

Amending Your Land Use Bylaw To Prepare For The Retail Sale Of Cannabis

The Federal Government has proposed that by July 2018 non -medical cannabis will be legalized in Canada. Currently, cannabis possession and use is only legal with a medical authorization. Once cannabis is legalized, it will be available from provincially authorized retailers. The Federal Government will continue to license cannabis production; however, the provinces and territories will regulate and license retail sales.

On November 30, 2017, the Province of Alberta gave *Bill 26, An Act to Control and Regulate Cannabis* third reading. *Bill 26* is awaiting Royal Assent. *Bill 26* primarily amends the *Gaming and Liquor Act* to address the distribution and sale of cannabis from a “licensed premises”. A “licensed premises” is defined as the premises where cannabis is sold pursuant to a provincial cannabis licence. Additionally *Bill 26* will do three things:

- (1) provide authority for the Alberta Gaming and Liquor Commission to carry out oversight and compliance functions as well as manage the distribution of cannabis;
- (2) establish the authority to carry out public online sales, and to license privately owned and operated cannabis stores with strong oversight and province-wide rules; and
- (3) establish provincial offences related to youth possession, public consumption and consumption of cannabis in vehicles.

Bill 26 suggests that municipalities have a role to play in the retail sale of cannabis; however, many of these details will not be known until the regulations are developed in 2018. Currently, *Bill 26* provides that the following things *may* be regulated by municipal bylaws:

- When the sale and use of cannabis in a licensed premises is required to cease;
- When the sale and use of cannabis in a licensed premises is prohibited;
- The areas or places where persons are prohibited from smoking or vaping; and
- The creation of specified classes of licensed premises that prescribe hours of sale and use of cannabis on a licensed premise and the areas of the licenses premises where the sale and use of cannabis may occur.¹

Additionally, *Bill 26* proposes to control, by regulation, days and hours of operation, what can be sold in licensed premises, design and minimum distances between licensed premises, and distances from and areas and places where persons may smoke or vape. The changes proposed to the *Municipal Government Act* by *Bill 26* will require land use bylaws to be consistent with the requirements of the regulations under the proposed *Gaming, Liquor and Cannabis Act*.

¹ See *Bill 26*, ss. 90.21(1), (2) and (3), 90.28(a) and 129(1)(r.4) respectively.

LAND USE BYLAW AMENDMENTS

To control the location of privately owned retail shops selling cannabis, or “licensed premises”, municipalities will need to amend their Land Use Bylaws. Each municipality’s Land Use Bylaw is distinct. The provisions in this document are provided to assist you in amending your Land Use Bylaw to regulate cannabis retail sales; however, the suggested provisions may need to be modified to fit within your Land Use Bylaw. Additionally, there may be other provisions in your Land Use Bylaw that need to be amended to create the desired regulatory scheme.

1. DEFINITIONS

Definitions will need to be added for the new uses in order that your municipality can specifically regulate where cannabis retail stores can be located within the municipality. If your Land Use Bylaw already addresses medical marijuana or medical cannabis uses, those definitions may need to be modified to differentiate cannabis retail sales use. The following definitions are suggestions for possible definitions to include in your Land Use Bylaw:

- “**Cannabis**” means cannabis plant, fresh cannabis, dried cannabis, cannabis oil and cannabis plant seeds and any other substance defined as cannabis in the *Cannabis Act* (Canada) and its regulations, as amended from time to time and includes edible products that contain cannabis.
- “**Cannabis Accessory**” means cannabis accessory as defined in the *Cannabis Act* (Canada) and its regulations, as amended from time to time.
- “**Cannabis Retail Sales**” means a retail store licensed by the Province of Alberta where Cannabis and Cannabis Accessories are sold to individuals who attend at the premises.

2. AMENDING DEFINITIONS

Your Land Use Bylaw will likely already contain definitions for some or all of the following types of development: retail stores, general retail stores, convenience stores, greenhouses. To make sure that a Cannabis Retail Sales development is a distinct use, you will need to add the following sentence (or some modified version of this sentence) to each of those definitions and any other definition where it may be possible for someone to argue that the use definition includes or could include Cannabis Retail Sales.

