



Committee of the Whole Briefing Note: Cannabis Retail Store, Westport

Date: December 18, 2018

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Executive Summary

Bill 36 Ontario Cannabis Statute Law Amendment Act was passed October 17, 2018. It provides the framework for sales, retailer licensing, store licensing, places of use and other cannabis rules. Bill 36 exempts retail stores from municipal business licensing and land use planning. Retail establishments will be licensed by the Alcohol and Gaming Commission of Ontario starting on April 1, 2019. Applications for retail stores open December 2018 with store licences to follow once Councils decide whether or not to ban sales.

The Smoke Free Ontario Act regulates places to smoke. Currently Public Health enforces smoking bans. A municipality can create its own by-law to be more restrictive if desired.

Recommendation

That the Committee of the Whole receive the report of the CAO dated December 18, 2018 and entitled 'Cannabis Retail Store, Westport', for information purposes.

Approved for Council Consideration

Paul Snider, C.A.O./Clerk

Background

The province has set a deadline of January 22, 2019 for municipalities to opt-out of cannabis retail stores in their community if they desire. Council will have two opportunities to discuss the issue before this deadline – at the Committee of the Whole meeting December 18, 2018 and Council meeting on January 8, 2019. It is currently not clear from the province when municipalities would be able to opt in (if they opt-out) and under what conditions.

AGCO process will begin with the licensing process by reviewing and completing due diligence on applications from corporations and individuals seeking to sell recreational cannabis. The licensing regime will have three parts: operator approval; retail site location approval; and store management licensing.

Municipal governments have the one-time opportunity to opt out of allowing retail cannabis stores in their communities. The decision to opt out must be made by January 22, 2019. Unless a municipal government opts out as per Ontario Regulation 468/18 s. 22, they opt in to recreational cannabis retail sale by default.

To protect youth, the provincial cannabis retailing regulations include a 150-meter buffer area for cannabis stores to keep them separated from schools. No buffers from any other use has been specified by the regulations.

A municipal government may consider setting out a policy statement identifying specific and significant locally sensitive considerations or uses, to best represent the expectations of the community in allowing cannabis retail. This statement would provide direction to municipal staff input to the AGCO within its 15-day review period.

The AGCO cannabis licensing process, much like the process for liquor licensing applications, requires that a notice of a proposed cannabis store site be posted for comments from area residents and businesses before a site authorization is made. At this point, the municipal government will not be provided pre-notification of the application, but can make comments about whether the proposal is in the public interest as described by regulation.

While there is no regulatory requirement for the AGCO to act on municipal input, it is reasonable that a council could choose to set out any locally sensitive uses as part of the decision to allow cannabis retail stores or to opt out. Setting out these sensitive uses would specify the expectations of the community as cannabis retail sites are proposed. However, care needs to be taken so that this statement would not prohibit any cannabis retail store from locating in a municipality. Opting out is the appropriate mechanism for not permitting any stores in a municipality.

The province has released the funding approach to help municipal governments offset implementation costs. Please note that while opting out can be reversed after January 22, the municipal government will not gain any additional funding from the Ontario Cannabis Legalization Implementation Fund (OCLIF) than it had as of January 22 when it opted out- beyond the minimum second payment of \$5000. Municipalities will have access to \$10,000 (and more) if cannabis retail stores are to be located in their communities. The contribution is a rate per household. The \$10,000 could be used towards potential increase in policing costs.

Registrar's Standards for the Private Retail Sale of Cannabis

The *Cannabis Licence Act, 2018* (CLA) and Regulation 468/18 provide the Registrar with authority to establish standards and requirements in the following areas:

- store premises, equipment and facilities, including surveillance and security
- the prevention of unlawful activities
- advertising and promotional activities
- training related to the responsible use and sale of cannabis
- the protection of assets
- record-keeping and measures to maintain confidentiality and security of records
- compliance with the federal cannabis tracking system.

