

THE CORPORATION OF THE TOWN OF GEORGINA

REPORT NO. CAO-2018-0021

**FOR THE CONSIDERATION OF
COUNCIL**

DECEMBER 12, 2018

SUBJECT: GENERAL CANNABIS INFORMATION REPORT

1. RECOMMENDATION:

- 1. That Council receive Report No. CAO-2018-0021 prepared by the Office of the CAO dated December 12, 2018 respecting General Cannabis Information.**
- 2. That Staff report back to Council at the January 16, 2019 Council meeting to obtain direction with respect to Council's decision to "opt-in" or "opt-out" with respect to the retail sale of cannabis within the Town of Georgina.**
- 3. That Staff report back to Council at the January 16, 2019 Council meeting on the preferred option with respect to regulating the consumption of cannabis on Town properties and if applicable, prepare any necessary by-law(s) for Council's consideration and passing.**
- 4. That Planning Staff be directed to prepare an interim control by-law for Council's consideration and passing at the January 16, 2019 Council meeting which would have the effect of prohibiting the production of cannabis in the Rural (RU) zone within the Town of Georgina for a period of one (1) year to allow the municipality to conduct a land use planning study regarding the implementation of zoning provisions for cannabis production facilities.**

2. PURPOSE:

The purpose of this report is to provide Council with background information relating to the municipalities ability to "opt-in" or "opt-out" of having cannabis retail sales within the Town, requirements relating to consumption of cannabis on Town properties, and land use planning/zoning considerations.

3. BACKGROUND:

The Cannabis Licence Act, 2018 and Ontario Regulation 468/18 were proclaimed by the provincial government on November 14, 2018. This legislative framework will govern the retail sale of recreational cannabis in Ontario. The Alcohol and Gaming Commission of Ontario (AGCO) has been chosen as the provincial agency to regulate the retail sale of recreational cannabis from brick and mortar storefronts, which will be accomplished through a provincial licensing regime. Whereas, the Ontario Cannabis Store (OCS) has been established by the province as the only legal online retailer of

recreational cannabis within Ontario. It should also be noted that legal cannabis for medical purposes can only be purchased online through a Health Canada licensed producer. In this regard, the OCS and retail store locations cannot fill medical prescriptions.

4. **ANALYSIS:**

Opting In Or Out

Pursuant to the Cannabis Licencing Act, “a municipality may, by resolution passed no later than January 22, 2019, prohibit cannabis retail stores from being located within their municipality.” If a municipality does not advise the AGCO by the January 22, 2019 deadline, the municipality will be considered to have “opted-in”. A decision of a municipal Council to “opt-in” cannot be reversed, however, if a municipality decides to “opt-out” by the deadline, thereby preventing cannabis retail stores from being located within their municipality, a resolution may be passed in the future to “opt-in”.

Should Council “opt-out” and not permit the sale of recreational cannabis from retail stores within the Town of Georgina, the AGCO will not be in a position to issue a retail operator license within the Town. On the other hand, should Council “opt-in”, the AGCO may issue a retail operator licence within the Town, subject to compliance with the licensing requirements.

The manner in which municipalities must notify the AGCO of their decision to “opt-out” is for the Municipal Clerk, Chief Administrative Officer or Mayor to forward the AGCO Registrar written notification that the municipality has passed a resolution prohibiting cannabis retail stores. This written notification must be signed by one of the persons noted above and sent by email to municipal@agco.ca and received by the AGCO no later than January 22, 2019. The notification must include:

1. The official name of the municipality, and;
2. The date the resolution was passed and in what form (i.e. council resolution).

Once received, the AGCO will acknowledge receipt by email.

Provincial Licencing and Municipal/Public Input

Under the *Cannabis Licencing Act*, municipalities do not have the authority to pass a business licensing by-law which has the effect of creating a system of licences regulating the sale of cannabis.

Should Council “opt-in”, one of the considerations the AGCO will evaluate when issuing a retail licence is whether or not the proposed retail store is in the public interest (emphasis added by the writer), having regard to the needs and wishes of the residents of the municipality in which the proposed cannabis retail store would be located. In accordance with the regulations, the province has identified only the following matters to be of ‘public interest’:

1. protecting public health and safety;
2. protecting youth and restricting their access to cannabis; and,
3. preventing illicit activities in relation to cannabis.

