



STAFF REPORT TO COUNCIL

Council Meeting: April 24th, 2018
500 Matterson Drive, Ucluelet, BC V0R 3A0

FROM: BRUCE GREIG, MANAGER OF COMMUNITY PLANNING

REF NO: RZ18-01 **FILE NO:** 3360-20

REPORT NO: 18-35

SUBJECT: ZONING BYLAW AMENDMENTS TO CLARIFY THE DEFINITION OF CANNABIS SALES AND PRODUCTION;

RECOMMENDATION:

1. **THAT** Council, with regard to the proposed zoning amendment to further define cannabis sales and cannabis production, and to clarify that these uses are not currently permitted in any zone within the municipality:
 - a. give first and second reading to District of Ucluelet Zoning Bylaw Amendment Bylaw No. 1228, 2018;
 - b. advance the bylaw to a public hearing;
2. **and further, THAT** Council indicate to the community and any future applicants that the following can be expected in the future consideration of rezoning applications for cannabis sales:
 - a. any cannabis sales rezoning applications will be brought to Council no earlier than 90 days following the adoption of federal Bill C-45 and provincial legislation for the legal distribution and regulation of cannabis sales in BC, whichever is later;
 - b. Council will consider the merits of any rezoning applications for cannabis sales in the context of federal and provincial regulations, community input at a joint public hearing, and the following preliminary criteria:
 - i. on commercial property located at least 300m from school grounds, public playgrounds, licensed daycare facilities, the Ucluelet Community Centre, Ucluelet Aquarium and Municipal Hall, and at least 150m from Tugwell Sports Fields;
 - ii. low-key storefront design and signage befitting the form and character of the Ucluelet streetscape and surrounding commercial properties;
 - iii. all other aspects normally considered with a commercial rezoning application (access, location and amount of parking, landscaping, etc.);
 - iv. any components of the proposal which may help to mitigate impacts of the new use or provide a degree of public amenity to present a net public benefit to the community; and,
 - c. after hearing public input, Council may deny all applications or approve one or more applications up to a maximum of two cannabis sales retail locations in Ucluelet at this point in time.

PURPOSE:

In anticipation of upcoming new federal and provincial legislation and regulations, this report is intended to give Council information on a zoning amendment to further clarify the zoning regulations for cannabis sales and production. The bylaw amendment would define “cannabis sales” as a distinct use from “retail” and clarify that cannabis sales is not a permitted use in any zone which currently exists in Ucluelet. This report also suggests criteria for Council to consider with any future site-specific rezoning application which may seek to allow cannabis sales as a permitted use on a property, once the federal and provincial legislation has been adopted.

BACKGROUND:

The Government of Canada has introduced legislation to legalize the recreational use of cannabis. Bill C-45, the *Cannabis Act*, which will regulate and restrict the production, distribution, sale, and use of this product, has completed Second Reading in the Senate (March 22nd, 2018) and is expected to pass into law sometime in the fall of 2018. The progress of Bill C-45 can be followed at:

<http://www.parl.ca/LegisInfo/BillDetails.aspx?billId=8886269>

This Federal legislation creates significant responsibilities for all levels of government. Provincial and Territorial governments have begun to make new policy decisions in response to the Federal legislation, and most have done so with some form of public and/or stakeholder consultation. The frameworks implemented by the Provincial and Territorial Governments provide a more detailed context for local governments to make decisions about the infrastructure, local regulations and enforcement needed to support these policy changes. On February 5, 2018 the BC Provincial Government announced decisions on public consumption, retail sales model, and personal cultivation. This has outlined in more detail the context within which BC municipalities will need to operate. More information on the provincial regulatory framework can be found at:

<https://www2.gov.bc.ca/gov/content/safety/public-safety/cannabis>

DISCUSSION:

The District of Ucluelet, like all local governments, must determine what changes are needed to ensure an effective response to the proposed new cannabis legalization. In managing this major legal and social change, municipalities are guided by the specific objectives of Bill C-45, which include:

- preventing youth from accessing cannabis;
- providing for controlled access to cannabis by adults; and
- providing for responsible regulation and oversight.