These Standards are outlined in the *Registrar's Standards for Cannabis Retail Stores*. Licensees are required to comply with the *Registrar's Standards for Cannabis Retail Stores*, as well as all applicable laws and regulations, including the *Cannabis Control Act, 2017* (CCA), the *Cannabis Licence Act, 2018* (CLA), and Ontario Regulation 468/18.

The objective of a standards-based regulatory model is to shift the focus from requiring licensees to comply with a specific set of rules or processes, toward the broader regulatory outcome or objectives they are expected to achieve. Since there may be many ways for a licensee to meet the Standards, licensees have the flexibility to determine what works best for their business, thereby strengthening regulatory outcomes without needlessly burdening regulated entities.

Holders of a Retail Operator Licence are responsible for meeting all Standards. Where not specified otherwise, Standards also apply to holders of a Retail Manager Licence.

The *Registrar's Standards for Cannabis Retail Stores* will be reviewed and revised on a regular basis to ensure that they are effective in mitigating risks as the cannabis retail sector matures.

General Standards

- A Licensees must ensure that all employees act in accordance with the law and demonstrate honesty and integrity. Requirements - At a minimum:
 - 1 licensees must obtain criminal background checks from employees as part of the hiring process
 - 2 licensees must ensure that all employees understand their obligations with respect to applicable laws, regulations, standards, and policies
 - 3 licensees must ensure that all employees have completed any required training, including Board-approved training, prior to their first scheduled shift.
- B Licensed Retail Operators must exercise oversight of their retail operations.
- C Licensed Retail Operators (if also performing the duties of a Retail Manager) or licensed Retail Managers may only be accountable for one authorized store.
- D A copy of the Retail Manager Licence must be kept at the store, and made available to AGCO inspectors or investigators upon request.
- E The retail store's operating name must be the same as the name set out on the retail store authorization.
- F A Licensed Retail Operator must submit the following changes to the Registrar within a reasonable time:
 - 1 if a person ceases to be a director or officer of a Licensed Retail Operator that is a corporation or a corporation that effectively controls the business
 - 2 if a person ceases to be a partner of a partnership in which the Licensed Retail Operator is also a partner.
- G A Licensed Retail Operator must submit, within a reasonable time, the following changes to the Registrar for approval:
 - 1 a person becomes a director or officer of a Licensed Retail Operator that is a corporation or a corporation that effectively controls the business
 - 2 a person becomes a partner of a partnership in which the Licensed Retail Operator is also a partner
 - 3 a person or partnership acquires a beneficial interest in the Licensed Retail Operator's business, including holding or controlling shares of a holder that is a corporation or in a corporation that effectively controls the business

- 4 a person or a partnership other than the Licensed Retail Operator becomes entitled to any of the profits from the sale of cannabis or cannabis accessories, or liable for any obligations incurred from the sale of cannabis or cannabis accessories, at any cannabis retail store for which the Licensed Retail Operator holds a retail store authorization.

Physical Store Requirements

- A Secure, high-resolution surveillance system must be in place at all times. Requirements - At a minimum: cameras and lighting must be positioned to clearly capture 24 hour coverage of the interior of the premises and immediately outside the premises, including the:
 - a Entrances and exits, including where IDs are checked;
 - b Point of sale area(s);
 - c Receiving area(s);
 - d Sales floor area(s); and
 - e Cannabis storage area(s).
- B video recordings must be made and retained for a minimum of 30 days and be made available to the AGCO upon request
- C the Licensee must ensure that the surveillance system is functioning properly at all times.
- D All cannabis must be stored securely at all times and be accessible only by staff from receipt of product to point of sale, destruction, or return to the Ontario Cannabis Retail Corporation (OCRC) or the Licensed Producer.
- E Any cannabis that is outdated, recalled, damaged, deteriorated, misbranded, adulterated, returned, or otherwise ineligible to be sold must be kept separate from other cannabis.
- F All points of access to the premises must be secure and protected against unauthorized access.
- G Licensees must ensure that cannabis and accessories are not visible from the exterior of the premises.
- H Licensees may use sensory display containers to allow patrons to see and smell cannabis. Sensory display containers must be locked and tamper-proof to prevent patrons from touching the cannabis, and must not be able to be removed from the premises.
- I The cannabis used in the sensory display containers must be purchased by the Licensed Retail Operator from the retail store's inventory through the point-of-sale system.