In order to gage the public interest, the Registrar shall give notice of an application for a retail store authorization:

1. by displaying a notice at the location of the proposed cannabis retail store specified in the application;
2. by posting a notice on the Commission's website; and,
3. in any other manner the Registrar considers appropriate.

The notice shall include a request for the municipality, its residents and, if the municipality is a lower-tier municipality, the upper-tier municipality of which it forms a part, to make written submissions to the Registrar. Written submissions must be made no later than 15 days after the notice is first given (emphasis added by the writer), as to whether the issuance of the retail store authorization is in the public interest, having regard to the needs and wishes of the residents. The Registrar shall consider any written submissions made in relation to the application.

Notwithstanding that the Cannabis License Act states that the Register shall consider any written submissions made in relation to an application for licence, there is no requirement for a municipal "sign off". The decision to issue or to not issue a retail licence is solely in the hands of the AGCO.

Further, it is Staff's understanding that the AGCO will not be providing direct notice to the host municipality in which a retail licence is being applied for. It will be the responsibility of individual municipalities which have "opt-in" to monitor the AGCO website for the posting of public notices so that comments may be provided.

Given the short timeframe for the municipality to provide comments on license applications for retail store locations, it is recommended that criteria be established to review these applications and that the municipality appoint a members of Staff to monitor the AGCO website and provide comments.

Cannabis Consumption

The *Smoke-Free Ontario Act* prohibits smoking cannabis in any place that tobacco is prohibited under the Act. For example, enclosed public spaces and workplaces, schools, common areas to apartments buildings and condos, child care centres, restaurant and bar patios, children's playgrounds and play areas, sporting areas, the outdoor grounds and perimeters of recreational facilities, etc...

The Region of York has established a website www.york.ca/cannabisinfo which provides education and information relating to cannabis use. The graph below is available on the website and is intended to help the public understand where different controlled substances can be used, because the laws vary for each controlled substance.

Where you can use controlled substances

Where	tobacco	cannabis*	alcohol
Your home	✓	✓	✓
Parks***	✓	✓	✗
Sidewalks	✓	✓	✗
Playgrounds and sports fields	✗	✗	✗
Licensed restaurant patios	✗	✗	✓
Vehicle****	✓	✗	✗
Boat	✓	✗	✗

*Recreational cannabis
 **Current as of October 25, 2018
 ***Some parks are smoke free. Check your municipality's website for more information
 ****Smoking is not permitted in vehicles that carry minors 16 years of age or under

Options

Regardless of Council's decision to opt-in or opt-out, the consumption of cannabis will still occur within our community. In order to address this issue, the municipality has the following three options to consider with respect to consumption of cannabis on Town properties.

Option 1 – Do Nothing

Continue to enforce our Tobacco By-law on Town properties. Public Health Inspectors will enforce cannabis and tobacco use through the *Smoke-Free Ontario Act* where required.

Option 2 – Add Cannabis to our Tobacco By-law

Amend our Tobacco By-law to also include cannabis. Tobacco and cannabis limited to use in designated smoking areas on Town property and other public places not regulated by the *Smoke-Free Ontario Act*.

Option 3 – Prohibit Cannabis Use Further

Enact a new by-law to prohibit cannabis use further than the requirements of the *Smoke-Free Ontario Act* and prohibit its use on town property.

The Municipal Law Enforcement Division, Parks and Facilities Division and the Department of Recreation and Culture will meet to determine the preferred option respecting consumption of cannabis on Town properties and if necessary, prepare by-laws to this effect for Council's consideration at the January 16, 2016 Council meeting.

Enforcement

The Municipal Law Enforcement Division has not received any complaints regarding cannabis use and tobacco use complaints are infrequent. There could be a health & safety concern as well as a lack of training for Municipal Law Enforcement Officers to deal with people impaired by Cannabis. York Regional Police have stated that they will not be responding to cannabis use complaints, unless immediate concern to health & safety, for example, other crimes also being committed. Whether or not Council opts-in or opts-out of retail stores, may have an effect on use in public areas.

