



**Municipality of Brockton
Planning Report**

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| Application: | Cannabis Report |
| File Number | |
| Date: | November 19, 2018 |

To: Mayor Inglis and Council, Municipality of Brockton

From: John Ghent, Planner for the Municipality of Brockton

Subject: Retail Sale of Recreational Cannabis

Recommendation:

That this report regarding the municipal Opt In / Opt Out implications related to the retail sale of recreational cannabis dated November 19, 2018 be received

Background:

On October 17, 2018 Federal legislation permitting the retail sale of recreational cannabis came into effect. The production of cannabis is regulated by licenses issued under the Federal legislation and the sale of cannabis for medical purposes is also regulated by Federal legislation. The retail sale of cannabis is currently limited to five products (seeds, fresh cannabis, dried cannabis, oil/resin, and plants). The federal government intends to authorize the legal sale of cannabis edible products and concentrates within the next year. In the interim, individuals are permitted to make edibles for personal use.

The Provinces have been delegated the authority to regulate the retail sale of cannabis for recreational purposes. The Ontario government passed Bill 36, the *Cannabis Statute Law Amendment Act, 2018* on October 17, 2018. Between Oct 17, 2018 and April 1, 2019, the retail sale of cannabis will only be available with on-line purchases. After April 1, cannabis may be purchased at retail stores. Key features of the Ontario legislation are outlined as follows (much of the following is an excerpt from the Osler web site dated Oct 18, 2018).

- **Changes for the Ontario Cannabis Retail Corporation (OCRC):** The OCRC will be granted the exclusive right to sell cannabis in Ontario online but is prohibited from operating retail stores. Instead, retail stores will be privately operated. The OCRC will also have the exclusive right to sell cannabis in Ontario to a retail store for resale.
- **Licensing scheme:** The *Cannabis Licence Act, 2018* sets out the licensing scheme for private cannabis retail stores and will be administered by the

Alcohol and Gaming Commission of Ontario (AGCO), the regulatory body for the adult-use cannabis market.

- **Licences and authorizations:** In order to operate a cannabis retail store, an individual must apply for and be granted both a retail operator licence and a retail store authorization. The retail store authorization may only be issued to the holder of or an applicant for a retail operator licence and authorizes its holder to operate a particular cannabis retail store. A separate authorization is required for each store and permits the holder to sell only cannabis purchased directly from the OCRC and any other prescribed items.
- **Illegal retail operations:** The *Cannabis Licence Act, 2018* also permits an individual who has been convicted or charged with a prescribed offence under the *Controlled Drugs and Substances Act* (Canada) for cannabis to be eligible to apply for a retail operator licence. However as Finance Minister Vic Fedeli stated, “if you are still operating an illegal retail operation after October 17, you would not be able to get a licence in Ontario.”
- **No ceiling or “cap”:** The proposed legislation does not set a limit to the number of retail store licences in Ontario. However, the legislation would afford the government flexibility needed to address issues with concentration of stores in individual markets and the number of individual stores that a single retailer may have. According to Attorney General for Ontario Caroline Mulroney, the objective is to ensure that the market is not dominated by one or two parties.
- **Sale by federally licensed producers:** Federally licensed producers will be allowed to establish retail stores, however they will be limited to a single retail store that must be onsite at a production facility.
- **Public consumption:** The *Smoke-Free Ontario Act, 2017* and the *Cannabis Control Act, 2017* are amended to the effect that individuals in Ontario will be able to smoke or vape cannabis wherever the smoking or vaping of tobacco is permitted as well including in public areas. This would represent a dramatic change from the previous state of the *Cannabis Control Act, 2017* which currently prohibits the consumption of cannabis in any public place. Smoking or vaping cannabis in enclosed public places, workplaces, vehicles or boats however is still be prohibited. If prescribed requirements are met, there are also exemptions allowing for the smoking or vaping of cannabis in certain long-term care homes, retirement homes, supportive housing residences, psychiatric facilities, veterans facilities as well as hotels, motels and inns.
- **Municipality control:** Municipalities are able to pass a resolution by **January 22, 2019** to opt out of retail sale in their communities. This prohibition can be lifted in the future, however once cannabis retail stores are permitted it will not be possible to implement a prohibition later. Should a municipality “opt

in” and allow retail sale in their community, the AGCO will have the authority to decide how many and where retail outlets will be permitted. While the municipality and its residents may make written submissions within 15 days after notice of a proposed retail store is posted, the AGCO will ultimately reserve the right to make a final decision. Further, the legislation prohibits municipalities from passing by-laws designating cannabis retail as a separate land use or creating their own system of licensing.

- **First Nations Reserves:** A retail store authorization may not be issued unless the council of the band has approved the location of the proposed retail store on the reserve. A council of the band may request that the AGCO Registrar not issue retail store authorization for cannabis retail stores to be located on the reserve. The Registrar must comply with such a request, as well as with any future request to amend or rescind the original request.
- **Standards and requirements:** The AGCO will also be able to establish standards and requirements respecting the conduct of licence and authorization holders on matters including: (1) store premises, equipment, surveillance and security; (2) the prevention of unlawful activities, including prohibiting or restricting certain individuals from entering cannabis retail stores; (3) advertising and promotional activities; (4) training relating to cannabis; (5) the protection of assets, including money and money equivalents; (6) the keeping of records, including financial records; (7) reasonable measures to maintain the confidentiality and security of records, including measures to securely dispose of records and to prevent unauthorized access to records; (8) compliance with the national Cannabis Tracking System; and (9) any other matter relating to the conduct of licence and authorization holders or to the operation of cannabis retail stores that may be prescribed.
- **Inducements and promotion:** The legislation would prohibit any inducement or promotion to the holder of a licence or authorization in order to increase sale of a particular type of cannabis.
- **Financial Implications:** All municipal governments will receive at least \$10,000 to help transition to legal recreational cannabis in our communities (this is cover incremental costs associated with the transition to cannabis retail sales). Communities that decide to allow retail storefronts will receive \$10,000, plus per household funding, and will be eligible for a share of 50 per cent of the surplus funding if the province’s share of federal excise tax exceeds \$100 million in the first two years. Municipal governments must track additional expenditures related to legalized recreational cannabis (source: AMO web site).

Municipal Implications / Options:

The key takeaways relating to planning are:

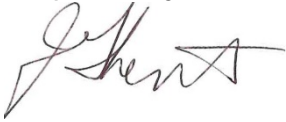
- Cannabis retail stores are not subject to municipal zoning by-laws;
- Cannabis retail stores are not subject to municipal licencing by-laws;
- There is no municipal control with respect to location of stores, the number of stores, the separation distances of the stores, or separation of the stores from sensitive land uses.

In addition, with respect to retail stores, municipalities have a one-time choice to 'opt in' or 'opt out'.

- **Opting in** would allow retail stores selling cannabis to locate in the municipality. Once this decision is made, there is no provision to prohibit retail sales in the future.
- **Opting out** would prohibit the retail sale of cannabis in the community. The decision could be lifted in the future but once lifted, the prohibition could not be re-established.

Municipalities that wish to opt out must do so by Council resolution prior to January 22, 2018. This resolution is to be communicated to the Alcohol and Gaming Commission of Ontario.

Respectfully submitted,



John Ghent, RPP
Planner, County of Bruce Planning and Development Department