Destruction of Cannabis

- A Cannabis that is ineligible to be sold and ineligible for return to the OCRC must be destroyed or rendered unusable through a method that :
 - 1 complies with all applicable federal, provincial and municipal laws and regulations, including environmental protection legislation applicable to the location where it is being destroyed
 - 2 does not result in any individual being exposed to cannabis smoke or cannabis vapour.
- B If carried out by the Licensee, the entire cannabis destruction process must be captured on the premises' surveillance system, and must be overseen by a Licensed Manager or Licensed Retail Operator.
- C Destruction of cannabis that is ineligible for sale must be performed on a monthly basis, at a minimum.

Secure Transportation

- A In the event of a product recall, Licensees must ensure that all product recalled is transported securely to the Licensed Producer, and must ensure that records are kept of all product returned.
- B If a Licensed Retail Operator holds more than one Retail Store Authorization, cannabis may be transferred between their retail stores. Licensees must ensure that the transportation of cannabis is secure, and must maintain records of all movements of cannabis between stores. At each store, the Licensed Retail Manager or Licensed Retail Operator must supervise and document the transfer process.

Minors and Prohibited Individuals

- A Licensees must take reasonable measures to ensure that patrons are not purchasing cannabis or cannabis accessories on behalf of individuals under the age of 19.

Advertising and Promotions

- A Licensees must have signage clearly identifying their business on the exterior of the authorized store.
- B Language and images on exterior signage may not:
 - 1 communicate information about the price or distribution of cannabis or cannabis accessories
 - 2 appeal to young persons
 - 3 contain testimonials or endorsements
 - 4 depict a person, character, or animal, whether real or fictional
 - 5 present cannabis or a cannabis accessory in a manner that associates it with or evokes a positive or negative emotion or image of a way of life such as one that includes glamour, recreation, excitement, vitality, risk, or daring

- 6 promote cannabis or cannabis accessories in a way that is false, misleading, or deceptive
 - 7 be associated with medicine, health, or pharmaceuticals
 - 8 associate consumption of cannabis with driving a motorized vehicle, or with any activity that requires care and skill or has elements of danger.
- C Licensees may promote cannabis and cannabis accessories within the store only under the following circumstances:
- 1 the promotion is limited to factual information about:
 - a cannabis or a cannabis accessory and its characteristics
 - b a service related to cannabis
 - c the availability or price of cannabis, cannabis accessories, or a service related to cannabis.
 - 2 the promotion focuses on brand characteristics of cannabis or cannabis accessories.
- D Licensees may not provide cannabis or cannabis accessories free of charge or provide any other thing or benefit, including a discounted price, as an inducement for the purchase of cannabis or a cannabis accessory.
- E Licensees may not accept or request material inducements from Licensed Producers, their representatives, or suppliers of cannabis accessories.

Responsible Use

Licensees must ensure that information related to the responsible use of cannabis is made available to patrons.

Requirements - At a minimum:

- 1 licensees must make the [Health Canada Consumer Information – Cannabis](#) document available to patrons; and
- 2 any other information prescribed by the Registrar.

