

Report to the Planning and Environment Committee

To: Chair and Members
Planning and Environment Committee (PEC)

From: John M. Fleming
Managing Director, City Planning and City Planner

Subject: CANNABIS RETAIL STORES
The Corporation of the City of London
City-wide

Meeting on: January 7, 2019

Recommendation

That, on the recommendation of the Managing Director, City Planning and City Planner, with the concurrence of the Managing Director, Development and Compliance Services and Chief Building Official, the following actions be taken with respect to the review of potential locations for Cannabis Retail Stores in the City of London:

- a) the attached proposed by-law (Appendix "A") **BE INTRODUCED** at the Municipal Council meeting to be held on January 15, 2019 to repeal and replace By-law No. CPOL-232-15, as amended, being a By-law entitled "Siting of Cannabis Retail Stores in London" and replace it with a new Council policy entitled "Siting of Cannabis Retail Stores in London"; and,
- b) the attached proposed delegation by-law (Appendix "B") **BE INTRODUCED** at the Municipal Council meeting to be held on January 15, 2019 to delegate to the Chief Building Official, or delegate, the authority to respond to circulation of cannabis retail site applications to the Alcohol and Gaming Commission of Ontario (AGCO).

Executive Summary

Purpose and the Effect of Recommended Action

To repeal and replace the current Council policy on cannabis retail stores adopted on December 12, 2017 and amended on June 26, 2018 and replace it with a new Council Policy entitled "Siting of Cannabis Retail Stores in London" and to establish a process for the review and submission of comments on cannabis retail store locations to the Alcohol and Gaming Commission (AGCO) and to delegate the authority to submit those comments.

Council Direction

At its meeting held on December 12, 2017 Municipal Council resolved:

11. That, on the recommendation of the Managing Director, Planning and City Planner, with the concurrence of the City Manager, the following actions be taken with respect to nontherapeutic cannabis legalization:
 - a) the staff report dated December 4, 2017, entitled "Planning for Non-Therapeutic Cannabis Retail Stores" BE RECEIVED for information;
 - b) the proposed by-law appended to the staff report dated December 4, 2017 as Appendix "A" BE INTRODUCED at the Municipal Council meeting to be held on December 12, 2017 to establish a new Council Policy entitled "Siting of Cannabis Retail Stores in London";

- c) the Council Policy, noted in b) above, BE FORWARDED to the Province of Ontario for their consideration when determining the siting of the first cannabis retail store in the city;
- d) the Managing Director, Planning and City Planner BE DIRECTED to initiate the necessary amendments to the Official Plan and Zoning By-law, to plan for cannabis retail stores at appropriate locations, ensure adequate parking facilities and require appropriate site design (where applicable) going forward;
- e) the Civic Administration BE DIRECTED to continue to work with the provincial and federal governments to identify the potential policing, by-law enforcement, and community services requirements associated with the legalization of non-therapeutic cannabis and to request that a portion of the revenues raised from the taxation of cannabis products be identified as a source of financing for municipalities;
- f) the Civic Administration BE DIRECTED to advise the relevant Ministries that the Municipal Council requests that consideration be given for the opening of up to five (5) retail stores in London by July 1, 2018; it being noted that London is the only municipality in Southwestern Ontario with current illegally operated dispensaries in place; it being further noted that London serves a much larger population beyond the city boundaries, given that the closest municipalities that is proposed to be opening a retail store are Windsor and Kitchener-Waterloo; and,
- g) the Mayor BE DIRECTED to write a letter to the Government of Canada expressing the Municipal Council's thanks and support for agreeing to a 25%/75% federal/provincial split of tax revenue from cannabis sales, with a copy of the letter to be sent to the local Members of Parliament.

it being noted that the Province of Ontario or its agents are not bound by municipal policies or bylaws relating to the siting of cannabis retail stores, but that Ministry of Finance and Liquor Control Board of Ontario representatives have indicated that the Province of Ontario intends to respect any such policies or by-laws established by local municipalities; and,

it being further noted that the Province of Ontario has indicated that it is intending to open a cannabis retail store in London by July 1, 2018.

This report responds to Clause (d) of the Council resolution.

Council Adopted Policy

In advance of Official Plan policies and/or Zoning By-law regulations regarding the location of cannabis retail uses, Municipal Council adopted the following Council policy to provide advice and direction to the Province regarding the City's preferred locations for cannabis retail uses as follows:

It is a policy of the City of London to ask that the Province and its agents implement the following location, design and engagement measures when siting a new cannabis retail store in London:

1. The property line of any cannabis retail store site be a minimum of 500m away from the property line of any elementary school or secondary school;
2. The property line of any cannabis retail store be a minimum of 500m away from the property line of any municipal library, pool, arena, community centre or the Western Fairgrounds;

3. A cannabis retail store be located within the following Place Types in the Council-approved London Plan:
 - a. Shopping Areas
 - b. Rapid Transit – Transitional
 - c. Urban Corridor - Transitional
4. A cannabis retail store site be designed to accommodate significant volumes of automobile parking - 1 space per 15m² of floor area - and incorporate CPTED (Crime Prevention Through Environmental Design) principles into the site design of the facility and the entire site on which it is located;
5. The Province be encouraged to undertake appropriate public engagement process when siting a cannabis retail store and to continue this engagement with representatives from the community thereafter to identify and address concerns.