RECREATIONAL CANNABIS IN ONTARIO AND LAND USE PLANNING

As a result of the recent legalization of recreational cannabis in Canada, local municipalities in Ontario are quickly trying to decipher the related Federal and Provincial legislation in order to evaluate and understand how it may impact their communities. From a land use planning perspective, there are two main areas which need to be considered and addressed. This includes zoning related to the retail sale of recreational cannabis and zoning related to the production of cannabis.

Recreational Cannabis Retail Sales and Zoning/Land Use

As per Section 42(2) of the *Cannabis Licencing Act*:

"the authority to pass a by-law under section 34, 38 or 41 of the Planning Act does not include the authority to pass a by-law that has the effect of distinguishing between a use of land, a building or a structure that includes the sale of cannabis and a use of land, a building or a structure that does not include the sale of cannabis."

Section 34 of the *Planning Act* relates to zoning by-laws, Section 38 to interim control by-laws and Section 41 to site plan control by-laws.

Under normal circumstances, municipalities would be permitted to impose zoning requirements, such as separation distances from sensitive land uses (i.e. residential, institutional, open space, etc.). In this situation, the Province has established through regulation that recreational cannabis retail stores cannot be located less than 150 metres from a school (private schools as defined in the *Education Act* are included). If the school is the primary or only occupant of the building, the 150 metres shall be measured from the property line. If the school is not the primary or only occupant of a building, 150 metres shall be measured from the boundary of any space occupied by the school within the building. This separation distance not only impacts the location of

future cannabis retail stores in relation to schools but also, conversely, the location of futures schools in relation to cannabis retail stores. The Province has not established any other separation distance requirements under the regulations.

As also prescribed by the regulations, recreational cannabis retail stores are only permitted to sell cannabis, cannabis accessories and shopping bags. Therefore, grocery stores or other general retail stores which offer other goods for sale will not be issued a licence from the AGCO to sell recreational cannabis within such stores. The regulations are provided as Attachment 1 for information purposes.

Should Council “opt-out” by January 22, 2019, the AGCO will not issue licences to operators looking to establish a recreational cannabis retail store within the Town of Georgina. In this regard, there will be no impact on the municipality from a zoning perspective.

Should Council “opt-in”, as already mentioned the municipality will not be able to regulate cannabis retail stores through zoning, however a separation distance of 150 metres will be required from schools in accordance with Provincial licencing. Therefore, it is important to understand which use a cannabis retail store would be considered pursuant to Zoning By-law No. 500 and as a result, what zone(s) it would be permitted in.

Zoning By-law No. 500 (ZBL 500) contains six (6) different commercial zones:

- General Commercial (C1);
- Highway Commercial (C2);
- Local Commercial (C3)
- Shopping Commercial (C4);
- Tourist Commercial (C5); and,
- Recreation Commercial (C6).

Within these six (6) zones, four (4) different types of retail uses are permitted, each having its own definition:

- retail store – means a building in which goods, wares, merchandise, substances, articles or things are offered or kept for sale directly to the public at retail;
- retail store, convenience – means a retail store not exceeding 190 square metres in floor area;
- retail store, marine – means a retail store which primarily sells marine related goods, merchandise, substances, articles or things, including fishing equipment and boat rentals and services; and,
- retail store, supermarket – means a self-service retail store selling groceries, staples such as tea, coffee, spices, and other products such as pharmacy

items, magazines, paper products, soft drinks, health and beauty aids, housewares, flowers, plants and other non-food articles.

Based on the above definitions, it is Staffs opinion that a cannabis retail store would be permitted in any zone that would permit general retail sales (i.e. a retail store or a convenience retail store). Therefore, and as illustrated in the below chart, a retail store or a convenience retail store are permitted within every Commercial zone, with the exception that a convenience retail store shall have a maximum floor area of 190 square metres.

Zone Category	Convenience Retail Store	Retail Store
General Commercial (C1)		✓
Highway Commercial (C2)	✓	
Local Commercial (C3)	✓	
Shopping Centre Commercial (C4)		✓
Tourist Commercial (C5)	✓	
Recreation Commercial (C6)	✓	

Production of Cannabis

A licence is required from Health Canada in order to cultivate (i.e. grow) cannabis in Canada, whether it be for medical or recreational purposes. The three types of cannabis cultivation licences include a standard licence, micro licence and nursery licence. A holder of any of the three licences would be permitted to grow cannabis either indoor or outdoor, subject to meeting certain security requirements of their licence.