Record Keeping Requirements

Licensees must ensure that the following records are maintained, retained a minimum of three (3) years, or longer as may be required by other laws and regulations, and made available upon request by the AGCO:

- 1 employee records, including names, addresses, primary job responsibilities, shift schedules, training records, CPIC records check results, and dates of employment
- 2 records for all cannabis in the authorized store, including cannabis purchased directly from the OCRC and cannabis transferred from another authorized retail store operated by the Licensed

Operator. At a minimum, these records must contain information regarding:

- a the cannabis purchased and received by the Licensee for sale in the authorized store
 - b any cannabis returned to the OCRC or Licensed Producers
 - c each sale transaction at the authorized store, traceable to the employee level
 - d any cannabis that has been destroyed. Records of any cannabis destroyed must include, at a minimum:
 - i the name and address of the authorized retail cannabis store
 - ii the time and date of the destruction
 - iii the name of the individual conducting the destruction, if being carried out by the licensee, or the company, if being contracted to a third party
 - iv a certificate of destruction, if destruction is carried out by a third party
 - v the product category and SKU
 - vi the amount of product
 - vii the reason for the destruction of the cannabis product
 - viii the method of destruction.
- 3 records required to enable the licensee to participate in any national cannabis tracking system established under section 81 of the federal *Cannabis Act*
 - 4 records that may be required to support a cannabis product recall
 - 5 records demonstrating that the Licensee is complying with sections 7 and 8 of the *Cannabis Control Act, 2017*, which prohibit sales to persons under 19 years of age and persons who are or appear to be intoxicated.
 - 6 licensees must maintain records of the cannabis used for display purposes. These records must account for the product after it is no longer on display.

Licensees must complete full physical inventory counts of all cannabis on weekly basis at a minimum or upon the request of AGCO.

A log of the inventory results must be maintained and all discrepancies must be reported to AGCO as soon as possible.

Licensees must ensure that there are reasonable safeguards around data security and protection of data integrity.

Point of Sales systems must be certified by a recognized industry certification body or organization (e.g. PCI, ISO) and have logging capability for the purposes of monitoring all system access and system changes.

CONCLUSION

There are clear economic development opportunities for residents who may be interested in opening a cannabis retail store and for residents who may be employed in a retail cannabis store. Staff and the Mayor have received enquiries related to retail stores..

However, the economic development opportunities must be weighed against the unknown possible related financial costs of enforcement and potential social costs.

Status

n/a

Analysis

n/a

Financial Considerations

1. Opting in - \$5000 + share of provincial revenue based on a per household rate - minimum of \$5000
2. Opting out - \$5000 + \$5000. no sharing of provincial revenue even if municipality opts back in.

Options

- 1) Receive for Information: This allows time for Council members and the public to discuss the issue before

- 2) the Committee of the Whole meeting December 18, 2018.
- 3) Prepare a resolution to be passed at Village of Westport Council meeting on January 8.

Consultation

AMO, AGCO

Operational Impact

Unknown at this time

Regulatory/Policy Compliance Implications

n/a

Link to Strategic Plan

n/a

Attachments

AMO Municipal Cannabis Update - November 21, 2018 (link below)

Links

<https://www.ontario.ca/page/cannabis-legalization>

<https://www.agco.ca/cannabis/private-retail-licensing-and-regulation>

<https://www.amo.on.ca/AMO-PDFs/Cannabis/Draft-Template-Municipal-Cannabis-Policy-Statement.aspx>

AMO

Municipal Cannabis Update

Information to help municipal staff prepare reports for councils

November 21, 2018

Purpose:

This update provides information on the province's regulatory framework, funding and AGCO licensing. This will help municipal staff prepare its report to council on elements for its decision-making on whether to have cannabis retail stores.

Overview

The provincial government has committed to allowing private recreational cannabis retail stores throughout Ontario starting April 1, 2019. As recreational cannabis is a legal, controlled and regulated product, cannabis stores will be considered like any other type of retail and as such, no zoning changes are needed.

In legalizing cannabis for recreational purposes, the federal, provincial and municipal governments share three interrelated goals: protecting youth, public health and safety, and ending illegal sales of cannabis. The provincial government has established a regulatory framework (O. Reg. 468.18) under the recently passed Cannabis Licensing Act, 2018 that provides further clarity on how these private businesses will be licensed and regulated by the Alcohol and Gaming Commission of Ontario (AGCO). These regulations deal with various elements of the retail regime including matters in which municipal governments may have an interest.

