




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Licensing and By-law Services Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	March 22, 2022
SUBJECT/REPORT NO:	Discontinuation of Special Municipal Review Program for Cannabis Retail Store Applications (PED22054) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Dan Smith (905) 546-2424 Ext. 6435
SUBMITTED BY:	Monica Ciriello Director, Licensing and By-law Services Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That effective September 30, 2022, Staff be directed to discontinue the special municipal review program for Cannabis Retail Store applications as previously directed by Council through Report PED18249(a) on January 14, 2019;
- (b) That the responsibility for enforcing City By-laws with respect to Cannabis, be assumed through the City's regular By-Law enforcement and business licensing programs; and,
- (c) That subject to the approval of Recommendation (a) and (b), Licensing and By-law Services work with the City's Communication team to develop a local awareness campaign to educate residents and business owners on how to be notified and comment on new cannabis applications.

EXECUTIVE SUMMARY

At the January 14, 2019 Council meeting, Council approved a formal process for the Municipal Review of Cannabis Retail Store applications. This process directed City staff to review all Retail Cannabis applications, compile comments from internal departments and Councillors, undertake a City-initiated door-to-door circulation of notices to neighbours and submit comments to the Alcohol and Gaming Commission of Ontario

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(AGCO). This enhanced municipal review process was funded through the Province of Ontario's Cannabis Legalization Implementation Fund (Fund).

As of December 2021, the Provincial commitment to provide funding through the Fund to municipalities ended. Under the Fund, the Province provided \$40M to municipalities over two years to help with the implementation costs of recreational cannabis legalization. Use of these funds was restricted to costs that directly relate to cannabis. There was no commitment by the Province to fund beyond the two years. Licensing and By-law Services (LBS), has enough funds to sustain the Special Municipal Review Program until September 2022.

Staff is recommending that the Special Municipal Review Program be discontinued, and that any enforcement related to Retail Cannabis stores revert to the City's normal By-Law enforcement program. New funding would be required if Council elects to maintain the Special Municipal Review of Cannabis Retail Store Applications beyond September 2022.

The AGCO has its own provincially-led process to share applications with the public. Without the Special Municipal Review of Cannabis Retail Store process, residents and commercial property owners may still participate in the application process (i.e. support or objections) but would be required to participate directly in the AGCO notification process.

Alternatives for Consideration – See Page 8

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: There is no Financial Impact in the 2022 Budget year associated with adopting the staff recommendation, which is to discontinue the Municipal Review Program as of September 2022.

If Council were to adopt the alternative to continue the program beyond September 2022, despite the loss of provincial funding, it would create a 2022 Budget pressure equivalent to four months of the program, or approximately \$100,000.

Since the City has been able to offset levy pressures on By-Law enforcement in 2021 and 2022 because of the availability of the provincial Cannabis funding, the loss of provincial funding will create a budget pressure in 2023. Staff will be looking at strategies to address this. This 2023 Budget pressure would be increased if Council were to adopt the alternative to continue the program, which as noted below would require the hiring of approximately four additional FTEs (Full-time Equivalents).

Staffing: There is no staffing impact associated with adopting the staff recommendation.

With the adoption of the Special Municipal Review of Cannabis Retail Store process, Council had approved the creation of up to four FTEs to administer the program. However, staff were initially able to use gapping to support the program and through 2020 and 2021, were able to use surplus capacity as a result of decreased licensing activity during the COVID-19 pandemic to administer the program. However, with licensing workload volumes returning to pre-COVID levels, the originally anticipated additional FTEs would be required to continue the program through 2022 and beyond. Therefore, staff estimates that there would be a staffing impact of approximately four FTEs should Council adopt the alternative for consideration and continue the enhanced level of service of the Special Municipal Review program.

Legal: N/A

HISTORICAL BACKGROUND

The Provincial government introduced the *Cannabis Licence Act, 2018, (CLA)* through Bill 36 which sets out a licensing scheme for Private Retail Cannabis Stores.

At the August 16, 2018 Planning Committee, Staff was directed to prepare an Information Report PED18174 updating Council on the Province's announcement to privatize cannabis sales.

The licensing scheme is regulated by the AGCO and creates two types of licences, a Retail Operator Licence and a Cannabis Retail Manager Licence.

The *CLA* also creates a retail store authorization which authorizes its holder to operate a specific Cannabis Retail Store. Subsection 41(1) of the *CLA* gives the authority to municipalities to decide to opt in or out of allowing Retail Cannabis Stores in their community.