In addition to permitting the growing of cannabis, a standard and micro cultivation license also permits the drying, trimming and milling of cannabis as ancillary uses. Whereas, a nursery licence only permits the drying of cannabis as an ancillary use. In accordance with the regulations, cannabis must be produced, packaged, labelled, stored, sampled and tested indoors.

It should also be pointed out that municipal zoning requirements must be complied with when cultivating/producing cannabis under any of the three licences noted above.

Given that cannabis production in Ontario is a relatively new land use, the potential impacts on sensitive land uses are not fully understood. In conducting preliminary research on the topic of cannabis cultivation and associated impacts, it has come to Staff's attention that the main concerns and complaints expressed by the public in relation to existing cannabis production facilities include noxious odours and lighting. Other concerns may include whether the use is considered an agricultural or industrial use (i.e. using agricultural land for an industrial use) and water supply requirements.

Zoning for Cannabis Cultivation/Production

Unlike the retail sale of recreational cannabis in Ontario, municipalities are permitted to specifically define and further regulate the production of cannabis through zoning. When

considering how to approach the production of cannabis from a zoning perspective, there are three (3) options for Council to consider:

1. Utilize existing zoning – Rely on the existing zoning by-law definitions and provisions to locate new cannabis production facilities (CPF); or,
2. Permit them with specific zoning requirements – Define a CPF and establish criteria that regulate the use in one or more zones; or,
3. Require site-specific zoning by-law amendments – Define a CPF, but do not permit the use in any zone. A site-specific zoning by-law amendment (ZBA) would be required in order to establish a new CPF.

Option 1 – Utilize Existing Zoning

In accordance with ZBL 500, it is Staff's opinion that the cultivation of cannabis would be permitted within Georgina under the following uses:

- Use, Agricultural/Aquacultural: means the use of land or water, building or structure for the purpose of the growing of field crops, sod, flowers, vegetables, berry crops and tree crops, and including nurseries, aviaries, apiaries or farms for the grazing, breeding, raising, boarding or training of livestock or fish, or any other similar use carried on in the field of general agriculture and including the sale of such produce, crops, fish or livestock on the same lot.

Note: Agricultural/aquacultural uses are only permitted within the Rural (RU) zone, subject to compliance with the non-residential provisions.

- Marihuana Production Facility: means a wholly enclosed building or structure used for the growing, producing, harvesting, testing, destroying, storing, packaging, or distribution of marihuana or cannabis, used for purposes as authorized by a license issued by the federal Minister of Health, pursuant to Section 25 of the Marihuana for Medical Purposes Regulations, SOR/2013-119, under the Controlled Drugs and Substances Act, SC 1996, c.19, as amended, or its successor. For purposes of clarification, no part of the operation, whether accessory or not, may be located outside.

Note: A marihuana production facility is only permitted within the Business Park 3 (BP-3) zone, subject to compliance with the non-residential provisions.

The two uses defined above would permit cannabis cultivation within either the RU or BP-3 zones. The Town Solicitor has also reviewed and concurs with Staff's opinion in this regard.

The RU zone would permit cannabis to be grown indoors and outdoors. Buildings containing indoor cannabis production would be required to comply with the provisions for non-residential uses in the RU zone. Should cannabis be grown outdoors as a field

crop, it would be permitted to be grown anywhere on the property. In both circumstances, no provisions are currently in place to mitigate potential impacts such as noxious odours and lighting (i.e. minimum distance setbacks from residential uses/zones or other sensitive land uses). On the other hand, the BP-3 zone which is only located within the Keswick Business Park, only permits cannabis to be grown indoors where such a building complies with the provisions for non-residential uses in the BP-3 zone.

As noted earlier, the growing of cannabis in the RU zone would be permitted as an agricultural use, whether it be done indoors or outdoors. It is also reasonable that a certain level of processing of the cannabis would be expected as an accessory use. However, at what point does the operation become more than just an “agricultural use” (i.e. manufacturing or industrial use)?