Key Points in the Regulations

The regulations speak to how a license to open a cannabis store will be issued. The full details of the AGCO process have not yet been released, however the AGCO will issue guidance as the regime is finalized. It is offering webinars (November 27 - 10:00 am / 3:00 pm) to prospective retailers and interested parties.

AGCO process will begin with it reviewing and completing due diligence on applications from corporations and individuals seeking to sell recreational cannabis. The licensing regime will have three parts: operator approval; retail site location approval; and store management licensing.

Municipal governments have the one-time opportunity to opt out of allowing retail cannabis stores in their communities. The decision to opt out must be made by January

22, 2019. Unless a municipal government opts out as per Ontario Regulation 468/18 s. 22, they opt in to recreational cannabis retail sale by default.

To protect youth, the provincial cannabis retailing regulations include a 150-meter buffer area for cannabis stores to keep them separated from schools. No buffers from any other use has been specified by the regulations.

In our discussions with some members, it has been proposed that a municipal government may consider setting out a policy statement identifying specific and significant locally sensitive considerations or uses, to best represent the expectations of the community in allowing cannabis retail. This statement would provide direction to municipal staff input to the AGCO within its 15-day review period.

The AGCO cannabis licensing process, much like the process for liquor licensing applications, requires that a notice of a proposed cannabis store site be posted for comments from area residents and businesses before a site authorization is made. At this point, the municipal government will not be provided pre-notification of the application, but can make comments about whether the proposal is in the public interest as described by regulation.

While there is no regulatory requirement for the AGCO to act on municipal input, it is reasonable that a council could choose to set out any locally sensitive uses as part of the decision to allow cannabis retail stores or to opt out. Setting out these sensitive uses would specify the expectations of the community as cannabis retail sites are proposed. However, care needs to be taken so that this statement would not prohibit any cannabis retail store from locating in a municipality. Opting out is the appropriate mechanism for not permitting any stores in a municipality.

The province has just released the funding approach to help municipal governments offset implementation costs. Please see the Minister of Finance's letter of November 20 to the AMO President. A similar letter is being sent to all Heads of Council. In addition, a letter from the Deputy Minister of Finance to municipal treasurers with more details will be sent in the coming days. Please note that while opting out can be reversed after January 22, the municipal government will not gain any additional funding from the Ontario Cannabis Legalization Implementation Fund (OCLIF) than it had as of January 22 when it opted out- beyond the minimum second payment of \$5000.

Store Location Approval Steps

The AGCO will have a 15-day window for public and municipal government comments for each store site proposed by an approved operator. The legislation provides that municipal comments should focus on whether a proposed storefront location is in the public interest, as defined in the regulation. In the regulation, public interest is defined as public health or safety, protecting youth and eliminating the illegal market.

If a municipal council accepts retail stores, AMO suggests that a 'Municipal Cannabis Retail Policy Statement' be adopted by council. Such a policy statement could address what it sees as significant local sensitive uses. This would give municipal staff direction

in responding to the 15-day window during the commentary process. For example, a policy statement may identify specific sensitive uses and express some parameters to consider proximity to these sensitive areas, or may set out concerns regarding store concentration¹ in certain areas of their communities.

It is recommended that municipal governments identify a key senior staff lead for proposed cannabis store notices from AGCO and to provide a one-window approach to coordinate municipal input within the 15-day commentary period. This will ensure AGCO has every opportunity to take note of municipal government considerations. This key contact should be able to gather information from various municipal departments as necessary, provide maps and be able to convey council policy.

Below, AMO has provided a draft Municipal Cannabis Retail Policy Statement template that may help municipal governments that choose to create such a policy. The template helps municipal government officials begin to think about the issues and criteria they may wish to note when considering a proposed cannabis retail site. Notes for consideration of what we understand to be an effective municipal policy statement are provided in the shaded boxes and would not form part of the policy statement.