Both the report and resolution were forwarded to the Province for their consideration. In addition these policies were provided for consideration to any person inquiring regarding the City's position with regard to the location of cannabis retail uses.

What Has changed Since Council's Resolution on December 12, 2017

- **August 13, 2018** - Province of Ontario commits to sharing \$40 million over two years with municipal governments, and 50% of all excise tax revenue generated over \$100 million.
- **September 27, 2018** — Ontario introduces legislation to move forward with private cannabis retail stores.
- **October 17, 2018**— Ontario passes Bill 36— Cannabis Control Act, 2017.
- **October 17, 2018**— Cannabis is legalized across Canada.
- **October, 2018** – Cannabis License Act, 2018, and Ontario Regulation 468/18 to provide additional direction and regulations regarding cannabis retail sales.
- **October 2018** - Province of Ontario amended the Smoke-Free Ontario Act, to align the regulation covering the smoking of cannabis with that of tobacco.
- **November 20, 2018** - Province of Ontario releases plan for distribution of funds to municipalities: \$15 million in early January; \$15 million after the January 22, 2019 deadline for municipalities to prohibit retail stores; \$10 million set aside to address unforeseen circumstances.
- **December 13, 2018** – Province announces that only 25 cannabis retail licenses to be issued province-wide by lottery through Regulation 497/18. Seven licenses to be issued for west region, which includes London-Middlesex.
- **April 1, 2019** - Ontario private retail model is to be established by this date, allowing for sale of cannabis through retail stores

What Needs to Be Done in Response to Bill 36

At the time of the Council resolution in December 2017 the Province was considering a public cannabis retail model; however Bill 36 (Royal Assent on October 17, 2018) provided for the implementation of a private cannabis retail model where the Province (through the Alcohol and Gaming Commission of Ontario- AGCO) oversees and regulates the location, and licensing of retail stores.

As municipal authority over the location of these uses is not permitted, there is no need for Official Plan policies or zoning by-law regulations for these uses, as was contemplated in the December, 2017 report.

Bill 36 established January 22, 2019 as the date by which Municipal Council, would, by resolution, inform the Province that retail cannabis sale would be prohibited. The Bill also confirmed that municipalities could not license these uses, nor could a municipality pass a by-law (zoning) that would distinguish a cannabis retail use from any other retail use.

On December 10, 2018, a report was received at the Community and Protective Services Committee regarding Municipal Implementation of Legalized Cannabis. At that meeting, the Community and Protective Services Committee recommended that London not “opt out” of retail cannabis sales.

The Cannabis License Act, 2018 provides further direction regarding retail cannabis sales. Regulations passed under this Act provide additional direction to Council:

Retail Store Authorizations

Cannabis retail store requirements

9. A retail store authorization may not be issued with respect to a proposed cannabis retail store if,

(a) the retail space where cannabis would be sold,

(i) would not be enclosed by walls separating it from any other commercial establishment or activity and from any outdoor area, or

(ii) could be entered from or passed through in order to access any other commercial establishment or activity, other than a common area of an enclosed shopping mall; or

(b) the premises at which the cannabis to be sold in the store would be received or stored would be accessible to any other commercial establishment or activity or to the public.

Public interest

10. For the purposes of paragraph 5 of subsection 4 (6) of the Act, only the following matters are matters of public interest:

1. Protecting public health and safety.
2. Protecting youth and restricting their access to cannabis.
3. Preventing illicit activities in relation to cannabis.

No issuance, proximity to schools

11. (1) In this section,

“private school” means a private school as defined in the Education Act.

(2) For the purposes of clause 4 (12) (a) of the Act, a proposed cannabis retail store may not be located less than 150 metres from a school or a private school, as determined in accordance with the following:

1. If the school or private school is the primary or only occupant of a building, 150 metres shall be measured from the property line of the property on which the school or private school is located.

2. If the school or private school is not the primary or only occupant of a building, 150 meters shall be measured from the boundary of any space occupied by the school or private school within the building.

(3) Subsection (2) does not apply to a private school if,

(a) it is located on a reserve; or

(b) it only offers classes through the Internet.

Municipal Council may only provide comment on these matters during the 15 day notice period for an application for a retail cannabis site. It is important to note that the regulations do not require that the City confirm that any proposed site meets these separation criteria.