The District of Ucluelet is seeking to develop a balanced, appropriate, and evidence-based response to cannabis legalization and its many implications. Local governments need to balance public safety concerns associated with cannabis legalization with a recognition that the possession and consumption of cannabis will become legal in Canada with the adoption of Bill C-45.

The first step in preparing for the adoption of Bill C-45 is to further define and improve our legal framework within the Zoning Bylaw for the production and sale of cannabis. The two areas of focus in the proposed bylaw are the definitions of Cannabis Production and Cannabis Sales:

Cannabis Production

Currently the production of cannabis is restricted under the District of Ucluelet Zoning Bylaw 1160, 2013 (the “**Zoning Bylaw**”):

303.3 *Without limiting the generality of Subsection 303.1, the following uses are prohibited in all Zones:*

(6) medical and other federally licensed marihuana production facilities, including parts thereof licensed under the federal Medical Marihuana for Medical Purposes Regulation;

Staff are proposing to delete S.303.3 (6) and replace it with the following:

“(6) Cannabis Production or Cannabis Sales, except as expressly permitted elsewhere in this Bylaw.”

The proposed modification of this section clarifies that there is a difference between production and sales, and anticipates future applications for legal production under the Access to Cannabis for Medical Purposes Regulations (**ACMPR**) or retail operations under the *Cannabis Act* and provincial regulations. Staff are also proposing to add the following definition to the zoning bylaw regarding cannabis production:

“Cannabis Production” means the use of any land, building or structure for the growing, production, processing, destruction, storage or distribution of Cannabis, including by one or more persons under one or more registrations under Part 2 of the ACMPR, but does not include:

- a) Cannabis Sales; or
- b) Non-commercial activities by a registrant or designated person under Part 2 of the ACMPR.

The addition of this definition is a clarification of the Cannabis Production use. Any future application for a cannabis production facility would still need a zoning amendment to allow that use but the use will have been clearly defined.

Cannabis Sales

In preparation of the expected fall 2018 adoption of Bill C-45, Staff in consultation with the municipal solicitors have proposed the following additions to Section 103.1(Definitions) of the zoning bylaw:

Cultivation for personal use:

Note the proposed bylaw amendments would leave the Zoning Bylaw silent on the cultivation of cannabis for personal use. The federal regulations are drafted to allow the cultivation of up to 4 plants in a dwelling (defined to include the property on which a dwelling is located). Once legalized by federal law, growing up to 4 pot plants on your property would, as a land use, be considered a permitted accessory use to a residence (no different than growing carrots or begonias).

Municipalities may have authority to restrict the location of personal cultivation on grounds of mitigating nuisance or health concerns. This area of regulation is expected to have a high degree of public interest and, if enacted, could generate a large volume of bylaw complaints.

Staff recommend that the District await the adoption of federal and provincial legislation and regulations - and then monitor this activity. If complaints or concerns arise from the personal cultivation of cannabis, Council could consider at a future date whether there is a need for municipal regulation, the details of such regulations and a practical enforcement mechanism.

“Cannabis” means any part of the cannabis plant, and includes its preparations and derivatives and any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, but does not include: a non-viable seed of a cannabis plant; a mature stalk of a cannabis plant, without any leaf, flower, seed, or branch, and fiber derived from such stalks; and the roots or any part of the root of a cannabis plant.

“Cannabis Sales” means the retail or wholesale sale of cannabis, and includes an operation which provides referrals or facilitates access to cannabis not physically sold on the premises, but does not include:

- a) sales of cannabis by a British Columbia Registered Pharmacist in a British Columbia regulated Pharmacy; or
- b) authorized distribution by a Licenced Producer under Part 1 of the ACMPR by means other than retail sale.

The addition of these definitions clarifies cannabis and cannabis sales and allows Council the opportunity to review future applications with improved clarity in regard to location, regulatory measures and bylaw enforcement.

