



**The Corporation of the
City of Sault Ste. Marie**

C O U N C I L R E P O R T

January 14, 2019

TO: Mayor Christian Provenzano and Members of City Council

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DEPARTMENT: Chief Administrative Officer

RE: Retail Sale of Cannabis – Opt Out Decision

PURPOSE

The purpose of this report is to provide City Council with background information and a recommendation concerning a decision to permit the retail sale of cannabis within the municipality.

A separate report dealing with the consumption of cannabis in public areas is found elsewhere on the agenda.

BACKGROUND

The distribution, sale and consumption of recreational cannabis became legal in Canada on October 17, 2018 following approval of the Cannabis Act. Under this legislation, cannabis production is regulated by the federal government while the province is responsible for regulating cannabis distribution and retail sales. The production and sale of medical cannabis continues to be regulated exclusively by the federal government.

As of October 17, 2018, residents have been able to purchase legal cannabis online through the provincially-run Ontario Cannabis Store, which is the exclusive online retailer of cannabis in Ontario.

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 the same as any other type of retail and as such, no zoning changes are required. It should be noted that municipalities cannot amend existing zoning bylaws to prohibit the retail sale of cannabis.

Municipal governments have a 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, by default, the retail

sale of recreational cannabis will be permitted. If a municipality decides to opt out in advance of the January 22, 2019 deadline, they may choose to opt in at a later date. However, municipalities that choose to opt in, cannot reverse this decision in the future.

On December 10, 2018, City Council approved the following resolution:

“Whereas the Federal Government has legalized marijuana use as of October 17, 2018; and

Whereas the province of Ontario is regulating cannabis use through the Alcohol and Gaming Commission of Ontario; and

Whereas the province of Ontario has reserved the exclusive right to sell cannabis online, but is permitting the private sector to operate retail stores and has passed regulations governing the operation of those private sector retail stores; and

Whereas municipalities have a one-time opportunity to opt out of having private sector retail stores open in the municipality and have to make a decision in that respect by January 22, 2019; and

Whereas this Council needs to have a thorough understanding of the legal and regulatory framework in order to make an informed decision on whether to opt out;

Now Therefore Be It Resolved that City staff return a report to Council that includes, amongst any other information staff believe is relevant, the following:

1. Confirmation of how many private retail stores may be permitted to open in Sault Ste. Marie if the municipality does not opt out;
2. Confirmation of where the private retail stores may be permitted to open in Sault Ste. Marie if the municipality does not opt out;
3. Confirmation of what type of authority, if any, the municipality has to regulate cannabis consumption in public areas of the municipality.”

ANALYSIS

This report utilizes a question and answer format to frame the recreational cannabis issue as follows:

Why is the recreational use of cannabis being legalized?

In legalizing cannabis for recreational purposes, the Federal and Provincial governments have identified three specific goals: protecting youth, public health and safety, and ending the illegal sale of cannabis.

It is the position of many public and mental experts that cannabis should be either decriminalized or legalized. The main reason is to ensure a safe uncontaminated product. In addition, possession of an illegal substance creates a criminal record for many people who were merely experimenting as youth. Legalization protects these individuals from the systemic harm of a lifelong criminal record and lost economic opportunities.

Who can buy cannabis?

In Ontario, anyone over the age of 19.

Can the City license the sale of cannabis?

No. The Alcohol and Gaming Commission of Ontario (AGCO) is the sole agency responsible for selecting and licensing cannabis retailers.

Can the City limit retail cannabis stores hours of operation?

No. Cannabis retail stores may operate between 9:00 am and 11:00 pm, consistent with the Province's new alcohol retail hours.

Can the City limit the number of retail stores selling cannabis?

No. Further, the regulations do not establish a minimum separation distance between cannabis retail stores.

On December 13, 2018 the Province released additional information. Due to a shortage of cannabis supply, only 25 stores will be licensed to sell cannabis in the initial phase. These store locations will be selected by lottery and permitted to open on April 1, 2019. Only two of the initial 25 stores will be in northern Ontario.

Where can retail stores selling cannabis be located?

Provincial regulations allow retail stores selling cannabis to be located in any commercial zone that allows the retail sale of other products subject to a 150 m separation distance from schools. The definition of schools for this purpose does not include colleges or universities. No buffers from any other use are specified in the regulations.

Can the City impose additional regulations on store locations?

No.

Will the municipality have an opportunity to comment on potential locations?

Yes. Much like the process for liquor licensing applications, the Alcohol and Gaming Commission requires that notice of a proposed cannabis store be posted for comments from area residents and businesses. The municipality does not

receive direct notification on proposed sites, but does have an opportunity to comment. Staff will need to monitor the AGCO website to determine if any cannabis licensing applications are being considered in Sault Ste. Marie.

AGCO allows a 15-day period for receiving comments. This 15-day notification period does not allow time for City staff to report and receive direction from City Council in order to make submissions on behalf of the City.

In advance of the application process has indicated in its correspondence dated December 13, 2018 that due to shortage of supply only 25 licenses will be provided at first. These will be selected by lottery as distributed through the major geographic regions of Ontario. Only 2 licenses will be provided to Northern Ontario as part of this tranche. (see <http://agco.ca/cannabis/expression-of-interest-lottery-rules>)

Can the City appeal a decision made by AGCO to issue a license at a particular location?

No.

Can the City comment on location criteria other than the 150 m buffer from schools?

Yes.