Recommended Revised Council Policy

Given these changes since the Council resolution was adopted in December 2017, Planning staff are recommending some changes to the Council policy.

The Province, through regulation 468/18, has established a Provincial setback of 150 metre setback from schools and private schools as defined under the *Education Act*. The current 500 metre setback for schools and private schools in the City of London policy exceeds the Provincial standard and is recommended to be deleted.

The current Council policy setback of 500m from municipal libraries, pools, arena and community centres was primarily based on comments received for the previous report from the Middlesex-London Health Unit (MLHU) to protect municipal places where youth-orientated services and vulnerable populations congregate. It is recommended that setbacks from these uses be retained, but that the separation distance be reduced to 150 metres, consistent with the separation distance from schools and private schools.

It is also recommended that the parking standards policy be deleted, as parking standards will be applied through the regulations associated with the zoning that will permit the cannabis retail use.

It is also recommended that the policy that identifies Place Types where these uses would not be permitted be deleted. The Province has clearly stated that cannabis retail uses are to be considered as retail uses, and may be permitted where retail uses are permitted in zoning.

Lastly, the public engagement clause should be removed because Province-wide public engagement has already occurred and the AGCO, through the regulations, have identified site posting and web site posting of applications to inform the public of cannabis retail store applications.

The revised Council policy should be revised as follows:

It is a policy of the City of London that the following location and design measures be considered when siting a new cannabis retail store in London:

1. The property line of any cannabis retail store site be a minimum of 150m away from the property line of any municipal library, pool, arena and/or community centre; and,
2. A cannabis retail store site be designed to incorporate CPTED (Crime Prevention Through Environmental Design) principles into the site design of the facility and the entire site on which it is located.

Proposed Municipal Process for Reviewing Retail Store Authorization

When a retail store authorization application is received by the Chief Building Official from the Alcohol and Gaming Commission (AGCO) the City will have 15 days to respond. The regulations provide the opportunity for the city to identify municipal concerns regarding the locations of these proposed uses. The City of London Cannabis Retail Policy Statement will provide a basis for these concerns to be identified to the AGCO.

The regulation identifies two criteria to be addressed by an Applicant for a cannabis retail use:

- 1) Is the site within 150 metres of a public school or private school as defined by the *Education Act*?
- 2) Does the site meet the public interest?

It is important to point out that only the first test is specifically contained within the regulation under Section 11(2). The last criterion is considered under Section 4 (6).5 of the *Cannabis License Act, 2018*, which reads:

“The issuance of the retail store authorization in respect of a proposed store is not in the public interest, having regard to the needs and wishes of the residents of the municipality in which the proposed cannabis retail store would be located.”

The regulation identifies these matters of public interest which include;

1. Protecting public health and safety.
2. Protecting youth and restricting their access to cannabis.
3. Preventing illicit activities in relation to cannabis.

The applications will be circulated to zoning, by-law enforcement and City Planning for individual comments and consolidated into one formalized City response on each individual application.

Any comments made by the municipality regarding matters of public interest would be considered through the review of the application by the AGCO. It is important to note that the Province of Ontario or its agents are not bound by municipal policies or by-laws relating to the siting of cannabis retail stores, but the Ministry of Finance and Alcohol and Gaming Commission (AGCO) representatives, in the past, have indicated that the Province of Ontario intends to respect any such policies or by-laws established by local municipalities.

It is expected that the City will be able to respond to circulation of the applications and respond within 15 days under normal circumstances provided a process is established to quickly identify and circulate to reviewing City Departments and Agencies. There was a significant concern that there would be a “flood” of applications in January once the province begins to accept applications for retail cannabis stores, based on the experience of other municipalities in Canada. However, on December 13, 2018, the Province indicated that it would be limiting the number of licenses province-wide to just 25, with seven licenses identified for the “West Region”, which includes London-Middlesex.

To assist in meeting the 15 day timeline, The City is preparing a Citymap layer to assist with inquiries. The map layer will show a 150 metre setback radius around schools and private schools as defined by the *Education Act*, current zoning to identify properties where retail uses are permitted, property address, and other sensitive land uses such as libraries, pools, arenas and community centres which have setbacks in the Council policy.

In order to respond to applications in a timely fashion and within the 15-day commenting period, and to co-ordinate responses from a number of municipal service areas and agencies, it is recommended that Council delegate its authority to provide comments on these applications. The delegated authority will receive the applications, circulate them, review the responses and provide a co-ordinated set of comments and then then submit them to the AGCO within 15 days. A Delegated Authority By-law has been prepared which identifies the Chief Building Official, or delegate as the delegated authority, and is attached to this report.

5.0 Conclusion

These recommendations respond to Council's direction of December 12, 2017 related to the location of cannabis retail uses in London. It is also recommended that a process be established and authority be delegated for the review and submission of comments on cannabis retail store locations to the Alcohol and Gaming Commission (AGCO).

