into a municipality's general revenues. The funding is to be specifically applied toward costs directly related to the legalization of cannabis, such as increased enforcement, response to public inquiries, increased paramedic and fire services and by-law/policy development.

It must also be noted that the 50/50 share of funding between the City and the Region can be adjusted on mutual agreement. Given that the regulation of smoking generally lies within Provincial and Regional jurisdiction, an adjustment of funding shares in favour of the Region might be fair, and the City's share could be reduced accordingly.

Most of the responsibility for addressing cannabis issues will fall upon the Region through the role of Durham Regional Police, the Region's Tobacco Enforcement Unit, Public Health Education initiatives, Emergency Medical Response, and the Provincial Offences Courts. In this regard, it must also be noted that if the City opts out, the reduction in Provincial funding will impact not only the City but the Region as well.

Other issues to consider include:

- (a) concerns that opting out may encourage the illegal cannabis trade, which does not restrict access to minors or ensure product quality and safety.
- (b) public perceptions of the municipality.
- (c) loss of some economic development opportunities.

The primary concerns relating to retail cannabis storefronts in the community include unauthorized access by minors, advertising that promotes use to minors, public consumption or loitering on the exterior of the property. Provincial legislation addresses these issues, but municipalities wanting additional restrictions have been deprived of the zoning and other legal powers required to impose them.

The Province's regulations establish rules relating to the sale, distribution, purchase, possession, cultivation and consumption of cannabis. Sales are prohibited to anyone under the age of 19, and youth are prohibited from possessing, cultivating, consuming or sharing cannabis. Sales are also prohibited within 150 m of any school. The ACGO has established a zero-tolerance policy for any retailer who provides cannabis to anyone under the age of 19. Licensed or illegal cannabis stores will be subject to seizure, removal of people from premises and closure orders for premises that are suspected of being used for the illegal sale of cannabis. All private retail cannabis storefronts

will be required to be stand-alone stores only, and the operator, location and manager will all be Provincially licensed.

Federal cannabis advertising rules are strict, and similar to those in place for tobacco and alcohol. Promotional restrictions in the Federal *Cannabis Act* will apply to all media, including newspapers and magazines, digital content, signage, broadcast media, and communications sent by mail. They also include cannabis accessories and cannabis-related services. The law prohibits promoting cannabis in any way that "could be appealing to young persons," or by using testimonials or celebrity endorsements. Presenting a cannabis product — or even cannabis "brand elements" like brand names, logos, or slogans — cannot be done in any way that "evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring." City staff will review whether the City's Sign By-law 6999/09 will require revisions to further address this issue, however, based on the existing federal restrictions, this is probably unnecessary.

Public Consumption of Cannabis

Public Consumption of Cannabis, at this point in time, includes smoking and vaping. By the end of 2019, it is anticipated that edible products will also be legally available to the public. Regardless of whether or not Pickering allows retail sales of cannabis, cannabis will be legally available online, and it will be consumed within Pickering.

To address issues arising from the public consumption of cannabis, the Province has introduced regulations under the amended *Smoke Free Ontario Act*, that prohibit the smoking or vaping of cannabis in the following locations:

- At schools, on school grounds, and all public areas within 20 m of these grounds
- On Children's Playgrounds and public areas within 20 m of playgrounds
- On grounds of community recreational facilities, and public areas within 20 m of those grounds
- On publicly-owned sports fields (not including golf courses), nearby spectator areas and public areas within 20 m of these areas
- Indoor common areas in condos, apartment buildings and college/university residences
- Enclosed public places and enclosed work places
- In restaurants and on bar patios, and public areas within 9 m of a patio
- Non-designated guest rooms in hotels, motels and inns,
- In child care centres, or where an early years program is provided
- In places where home child care is provided – even if children are not present
- Within 9 m from the entrance/exit of hospitals, psychiatric facilities, long-term care homes, and independent health facilities
- On outdoor grounds of hospitals and psychiatric facilities
- In non-controlled areas in long-term care homes, certain retirement homes, provincially funded supportive housing, designated psychiatric or veterans' facilities
- In reserved seating areas at outdoor sports and entertainment locations
- In sheltered outdoor areas with a roof and more than two walls, which the public or employees frequent, or are invited to (e.g. a bus shelter)
- In a vehicle or boat that is being driven, or is at risk of being put into motion

In addition to the *Smoke Free Ontario Act*, the Region of Durham will be introducing amendments to its Smoking in Public Places and in the Workplace By-law. City staff have met with representatives from the Region of Durham Health Department, Tobacco Enforcement Unit and Legal Services Division to coordinate a Region-wide by-law to address the needs of the local municipalities. The Region has welcomed input from Pickering and the other lower tier municipalities. The new Regional by-law will prohibit smoking on all properties where there is a municipally-owned building, including libraries, community centres, recreational facilities, museums and outdoor community events. This is an expansion of the existing prohibition which only bans smoking inside municipal buildings. The amended Regional by-law will also prohibit smoking on public streets where a special event permit has been issued (e.g. for a parade).

Region of Durham staff will be outlining this new by-law in a Health and Social Services Report scheduled for the committee's December 11, 2018 meeting.

Region of Durham Tobacco Enforcement Officers will be tasked with enforcing both the *Smoke Free Ontario Act* and the Regional Smoking in Public Places and the Workplace By-law. While formal enforcement will be done by the Region, lower tier municipalities may utilize both the Act and the Regional by-law to request that any person in contravention cease smoking/vaping or leave the City's property. Failure to comply may be dealt with by calling the police and/or issuing notices under the *Trespass to Property Act*.

Odours

While it is anticipated that the municipality may receive complaints regarding odours from the use of cannabis, no enforcement action is possible in relation to the use of a legal substance.

Home Cultivation

Complaints relating to the cultivation of cannabis exceeding the four plants permitted to each residence will be directed to Durham Regional Police Service. However, for internal cultivation, there may be some investigation or enforcement undertaken by Municipal Law Enforcement Services or Building Services in relation to mold, and by Fire Services in relation to Fire Code and electrical concerns.

Public Information

Once the City has decided whether or not to opt in to allow retail cannabis sales, City staff will develop information for the City's website providing public awareness messaging regarding where cannabis can and cannot be consumed, who to contact regarding cannabis related issues or concerns, how to report illegal cannabis sales/distribution/growing, how to report smoking or vaping of cannabis, where it is not permitted, etc. The information will include links to the Region of Durham's cannabis information page, as well as Federal and Provincial links.

Evolving Cannabis Policy

The impact of the legalization of cannabis will continue to be monitored by staff at all three levels of government. The regulations adopted at the early stages of legalization will need to be

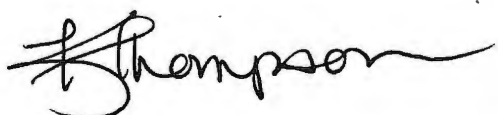
reviewed and revised as information continues to become available. Staff will continue to coordinate with Region of Durham staff, and participate in opportunities to provide feedback to both the Federal and Provincial government.

Attachments:

1. Not applicable.

Information Compiled By:

Prepared/Approved/Endorsed By:



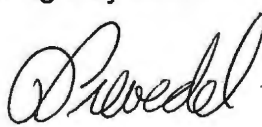
Kimberly Thompson
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KT:ks

Recommended for the consideration
of Pickering City Council



Dec. 3, 2018

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