“This definition does not include Cannabis Retail Sales.”

□ 3. DISTRICTING

A. Option 1 – Standard Land Use District or Zone

Cannabis Retail Sales is neither a Permitted nor a Discretionary use unless it is added to the list of uses in an existing land use district or zone in your municipality. You will need to determine the land use districts or zones in which Cannabis Retail Sales may be allowed as either a Permitted or Discretionary use and amend your Land Use Bylaw accordingly. Remember, if Cannabis Retail Sales is added to the list of uses for a land use district or zone, Cannabis Retail Sales could, subject to any additional regulations that might be incorporated in your Land Use Bylaw, be approved to be developed on lands having that districting or zoning throughout the entire municipality.

Wording such as the following could be used:

“The use Cannabis Retail Sales is added to the list of Permitted Uses in the following Districts <list the districts>.”

and/or

“The use Cannabis Retail Sales is added to the list of Discretionary Uses in the following Districts <list the districts>.”

You will have to evaluate which land use districts or zones are best suited for Cannabis Retail Sales from a planning perspective. Some possible land use districts where Cannabis Retail Sales may fit include industrial or commercial districts, depending on the purpose of the land use district.

B. Option 2 – Direct Control District

If your municipality uses Direct Control Districts, you may choose not to identify Cannabis Retail Sales as a Permitted or Discretionary use in a standard land use district or zone. Instead, you may want to require an applicant who wants to open a Cannabis Retail Sales development to apply to redistrict or rezone the lands they want to develop as “Direct Control”. In making this decision, you may want to consider the following questions:

- Do you use Direct Control Districts for other land uses or would this be the “first” use for your municipality?
- Who approves development permits for Direct Control Districts in your community? If Direct Control development permits are approved by your Council, does Council want to be dealing with applications to redistrict/rezone land to Direct Control to allow Cannabis Retail Sales?
- What other uses might you want to include in the list of uses allowed under the Direct Control Districts?
- What additional regulations regarding yards, setbacks, height, parking etc. might need to be included in the Direct Control District?

An application to redistrict or rezone lands to a Direct Control District is a decision of Council which requires a public hearing. Depending on how the Direct Control District is set up, applications for development permits for Cannabis Retail Sales may be decided by Council or Council may delegate the decision to a Development Authority. If the decision is made by Council, there is no appeal to the Subdivision and Development Appeal Board making the decision both public and final. If the decision is delegated to a Development Authority, any appeal is limited to whether the Development Authority followed the direction of Council.

4. SPECIAL USE REGULATIONS

A. Buffer Distances or Separation Distances

You may want to amend your Land Use Bylaw to include regulations that apply specifically to the use of Cannabis Retail Sales. One example of a specific regulation you may want to consider is including restrictions on the proximity of Cannabis Retail Sales use to other land uses that might be considered “sensitive” uses or uses that could be negatively impacted by the presence of a Cannabis Retail Sales development. *Bill 26* provides that the Province of Alberta will establish rules that guide hours of operation and the location of licensed premises but it also suggests municipalities may regulate hours of operation and location by bylaw. Your municipality may want to consider imposing a buffer from “sensitive uses” for municipal and planning purposes; however any regulation should dovetail with provincial prescriptions to avoid a challenge to the bylaw. The Province of Alberta has advised that it will impose minimum separation distances from schools, community centres, liquor stores and other “licensed premises” but these separation distances have not yet been established.²

If you want to put in your own buffer provisions wording such as the following could be used:

“Cannabis Retail Sales use shall not be located within <specify distance> from <insert other uses as defined in your Land Use Bylaw>.”

If you are going to utilize buffer distances, you need to be sure to define how the buffer distance is to be measured. Wording such as the following could be used:

“The separation distance between Cannabis Retail Sales use and <insert other specified uses> shall be determined by measuring a straight line from the closest point on the lot line of the lot on which the proposed Cannabis Retail Sales use is located to the closest point on the lot line of the lot on which the other specified use is located. The separation distance shall not be measured from district boundaries or walls of buildings.”

or

“The separation distance between Cannabis Retail Sales use and <insert other specified uses> shall be measured from the closest point of the parcel on which the proposed Cannabis Retail Sales is located to the closest point of the parcel upon which the other use is located. The separation distance shall not be measured from district boundaries or walls of buildings.”

or

² See “Alberta Cannabis Framework and proposed legislation: Safeguards for cannabis sales” at <https://www.alberta.ca/cannabis-framework.aspx>.