The Association of Municipalities of Ontario (AMO) is suggesting that municipalities may consider adopting a policy statement identifying specific and significant local considerations. Any comments from the municipality must relate to the three specific goals: protecting youth, public health and safety, and ending the illegal sale of cannabis.

Earlier this year, the City worked with Algoma Public Health and the Ontario Cannabis Store to develop locational criteria for retail stores selling cannabis in Sault Ste. Marie. In addition to the property being properly zoned, the store location would have to be a minimum of 200 m from a school, park, community centre or existing treatment facility. This location criteria was consistent with the provincial objectives of protecting youth and public health and safety.

Given that the province will not allow municipalities to establish criteria beyond the 150 m separation distance from schools, staff is recommending that the above locational criteria be adopted subject to reducing the separation distance from 200 m to 150 m. In summary, new retail cannabis stores must be properly zoned (any commercial zone that permits retail sales) and located more than 150 m from a school, park, community centre or existing treatment facility.

This criteria eliminates a number of locations that are not on major arterial roads and large sections of the downtown area. Attached to this report are two maps.

Map 1 – Provincial Requirements – Commercially zoned, 150 m setback from schools.

Map 2 – Preferred Sault Ste. Marie Requirements – Commercially zoned, 150 m setback from schools, parks, community centers or existing treatment centers.

If City Council approves the recommendation to create a Sault Ste. Marie requirement, staff will provide comment on potential retail cannabis store locations within the 15-day review period, based on the Sault Ste. Marie requirement.

Staff will also provide AGCO with a copy of the map showing the locations permitted under Sault Ste. Marie requirements. It should be noted that these are only comments and AGCO can approve locations that are not consistent with City Council's requirements or comments.

If approved, how will this policy be administered?

Responsibility for monitoring and commenting on licensing potential retail cannabis store locations will be assigned to the CAO Office and/or his delegate.

Can the City regulate where people smoke cannabis?

Yes, pursuant to the Smoke-Free Ontario Act. A separate report on this subject from the City's Legal Department is attached as an appendix to this report.

What happens to existing illegal cannabis stores?

Illegal cannabis stores are a criminal activity and enforcement is the responsibility of local police services.

What have other Ontario municipalities done?

As of the date of writing this report, Toronto, Ottawa, Greater Sudbury, North Bay, Elliot Lake, Spanish, and the townships of Johnson, North Shore, Plummer Additional, Prince, and Tarbutt have all opted in. Both Markham and Mississauga have opted out.

Consultation

Staff reached out to the District of Sault Ste. Marie Social Services Administration Board, Algoma Public Health (APH), Sault Ste. Marie Police Services and the Drug Strategy for their comments. Only APH was able to provide input by the time this report went to print.

Algoma Public Health responded that it does not have a position on opting in or out. APH staff have shared some information with City departments about the health effects of cannabis. Whether the City opts in or out of retail sales, there will still be cannabis in Algoma communities. The policies that the City develops with

respect to where individuals can smoke or vape will have an impact on where cannabis can be smoked and APH is happy to work with the City on revising and on strengthening those policies. With respect to retail outlets minimizing access/exposure to children and youth is a primary concern and APH is willing to work with the City within the provincial framework that currently exists.

In summary, this report recommends that City Council **not** opt out of allowing licensed cannabis retail stores within the City's municipal boundaries. Provincially licensed cannabis retail stores will assist with ensuring that operators conduct their business in a responsible and accountable manner, and support the goals of preventing youth from accessing cannabis, maintaining product health and safety standards and eliminating the illegal cannabis market.

While residents will be able to purchase recreational cannabis online through the Ontario cannabis store, choosing to opt out would not improve product quality or reduce illegal cannabis sales.

FINANCIAL IMPLICATIONS

The Province has committed to provide \$40 million in funding over two years to municipalities to help with the implementation costs of recreational cannabis legalization. In 2019 the Province will provide \$30 million. The remaining \$10 million is to address costs from unforeseen circumstances with details to be provided at a later date. Municipalities must use the money they receive solely for the purpose of paying for implementation costs directly related to the legalization of cannabis. Permitted costs include:

- Increased enforcement
- Increased response to public inquiries
- Increased paramedic services
- Increased fire services
- By-law/policy development

The first payment is expected in January, 2019 with Sault Ste. Marie's allocation being \$88,386, based upon 2018 MPAC Household numbers. This amount is reflected in the 2019 Preliminary Operating Budget as a one-time grant. The second payment will be distributed following the deadline for municipalities to opt-out. The amount will be capped to \$5,000 for municipalities that opt-out. Notification of the amount will be received by March, 2019.

In addition to the one time grant, Ontario's portion of the federal excise duty on recreational cannabis over the first two years in excess of \$100 million will be split 50% with municipalities who have not opted out as of January 22, 2019. There is currently no estimate of what this amount could be.

STRATEGIC PLAN / POLICY IMPACT

This report is not directly linked to any strategic direction identified in the Corporate Strategic Plan although there may be potential impacts to various municipal programs and services.

RECOMMENDATION

It is therefore recommended that Council take the following action:

Resolved that the report of the Chief Administrative Officer dated 2019 01 14 concerning the sale of retail cannabis be received and that City Council **not** opt-out of provincially licensed cannabis retail stores in Sault Ste. Marie and that City staff provide the Alcohol and Gaming Commission of Ontario with a copy of the preferred Sault Ste. Marie requirements map and further that City staff comment on all proposed store locations in the community and advise AGCO:

1. Whether the proposed location is properly zoned for a retail cannabis store, and
2. If the proposed location is within 150 m of a school, park, community center or existing treatment facility.

Respectfully submitted,



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