

Report to Community and Protective Services Committee

To: CHAIR AND MEMBERS
COMMUNITY AND PROTECTIVE SERVICES COMMITTEE

From: G. KOTSIFAS, P. ENG.
DEPUTY CITY MANAGER, PLANNING & ECONOMIC DEVELOPMENT

Subject: HEALTH CANADA CONSULTATION – PERSONAL PRODUCTION OF CANNABIS
FOR MEDICAL PURPOSES

Date: MAY 11, 2021

Recommendation

That, on the recommendation of the Deputy City Manager, Planning & Economic Development:

- a) the report dated May 11, 2021 and entitled “Health Canada Consultation - personal production of cannabis for medical purposes” **BE RECEIVED**; and
- b) the Civic Administration **BE DIRECTED** to continue to consult with the Federal Government to identify challenges relating to public safety, nuisance control and Building Code compliance associated with the personal production of cannabis for medical purposes.

Analysis

1.0 Background Information

The Cannabis Act (the Act) and the Cannabis Regulations came into force on October 17, 2018. The purpose of the Act is to protect public health and public safety. The Act creates a strict legal framework for controlling the production, distribution, sale and possession of cannabis across Canada. The Act aims to accomplish three goals:

- keep cannabis out of the hands of youth
- keep profits out of the pockets of criminals
- protect public health and safety by allowing adults access to legal cannabis

Consistent with the advice of the Task Force on Cannabis Legalization and Regulation, which was mandated to consult and provide advice to the Government of Canada on the design of a legislative and regulatory framework for legal access to cannabis in Canada, the Act and the Regulations maintain a separate system to provide patients with reasonable access to cannabis for medical purposes.

The Act and the Regulations give patients that have a signed medical document from their health care practitioner the following options to access cannabis for medical purposes:

- purchase quality-controlled cannabis from a wide variety of federally licensed sellers inspected by Health Canada
- produce a limited amount of cannabis for their own medical purposes as authorized by their health care practitioner ("personal production")
- designate someone to produce it for them ("designated production")

Registration with the Minister of Health (Minister) for personal or designated production is subject to a limited number of requirements set out in the Regulations. These regulations also provide the Minister with the authority to refuse or to revoke a registration in certain circumstances where public health or public safety concerns exist.

Until May 7th, 2021, Health Canada is consulting on possible changes to the personal production of cannabis for medical purposes. Health Canada will engage with various groups across Canada, including: all interested Canadians, including Indigenous Peoples, patients and patient associations, provincial, territorial, and local governments, cannabis industry licence holders and associations, law enforcement and first responders and associations.

The intent of this consultation is to produce additional guidance on Health Canada’s administration of the personal and designated production of cannabis for medical purposes. This is one of the ways that Health Canada is supporting collective efforts to address potential misuse of Canada’s access to cannabis for medical purposes program, while preserving reasonable access for patients and healthcare practitioners who rely upon it.

After the consultation concludes, Health Canada will analyse the feedback, and produce a *What We Heard* report summarizing the feedback received, and publish that report and a final guidance document on its website. Under the *Cannabis Regulations*, Health Canada also has the authority to refuse (to issue, renew, amend) or revoke a registration for personal or designated production of cannabis for medical purposes and this guidance document will support transparency on the factors that may be taken into consideration in the use of these authorities.

Civic Administration's response to the Federal Government's request for information on the personal production of cannabis for medical purposes is attached to this report, as "**Appendix A**". The comments provided are from the perspective of public safety, nuisance control and building/planning compliance. Below is a summary of the comments contained in the Appendix:

- Once approval has been granted for the cultivation of marijuana plants for medicinal purposes, there is limited oversight from a compliance perspective to ensure that the limit on the number of approved plants is adhered to and that any neighborhood nuisances are addressed.
- Civic Administration is not aware of any phased approval process dependant on the number of plants permitted for production and the location within the municipality for the proposed production.
- A building owner or tenant may be granted a federal licence to grow/produce cannabis in situations where a building permit may not be required (i.e. no Change of Use).
- It is critical that controls and measures are put in place to ensure the safety of building occupants.
- These same controls should be implemented regardless of whether a building permit is required or not.
- Civic Administration would be open to further consultations with the Federal Government on implementing an operational and financial municipal service level agreement for compliance inspections

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Recommended by: George Kotsifas, P. Eng
Deputy City Manager, Planning & Economic Development

“Appendix A”

Date: April 29, 2021

To: Controlled Substances and Cannabis Branch
Health Canada, Address locator 0302B
Ottawa, Ontario K1A 0K9

From: Corporation of the City of London
300 Dufferin Avenue
London, Ontario N6B 1Z1

Re: Consultation on guidance on personal production of cannabis for medical purposes.

The City of London’s response to the Federal consultation on the guidance on personal production of cannabis for medical purposes specifically refers to question #9 in the form.