Staff have posed the above question to the Town Solicitor who has explained under what circumstances the packaging, labelling, storing and testing/sampling of cannabis would be considered an accessory use to a permitted agricultural use. In summary, packaging, labelling, storing and sampling/ testing of cannabis would only be considered an accessory use to an agricultural use if it is simply for the purposes of transporting the cultivated cannabis to another destination. Packaging and labelling will not qualify as an accessory use if it is for the purpose of packaging the product for use by the final consumer. Similarly, testing/sampling the cannabis will only qualify as an accessory use if it is quality testing a batch, not testing cannabis for research or analysis purposes. Staff have reviewed and concur with the Town Solicitor’s opinion. The full response from the Solicitor is provided as Attachment 2.

The Federal Government has advised that draft regulations related to the production and sale of edible cannabis products are expected to be released by the end of this year and in force and effect for October of 2019. In Staff’s view, taking cannabis and processing it into different forms of edible products would be considered an industrial use and would also fall under the definition of a Marihuana Production Facility pursuant to the By-law. Industrial uses and Marihuana Production Facilities, as defined by ZBL 500, are only permitted in the Business Park 1 (BP-1), Business Park 2 (BP-2), BP-3, Restricted Industrial (M1) and General Industrial (M2) zones.

It is also important to note that agricultural uses are exempt from Site Plan Control (SPC) approval, so unless the SPC by-law is amended, these facilities would not be subject to SPC if they are considered to be an agricultural use and within the RU zone.

Option 2 – Permit Them Subject to Specific Zoning Requirements

With this option, Staff would undertake a general ZBA in order to create a definition for a CPF (or a similar name) within the Zoning By-law. The Town would also determine which zones the use may be permitted in and create a set of zoning standards which would apply. Depending on what type of use a CPF is considered (i.e. agricultural vs. industrial vs. agricultural/industrial) and where it is located, SPC may or may not be required.

Option 3 – Require Site-Specific Zoning By-law Amendments

The only difference between Option 2 and Option 3 is that a CPF would not be permitted in any zones “as-of-right” and therefore, a site-specific ZBA would be required to establish the use on any property. This would allow Council, Staff and the public the opportunity to review every proposal for these types of facilities within the community. In order to rationalize the merits of an application for a new facility, a general Official Plan Amendment (OPA) may also be needed which would incorporate applicable policies in this regard.

Preferred Option

Although Option 1 may be the easiest and quickest approach to deal with the issue of cannabis production from a zoning perspective, it is also the option which generates the most questions and uncertainty given that it does not adequately address the potential impacts that may arise from cannabis cultivation in close proximity to residential or other sensitive land uses (i.e. churches, schools, parks, playgrounds, etc.) For these reasons, this option has the potential to cause the greatest public concern and impact. In the opinion of Staff, Option 1 is not recommended.

Options 2 and 3 are similar in that they will allow the municipality to further evaluate CPFs and develop use-specific definitions and provisions. Given the relatively new nature of this type of land use and that the potential impacts on sensitive land uses as a result of these facilities have not yet been fully evaluated and understood, it is recommend that Planning Staff be directed to initiate a land use planning study regarding zoning for CPFs. Following this study, Staff will be in a better position to recommend a specific course of action with respect to zoning for CPFs.

With the introduction of the new legislation, Development Services Staff have already begun receiving inquiries with respect to CPFs and what zone(s) they are permitted in. In considering the existing definitions in ZBL 500, it would be difficult for Building Division Staff to justify not issuing a building permit for an agricultural use (i.e. a possible CPF in a RU zone) which complies with the zoning provisions. Therefore, in order to prevent CPFs from establishing within the municipality as an agricultural use in the RU zone while Staff are undertaking the land use planning study, Staff recommend that Council pass an interim control by-law (ICB) to this effect.

Section 38 of the *Planning Act* allows Council to pass an ICB where Council has directed a review or study to be undertaken with respect to land use planning policies in any defined area or areas. This By-law may be in effect for a period which shall not exceed one year from the date of passing, and would restrict the use of lands, buildings or structures within the defined area or areas, for such purposes as are set out in the By-law. Council may, if necessary, extend the period of time that the By-law is in effect, provided the time period does not exceed two (2) years from the date of passing.

Staff note that there is no requirement under the provisions of the *Planning Act* to provide notice or hold a public meeting prior to the passing of an ICB, however, the Clerk shall provide notice of a By-law passed under Section 38 within thirty (30) days of passing.