Acknowledgements:

Thanks to all the members of the Cannabis Implementation Working Group cross-departmental team: Adam Thompson (Government and External Relations-City of London), Lynn Marshall and Aynsley Anderson (Legal-City of London), Rosanna Wilcox (Community and Economic Innovation-City of London), Linda Stobo (Middlesex London Heath Unit), Scott Stafford (Parks and Recreation- City of London), Orest Katolyk, (Chief Municipal Law Enforcement Officer -City of London) Adam Salton (Zoning-City of London) and George Kotsifas (Building - City of London).

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Recommended by:	John M. Fleming, MCIP, RPP Managing Director, City Planning and City Planner
Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Planning Services	

December 17, 2018
CP/GB/cp

Appendix A

Bill No.
2019

By-law No. CPOL.

A by-law to repeal and replace By-law No. CPOL-232-15, as amended, being a By-law entitled "Siting of Cannabis Retail Stores in London" and replace it with a new Council policy entitled "Siting of Cannabis Retail Stores in London".

WHEREAS section 5(3) of the *Municipal Act, 2001*, S.O. 2001, C.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, C.25, as amended, provides a municipality with the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority;

AND WHEREAS the Council of The Corporation of the City of London wishes to repeal and replace By-law No. CPOL-232-15, as amended, being a By-law entitled "Siting of Cannabis Retail Stores in London" and replace it with a new Council policy entitled "Siting of Cannabis Retail Stores in London";

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The policy entitled "Siting of Cannabis Retail Stores in London", attached hereto as Schedule "A" is hereby adopted.
2. By-law No. CPOL-232-15, as amended being a By-law entitled "Siting of Cannabis Retail Stores in London" is hereby repealed.
3. This by-law shall come into force and effect on the date it is passed.

PASSED in Open Council on January 15, 2019.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading – January 15, 2019
Second Reading – January 15, 2019
Third Reading – January 15, 2019

Schedule A

Policy Name: Siting of Cannabis Retail Stores in London

Legislative History: Enacted by Council Resolution on December 12, 2017 (By-law No. CPOL-232-15), amended by By-law CPOL-339-330 on June 26, 2018

Last Review Date: June 11, 2018

Service Area Lead: Managing Director, City Planning and City Planner

1. Policy Statement

This policy is to establish a Council policy for the location and design for proposed locations of cannabis retail stores.

2. Definitions

Not applicable

3. Applicability

This policy applies to the matters to be considered by the Province or its Agents in the siting of cannabis retail stores in London.

4. The Policy

It is a policy of the City of London that the following location and design measures be considered when siting a new cannabis retail store in London:

- 4.1 The property line of any cannabis retail store site be a minimum of 150m away from the property line of any municipal library, pool, arena and/or community centre; and,
- 4.2 A cannabis retail store site be designed to incorporate CPTED (Crime Prevention Through Environmental Design) principles into the site design of the facility and the entire site on which it is located.

Appendix B

Bill No.
2019

By-law No.

A by-law to delegate the authority to respond to circulation of cannabis retail site applications to the Alcohol and Gaming Commission (AGCO).

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 23.1 of the *Municipal Act, 2001* provides that a municipality may delegate its powers and duties to a person or body subject to the restrictions set out in that section of the *Municipal Act, 2001*;

AND WHEREAS The Corporation of the City of London (the "City") has by by-law adopted a Delegation of Powers and Duties Policy;

AND WHEREAS it is deemed expedient for the City to delegate the authority to provide responses to the circulation of cannabis retail store applications to the Alcohol and Gaming Commission (AGCO) within the prescribed commenting period;

AND WHEREAS Section 10 of Ontario Regulation 468/18, made under the *Cannabis License Act, 2018* identifies matters of public interest which include:

1. Protecting public health and safety.
2. Protecting youth and restricting their access to cannabis.
3. Preventing illicit activities in relation to cannabis;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. That the authority to respond to circulation of cannabis retail site applications to the Alcohol and Gaming Commission (AGCO) is hereby delegated to the Chief Building Official, or delegate.
2. Scope of Power:

The delegated authority to the Chief Building Official, or designate to develop a process and identify the staff and technical resources required to submit the City of London's formal response to a cannabis retail site application to the AGCO shall include:
 - a) submissions whether the proposed cannabis retail store location is within 150 metres of a school or private school as defined by the *Education Act*;
 - b) submissions whether the proposed cannabis retail store location is zoned to permit a retail store; and,
 - c) comments with regards to the proposed site's conformity with the Council Policy entitled "Siting of Cannabis Retail Stores in London", as may be amended from time to time.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council January 15, 2019.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading – January 15, 2019
Second Reading – January 15, 2019
Third Reading – January 15, 2019