For alignment between the regulations and AGCO mandate, municipal comments in the process, whether through a municipal cannabis policy statement or not, must focus on the three provincial public interest objectives: public health and safety, protecting youth and ending illegal sales of cannabis.

Municipal staff are encouraged to read the regulations and AGCO guidelines as they are developed and made available to understand eligibility requirements for operators how cannabis retail businesses are expected to operate. AMO will continue to provide information and analysis on this and other matters as it becomes available.

Draft Municipal Policy Statement Template:

The template can be used by a municipality that has chosen to allow retail sales of recreational cannabis.

Purpose & Vision

The purpose of this policy statement is to provide a format for municipal government input to the Alcohol and Gaming Commission of Ontario (AGCO) as well as help prospective recreational cannabis retailers in their consideration of location of cannabis retail stores in (name of municipality).

The AGCO is the provincial authority that licences cannabis retail operators, authorizes cannabis retail locations and licenses senior store staff. Municipal governments have no licensing authority.

The AGCO regulates and reviews all aspects of the retail operation including municipal and public input, that the proposed store location is consistent with the public interest as defined in the regulations.

The Municipality ofhas chosen to allow retail sales of recreational cannabis. The following provides municipal staff with guidance on commenting to AGCO when notice on a specific proposed cannabis retail store site is provided on the site location.

Principles for Cannabis Retail Store Locations: Relationship to Other Applicable Law:

- Land Use Planning: The provincial licensing process does not remove the requirement to comply with the zoning by-law and other municipal planning documents. The definitions within the municipality's Official Plan and Zoning By-law are applicable to all retail, including cannabis retail stores. Retail sale of cannabis from a provincially licensed store is legal and is a permitted use in the retail zones.
- Municipal Building Inspections: while the licencing of the store operation is the responsibility of the AGCO, the Building Code applies to cannabis retail store locations. Therefore, where a building permit is required, the building inspector will undertake duties as usual. Fire Code compliance is also mandatory.

For the purposes of this policy statement, a cannabis retail store shall mean a store licenced by the AGCO.

1. Cannabis Retail Stores and Sensitive activities:

In order to help ensure public health and safety, protect youth and reduce illegal sales, retail cannabis stores are discouraged where nearby properties are designed to serve youth including

The policy can address types of activities where youth or the potential for illegal sales or health risk exist. Please note that Ontario Regulation restricts a cannabis retail store from being located within a distance of 150 meters of a public school or most private schools. The municipality cannot adopt a greater distance. The distance buffer would be 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 shares space, like in a mall. This distance buffer would not apply to private schools that hold classes online only, or to First Nation schools located on reserve.

The municipal government may want to suggest other youth facilities such as libraries and community centres if appropriate, or other sensitive facilities that serve persons with mental health or addiction challenges.

The policies cannot be so restrictive that it is impossible to locate a store. Nor can the policy state a specific number of stores permitted.

It is recommended that should the municipal government choose a separation distance from a sensitive use that it be a number, not a range and that a rationale for this distance be provided.

Municipal governments should note that municipal density restrictions on cannabis retail stores are not permitted under the legislation or regulations. However, it is possible that the number of cannabis retail stores in one area could in the future be considered under the public interest criteria in the regulations and merit comment from the municipal government and community.

2. Cannabis retail stores should not be permitted in:

Any prohibitive statements must be considered through the lens of eliminating illegal activity, public health and safety or protecting youth and the regulatory definition of the public interest.

Retail locations, if retail is allowed in a zone other than a commercial zone, such concerns may be noted.

How does this prohibition help youth, create a safer environment or limit illegal activity? A municipal government may choose not to have any prohibitions.

3. Attached is a map showing the retail/commercial zones of the municipality and the activities identified in Section 1 above.

A map showing where retail is permitted and the locations of the activities identified in the first section will be very helpful to the AGCO. Municipal governments may choose to provide some sample separation distances as concentric rings around the activities such as addiction treatment facilities etc. to provide sample set backs. The Ministry of Education is working to identify all schools however; municipalities could also provide this information.