Only the Minister may appeal the passing of an ICB, of which must be done within sixty (60) days of the date of passing of the by-law.

In consideration of the foregoing, a recommendation has been included in Section 1 of this Report providing direction to Planning Staff to prepare an ICB for Council's consideration and passing at the January 16, 2019 Council meeting. The ICB will prohibit the production of cannabis within the RU zone for a period of one (1) year in order to allow the municipality to study CPFs and develop an appropriate approach for zoning the use.

5. RELATIONSHIP TO STRATEGIC PLAN:

This report addresses the following strategic goal:

GOAL 2: "Promote a High Quality of Life" – HEALTHY, SAFE, SUSTAINABLE COMMUNITIES.

6. FINANCIAL AND BUDGETARY IMPACT:

The Minister of Finance announced funding for all municipalities through the Ontario Cannabis Legalization Implementation Fund ("Fund"). Georgina received its allocation notice in the amount of \$24,408 which will be received in January of 2019. Municipalities must use the funds solely for the purpose of paying for implementation costs directly related to legalization of cannabis examples include increased enforcement, increased response to public inquiries, increased paramedic services, increased fire services and by-law-policy development.

For the second payment of funds the Minister of Finance has advised that the Province will distribute \$15 Million of the Fund between all municipalities based on the following:

- If a municipality has not opted-out of hosting private retail stores in accordance with *Cannabis Licence Act*, it will receive funding based on the 2018 MPAC household numbers, adjusted so that at least \$5,000 is provided to each municipality.
- If a municipality has opted-out of hosting private retail stores in accordance with the *Cannabis Licence Act*, it will receive a maximum amount of \$5000. If a municipality opts-out by January 22, 2019, and opts back in at a later date, the municipality will not be eligible for additional funding.

Second payments will be based on the above criteria and allocation notices will be received in March 2019.

7. PUBLIC CONSULTATION AND NOTICE REQUIREMENTS:

Not applicable.

8. CONCLUSION:

Following the December 12th meeting, the Municipal Law Enforcement Division, Parks and Facilities Division and the Department of Recreation and Culture will meet to determine the preferred option respecting consumption of cannabis on Town properties and if necessary, prepare by-laws to this effect for Council's consideration at the January 16, 2019 Council meeting.

Further, subject to Council's direction, Planning Staff will prepare an ICB for Council's consideration and passing at the January 16, 2019 Council meeting.

At the January 16, 2019 Council meeting, Staff will be reporting to Council seeking direction with respect to Council's desire to "opt-in" or "opt-out" with regard to the retail sale of cannabis within the municipality.

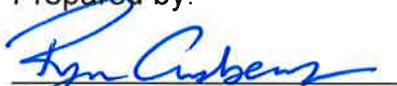
In consideration of the foregoing, Staff recommend that Council approve the recommendations contained in Section 1 of this report.

Prepared by:



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Senior Policy Planner

Prepared by:



Ryan Cronsberry
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Director of Development Services

Reviewed by:



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Acting C.A.O.

Approved by:



Winanne Grant, B.A., AMCT, CEMC
Chief Administrative Officer

November 28 2018

Tolek Makarewicz

From: Mariam Awan <mawan@ritchieketcheson.com>
Sent: November-26-18 3:49 PM
To: Tolek Makarewicz
Cc: Harold Lenters; Andrew Biggart; Jacqui Wice
Subject: RE: Legal Opinion on Zoning for Cannabis Production

Hi Tolek,

You posed the following question for us:

In considering the Town’s definition of agricultural/ aquacultural use, would the production, packaging, labelling, storing, sampling and testing of cannabis be permitted as an agricultural use or accessory/ ancillary to the agricultural use, within the Rural (RU) zone? Or would this aspect of cannabis cultivation be considered an industrial use in itself and not be permitted under an agricultural use?

The Definition of Cannabis Production

In order to answer this question, we need to unpack what you mean by “production”. Under the federal *Cannabis Act*, **produce**, in respect of cannabis, “means to obtain it by any method or process, including by

- (a) Manufacturing
- (b) Synthesis
- (c) Altering its chemical or physical properties by any means; or
- (d) Cultivating, propagating or harvesting it or any living thing from which it may be extracted or otherwise obtained.”