Question #9: *Please provide any additional factors you think could be considered in assessing public health and public safety concerns as it relates to refusing or revoking a registration for personal and designated production of cannabis for medical purposes.*

Compliance perspective:

Over the past several years, there have been complaints submitted to the municipality regarding odours emanating from allegedly approved medical marijuana grow operations. Once approval has been granted for the cultivation of marijuana plants for medicinal purposes, there is limited oversight from a compliance perspective to ensure that the limit on the number of approved plants is adhered to and that any neighborhood nuisances are addressed. Civic Administration is not aware of any phased approval process dependant on the number of plants permitted for production and the location within the municipality for the proposed production. For example, from a public nuisance perspective, there is a substantial difference between the production of ten plants and over 100 plants. For example, Municipal Law Enforcement Officers and London Police Services responded to a cannabis odour concern at a single detached dwelling in a residential community and found over 300 plants in various levels of production. Pre regulation, this would have been classified as an illegal grow operation, however in this case, the Federal medical cannabis licenses permitted approximately 300 plants to be grown in a single detached dwelling. The Fire Department as well as the Electrical Safety Authority also assisted in the investigation. Below are photos from this approved medical licence location.

PHOTOS: Approved medical licence location – London, Ontario:





MLEOs and Building Inspectors are most familiar with ongoing public nuisance and building related complaints in their municipality. Civic Administration would be open to further consultations with the Federal Government on implementing an operational and financial municipal service level agreement for compliance inspections where the number of plants to be grown/produced exceeds 'X'. The magnitude of plants of approved locations for the cultivation of cannabis for medical purposes is both a public nuisance and life safety issue.

Ontario Building Code perspective:

The scope of the Ontario Building Code (OBC) is to ensure the health and safety of all building occupants. A building owner or tenant may be granted a federal licence to grow/produce cannabis in situations where a building permit may not be required (i.e. no Change of Use). It is critical that controls and measures are put in place to ensure the safety of building occupants. In fact, these same controls should be implemented regardless of whether a building permit is required or not.

As such, we would propose that the following reports or items be required to be submitted to Health Canada for consideration prior to the issuance of a cannabis production licence:

For a building where the number of plants to be grown/produced exceeds 'X': (to be determined)

- The building shall be equipped with a suitable air filtration system to prevent the escape of odours from the production site to reduce the risk of alerting others to the existence and location of the production site. A qualified designer's report confirming installation and operation shall be submitted to Health Canada.
- A licensed structural engineer's report shall be submitted to Health Canada certifying the structural integrity of the building.
- A qualified designer's report shall be submitted to Health Canada certifying that the proposed use and layout does not give rise to any unsafe conditions, per the Building Code Act and does not contravene any 'applicable law' as defined in the Ontario Building Code.
- The building's owner shall submit written confirmation (i.e., copy of building permit etc.) to Health Canada certifying that any required building alterations associated with plant production, have been made under a building permit, when the issuance of a building permit is required under provincial regulation.
- The building's owner shall submit written confirmation that there are no active Building Code orders issued against the building.

City Planning perspective:

The City of London's Official Plan, *The London Plan*, identifies permitted uses, intensities, and forms of development for different areas of the City based on factors including the planned function and character of the area and the potential for land use conflicts. In Neighbourhood areas residential is the predominant permitted use, and non-residential uses may be permitted on a limited basis subject to established criteria being met. Non-residential uses will require specific zoning to be applied unless they qualify as a home occupation.

The London Plan includes that home occupations may be permitted where “the home occupation is a business activity which is clearly ancillary to the residential use of the property, is carried on entirely within the dwelling unit by a resident of the dwelling unit, and does not generate any noise, odour, traffic or visual impacts that may have an adverse effect on adjacent properties or dwelling units.” More detailed restrictions for home occupations are found within the Zoning By-law.

The scale of any facility engaged in the production of cannabis for medical purposes should be required to comply with the City's Official Plan and Zoning By-law to ensure that potential land use conflicts can be mitigated. Some facilities under Size 'X' (to be determined) may be appropriate if similar in scale and impact to a home occupation; however, facilities over Size 'X' should be considered as a “Pharmaceutical and medical products industry” as defined by the City of London Zoning By-law and permitted only in the appropriate commercial or industrial zones.

Conclusion:

The City of London would like to thank Health Canada for seeking input from municipalities. The City of London does not have any comments related to amounts of cannabis prescriptions or any criminal matters related to the applicants. The comments provided are primarily from the perspective of public safety and nuisance control.

City of London Civic Administration is open to further consultations with the Federal government on implementing an operational and financial municipal service level agreement to ensure prompt responses to public nuisance complaints, adherence to regulations on the number of plants being cultivated and implementing controls and measures, ensuring the safety of building occupants

Respectfully submitted,
City of London