At its meeting of September 12, 2018, Council approved Item 14 of Planning Committee Report 18-013 directing Staff to report back to the Planning Committee with recommendations with respect to the regulation of private retail cannabis stores in the City and that the report outline options for the potential application of the Province's proposed opt-out clause.

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On November 14, 2018, the Province also filed *O. Reg. 468/18*, a regulation under the *CLA*. Effective November 16, 2018, the AGCO is considered the regulator of private recreational cannabis retailing in Ontario. Other matters addressed by the regulation include separation distances from schools, hours of operation, public and Council commenting, and training requirements for employees.

The City opted into the Cannabis Program in December 2018 with funding from the Ontario Cannabis Legalization Implementation Fund. Under the Ontario Cannabis Legalization Implementation Fund, the Province provided \$40M over two years to help municipalities with the implementation costs of recreational cannabis legalization.

Use of these funds was restricted to costs that directly relate to cannabis. There was no commitment by the Province to fund beyond the two years. The AGCO began accepting retail store applications effective December 17, 2018.

The funding from the Province was used by the City to establish a Municipal Review Program and creation of a Cannabis Enforcement Team within Licensing and By-law Services.

The Association of Municipalities of Ontario had recommended that municipalities adopt a 'Municipal Cannabis Retail Policy Statement'. Such a Policy Statement could address what a municipality sees as significant local sensitive uses. This would give municipal staff direction in responding to the 15-day window during the commenting process. The City's Cannabis Policy Statement approved by Council in January 2019 was submitted to the Province along with a request that it be used to guide the Province in making decisions on the approval of locations of cannabis retail stores.

The Cannabis Enforcement Team as part of the Municipal Review Program reviews each proposed location using the Cannabis Policy Statement, that includes reviewing the City's desired 300m setback from schools, parks, day cares, libraries, community centres, addiction and health centres and other cannabis stores. The team also solicits input from the area Councillor, internal stakeholders and canvasses residential and businesses properties within a 300m radial area. Licensing and By-law Services Division would then consolidate this information and provide it to the AGCO.

On December 21, 2021 a communication update was provided to Council stating a recommendation report will be prepared for Planning Committee to present options if funding from the Province has not been received.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The *CLA* prohibits a municipality's ability to restrict land use and zoning of proposed cannabis dispensaries and to establish a municipal licensing requirement for the use.

The *Cannabis Control Act, 2017* (CCA) ensures the sale of cannabis is in accordance with the *Ontario Cannabis Retail Corporations Act, 2017*, the *CLA* establishes prohibitions including appropriate enforcement and sanctions.

The City's Cannabis Policy Statement passed by Council on January 23, 2019 was submitted by the City to the Province along with a request that it be used to guide the Province in making decisions on the approval of locations of cannabis retail stores in the City.

RELEVANT CONSULTATION

Planning and Economic Development – Licensing and By-law Services - Cannabis Enforcement Team.

Business Improvement Area's (BIA) through verbal presentation and question period at a BIA Steering Committee.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Issuance, Refusal of Retail Store Authorization

The *CLA* governs the issuance, renewal and expiry of retail operator licences, cannabis retail manager and retail store authorizations. The *CLA* sets out the process for public and municipal input on locations for retail cannabis stores. Public notice is displayed at all locations proposed for a Cannabis Retail Store specified in the application, the same is also posted on the AGCO's website. Residents and the municipality have 15 days in which to issue written submissions on each application on whether issuance of the licence is in the public interest considering the needs and wishes of residents. The *CLA* requires these submissions to be considered by the Registrar in determining the issuance of a retail store authorization approval, but do not ensure that a retail store authorization would be declined where a municipality was not in favour of the proposed location, as the ultimate decision rests with the Registrar. Matters of public interest are specified by regulation, which limits the scope of comments that would be considered by the Registrar to the following interests:

- (a) Protecting public health and safety;
- (b) Protecting youth and restricting their access to cannabis; and,
- (c) Preventing illicit activities in relation to cannabis.

Restricting Locations

Subsection 4(12) of the *CLA* authorizes the Registrar to refuse to issue a retail store authorization for a Cannabis Retail Store that would be located less than a specified

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distance to a school or other prescribed land use, or in any other circumstance that may be prescribed. The *CLA* authorizes the Lieutenant Governor in Council to make regulations relating to prescribed circumstances and reasons for refusals.