“The separation distance between Cannabis Retail Sales use and <insert other specified uses> shall be measured from the closest point of the exterior wall of the building in which the proposed Cannabis Retail Sales use is located to the closest point of the exterior wall of the building in which the other use is located. The separation distance shall not be measured from district boundaries.”

B. Special Consultation Requirements

If you have made Cannabis Retail Sales a Discretionary Use you may want to include a provision that requires the Development Authority to consult with adjoining or adjacent property owners and/or users prior to making a decision on whether or not to grant the development permit. Wording such as the following could be used:

“Before granting a development permit for Cannabis Retail Sales where the use is discretionary, the Development Officer shall:

- (a) notify, in writing, property owners and users within <specify distance> of the proposed site of the Cannabis Retail Sales use that the application for the Cannabis Retail Sales use has been received and give the property owners and users <specify number> days to provide written comments to the Development Officer with respect to the proposed Cannabis Retail Sales application;
- (b) advise the applicant for the development permit for the Cannabis Retail Sales use that their application will not be considered completed until the time given to the property owners and users to provide written comment on the proposed development has expired; and
- (c) consider the comments received from the property owners and users prior to making a decision on the development permit application.”

If you have made Cannabis Retail Sales a Permitted Use in a land use district or zone, there is no need to have a similar provision as the Development Officer will have to grant the development permit for the Permitted Use if the application complies with the requirements of the Land Use Bylaw. The opinion of adjoining property owners and users does not factor into the process for approving Permitted Uses that comply with the Land Use Bylaw regulations.

C. Other Regulations

In addition to regulating separation distances and requiring consultation, you may want to consider the following special use regulations for Cannabis Retail Use, whether a Permitted Use or Discretionary Use:

- landscaping or other requirements consistent with Crime Prevention Through Environmental Design (CPTED) planning principles;
- how long the development permit will remain in effect;

- parking;
- building footprint and location; and
- addressing nuisances such as odour.

Growing Cannabis in the Home

The *Cannabis Act (Canada)* will allow individuals to cultivate, propagate and harvest up to 4 cannabis plants in their dwelling house. The 4 plant limit is per dwelling house and not per resident. A dwelling house is defined in the federal Act to include immediately contiguous land to a building or structure. Consequently, the federal act will allow cannabis to be grown outdoors.

Provincial governments have the jurisdiction to reduce the number of plants in a dwelling house and to determine where in a dwelling house cannabis can be grown. *Bill 26, An Act to Control and Regulate Cannabis* states “*Subject to the federal Act, no person may grow cannabis except in accordance with the regulations.*” The provincial regulations have not been made public. However, the *Alberta Cannabis Framework* indicates that Alberta will allow 4 plants per dwelling house but Albertans will only be allowed to grow cannabis indoors.

While many Land Use Bylaws regulate non-residential uses of a dwelling that might be accessory to the residential use, such as a home based business, attempting to regulate activities that occur within a dwelling that are expected or normal activities of the resident is a different matter. From a land use perspective it would be difficult to identify how growing a cannabis plant would have a different land use impact than growing any other type of plant. Because of this it will be difficult for a municipality to try to define or regulate the growth of cannabis in a dwelling house.

For more specific information or advice on this topic, please contact Brownlee LLP.

Disclaimer: This document was prepared by Brownlee LLP at the request of Aurora Cannabis Inc. as a tool to guide municipalities in addressing cannabis retail sales. This document provides general information about cannabis legislation, regulations and land use impacts. It does not include all details and does not take into account local facts or circumstances. The document reflects laws and regulation as of January 31, 2018, which are subject to change. Municipalities are responsible for making planning decisions in accordance with legislation, regulations, bylaws and planning principles. For this reason, this guide should not be relied upon as a substitute for specialized legal or professional advice.