Smoking Regulations

The Ucluelet Smoking Control Bylaw No. 1187, 2016, already bans the smoking or vaping of tobacco, “weed” or other substances in parks, playgrounds, beaches, trails or other public places, within 8m of a building opening or customer service area, or in restaurants. The bylaw enacts a \$50 fine for non-compliance. Bylaw No. 1187 would still fully apply to the smoking of cannabis in public places after Bill C-45 is enacted, and does not need to be amended at this time.

TIME REQUIREMENTS – STAFF & ELECTED OFFICIALS:

Setting up the specific policy and regulatory measures will be part of any future rezoning application and be part of the normal duties of the Planning department. Staff anticipate that any future cannabis rezoning applications could generate significant public interest and may warrant one or more public information meetings or town hall-type meetings in addition to a formal public hearing or hearings on the bylaws.

FINANCIAL IMPACTS AND FUTURE WORK:

The District of Ucluelet has accrued minor legal costs in preparing a response to Bill C-45. A portion of the costs of Staff time involved in preparing the policy and regulatory measures needed for future rezonings will be recouped through the respective application fees. The financial impacts to the District of Ucluelet as a result of the approval of a zoning amendment to define cannabis retail or production will also be reviewed through the respective zoning amendment application process.

If and when the District receives a rezoning application for allowing cannabis sales, a concurrent review of the Business Licence Bylaw would be warranted to insert the new business category and licence fees.

POLICY OR LEGISLATIVE IMPACT:

The proposed bylaw is the immediate required response to the possible adoption of Bill C-45. Staff will be able to provide additional direction on specific strategies around Cannabis sales and production after the federal and provincial framework is in place, and within the context of legal rezoning applications.

SUMMARY:

The zoning bylaw amendment proposed in this report is the first step in the District of Ucluelet's response to the possible adoption of Bill C-45 in the fall of 2018. When Bill C-45 is adopted and clear policy framework for the regulating and licensing of non-medical cannabis is available, the District of Ucluelet could then accept rezoning applications for those respective uses. Staff would create the appropriate site-specific zoning amendments and regulatory measures for Council to review at that time.

The draft Bylaw No. 1228 would clarify the definition of cannabis sales and position the community to consider any future applications seeking approval to open a retail cannabis store in Ucluelet. Any such application would need a site-specific zoning amendment. To achieve that a zoning amendment bylaw would need to be adopted by Council; that process would involve a public hearing on the specific proposal or proposals being considered.

The regulatory direction announced (but not yet adopted) by the provincial government indicates that Council will have full control over whether and how many cannabis retail sales licences are issued in the municipality. The rezoning of a property to allow cannabis sales would be a first step for a potential cannabis retailer to seek community support for their application and proposed location.

Staff recommend that Council consider adopting a motion signaling to the community and any future applicants some ground rules and preliminary criteria for what can be expected in the future consideration of rezoning applications for cannabis sales. By indicating this list of criteria and process, Council would clarify community expectations for those business and/or property owners considering applying for a zoning amendment. Staff expect significant community interest in the details of where, what and how many cannabis sales proposals are submitted. By bringing the first wave of applications forward together – after the federal and provincial legal framework is clear – the community could see the details before providing its input and Council would be able to make a fully informed decision on the merits of each application.

Municipalities have discretion over whether to permit any retail cannabis sales within their boundaries, or alternatively to allow any number of such businesses. Staff recommend that if there is support from the community for future rezoning applications Council consider approving up to two sites. Staff would advise against approving a single site (thereby setting up a monopoly in town), and suggest that for a community of this size more than two are probably not warranted.

OPTIONS:

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(Recommended)

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 - c. after hearing public input, Council may deny all applications or approve one or more applications up to a maximum of two cannabis sales retail locations in Ucluelet at this point in time.

(Recommended)

3. That Council defer the readings and advancement of Bylaw No. 1228, 2018 to seek further information from Staff.

Respectfully submitted: Bruce Greig, Manager of Planning
 John Towgood, Planner
 Mark Boysen, Chief Administrative Officer