Provincial regulations released on November 14, 2018, establish separation distances for schools, and not for other types of sensitive uses (e.g. parks, day cares), and the required radial separation is established at 150m.

The City, through the Cannabis Policy Statement requested a radius of 300 metres from:

- Schools
- Parks and Open Spaces
- Alcohol and Detox Centres
- Day Nurseries/Child Care Centres
- Libraries
- Community Centres
- Mental Health/Addiction Centres

The Cannabis Policy Statement had additionally requested that Cannabis Retail Stores not be permitted in the following:

- Areas that already have a high concentration of Cannabis Retail Stores (i.e. the “clustering” of stores should be avoided);
- Locations that have insufficient parking or transit access; and,
- Locations that are in predominantly residential areas.

Although the Cannabis Enforcement Team as part of the Municipal Review Program has submitted comments on each of the applications identified through the AGCO notice process, Staff do not believe the Cannabis Policy Statement has played a role in the AGCO’s review of the applications.

Statistics

Beginning November 2019, there have been a total of 138 applications that have been shared with the municipality:

- 93 – Permitted to Operate / Already in Operation
- 29 – Have a Public Notice Status
- 2 – In Progress (pre-commenting period)
- 14 – Removed/Application withdrawn

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Licensing and By-law Services have facilitated comments for residents, businesses, stakeholders and internal departments for all 138 applications since the beginning of the program.

The City has objected to 68 applications of the 138 applications. These objections are primarily related to not meeting the distance requirement within the Cannabis Policy Statement as well as building permit concerns specific to recognized use of a property. Of that, 65 did not meet the minimum requirements of the City of Hamilton Cannabis Policy Statement (i.e. 300m requirement). Multiple had both building department concerns as well as distance concerns. Only three objections did not have the distance separation as part of the submission.

Of the 68 City objections, the AGCO has granted a licence to 44 of the applications. Of the 24 remaining applications, 16 are identified as “public notice ended”. The status of these applications has not been shared with the City at the time of this report. The final eight have been listed as “removed”. Staff do not know if these applications were denied or withdrawn.

Of the 138 applications circulated within the municipality, 28 applications received comments / concerns from residents. Residents were encouraged to submit complaints directly to the AGCO. As a result, residential or commercial complaints may be higher than what has been reported to the City. The AGCO considers complaints sent in by the City on behalf of the community (residents or businesses) as 3rd party information and are thus not as heavily weighed as it would be if the resident submitted directly via the complaint portal on the AGCO’s website.

Cannabis Enforcement Team

The Cannabis Enforcement Team canvasses residential and commercial properties within the 300-metre radius of a new store application at the commencement of the AGCO commenting period. The information is shared via a door knocker that identifies the application address, timelines for comment and direction on how to provide comments. Comments from residential and commercial properties are provided to the AGCO directly and do not form part of the submission from the City.

The Licencing Administration team circulates the application information to the Ward Councillor, Public Health, Public Works, Hamilton Police Service, Hamilton Fire, Building and Zoning for comment. These comments are received by the Licensing team and packaged together in an official response to the application from the City.

The staff report is recommending this process be discontinued.

Additional actions by the Cannabis Enforcement Team

Since the start of the COVID-19 Pandemic, the Cannabis Enforcement team has participated in two cannabis grow-op investigations in collaboration with Hamilton Police – the Cannabis Enforcement team was the agency responsible for the Municipal by-law matters. Specifically, property standards contraventions.

Should the funding end, this enforcement and investigation of Cannabis Grow-Op locations would continue as needed but would rely upon the existing staff resources.

Impacts of Discontinuing the Municipal Review Program

If the staff recommendation is approved, then moving forward, the Cannabis Enforcement Team would no longer be monitoring the AGCO website for applications. This means that it would be the responsibility of residents to monitor and make objections or submissions for cannabis applications to the AGCO directly. City Staff would not be providing comment on applications as a routine activity. Licensing and By-law Services would work with the City's Communication team to develop a local awareness campaign to educate residents and business owners on how to be notified and comment on new cannabis applications.

ALTERNATIVES FOR CONSIDERATION

Council may wish to continue the Municipal Review Program which would require the creation of approximately four FTE positions. This would have a levy impact of approximately \$373,000.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report PED22054 – City of Hamilton Cannabis Policy Statement
Appendix "B" to Report PED22054 – Cannabis Retail locations by Wards