The federal *Cannabis Regulations* (the “*Regulations*”) delineate 6 class of licences that authorize activities in relation to cannabis:

1. a licence for cultivation
 - a. a licence for micro-cultivation
 - b. a licence for standard cultivation
 - c. a licence for a nursery
2. a licence for processing
 - a. a licence for micro-processing
 - b. a licence for standard processing
3. a licence for analytical testing
4. a licence for sale
 - a. A licence for sale for medical purposes
5. a licence for research
6. a cannabis drug licence

Out of these 6 classes of licences, “producing” cannabis could be through both a licence for cultivation or a licence for processing.

Section 11 (b) of the *Regulations* states that **cultivation** entails obtaining dried cannabis, fresh cannabis, cannabis plants or cannabis plant seeds by cultivating, propagating and harvesting cannabis. Section 13 (1) (a) of the *Regulations* states that **micro-cultivation** is the same as standard cultivation but is subject to a 200 square metre surface area limit. Section 14 (1) (b) of the *Regulations* states that a licence for a **nursery** is the same as standard cultivation but it is limited to the cultivating cannabis plants and cannabis plant seeds, not dried or fresh cannabis. Under the Town’s Zoning By-Law 500, cultivation would fall under “Agricultural/ Aquacultural” use.

In contrast to cultivation, Section 17 (b) states that **processing** cannabis entails producing cannabis other than by cultivation, propagating or harvesting it. Section 17 (2) (b) of the *Regulations* states that **micro-processing** is the same as standard processing, but with micro-processing, the production of cannabis by synthesis is prohibited. Under the Town's Zoning By-Law 500, processing would fall under "Industrial" use.

Accessory Use

The Federal licencing scheme accounts for the fact that cultivating cannabis would include ancillary activities. For instance, section 11(3) of the *Regulations* states that a licence for cultivation includes the ability to conduct ancillary activities such as drying, trimming and milling cannabis. Similarly, activities such as packaging, labelling, storing, and testing of cannabis may be permitted as "Use, Accessory" under By-Law 500. This category is defined in the Town's By-Law as, "a use naturally and normally incidental, subordinate in purpose and floor area, and exclusively devoted to a main use of land, building or structure located on the same lot". Packaging, labelling, storing and testing cannabis for quality control can be subordinate to cultivating (growing) cannabis, depending on how they are defined. For instance, testing cannabis would only be considered an ancillary use if the testing occurs for the purposes of determining the quality of a batch of product. Testing cannabis would not be considered an ancillary use if the testing occurs for the purposes of analysis or research.

Similarly, packaging, labelling, and storing cannabis must be for purposes that are incidental to producing cannabis. For instance, once cannabis is produced, it is necessary to store it prior to shipping it elsewhere. However, a distinction can be made between packaging and labelling cannabis for the purposes of selling it to other licensees under the federal scheme, Health Canada, or government laboratories versus packaging product for retail sale to the final consumer. Packaging and labelling cannabis for final consumers would not be considered a use that is ancillary to "Agricultural/ Aquacultural" as it entails an entirely new dimension of retail that is not subordinate to agricultural use.

In summary, considering the definition of "Agricultural/ Aquacultural" use under Town's By-Law 500, *cultivating* cannabis would be permitted as an "Agricultural/ Aquacultural" under the By-Law. Packaging, labelling, storing, sampling/ testing cannabis would only be considered an accessory to "Agricultural/ Aquacultural" use if it is simply for the purposes of transporting the cultivated cannabis to another destination. Packaging and labelling will not qualify as an accessory use if its for the purpose of packaging the product for use by the final consumer. Similarly, testing the cannabis will only qualify as an accessory use if it is quality testing a batch, not testing cannabis for research or analysis purposes.

I trust that answers your question. Please feel free to contact me or Andrew if you have any further questions or require clarification on anything.

Thank you.

Best,

Mariam

Mariam Awan
Associate

Ritchie Ketcheson
Hart & Biggart

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Français**ONTARIO REGULATION 468/18**

made under the

CANNABIS LICENCE ACT, 2018

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23. Notice of resolution

COMMENCEMENT

24. Commencement
- Schedule 1 Cannabis retail seal

Interpretation

1. In this Regulation,

"licensed producer" means a person who is authorized by a licence issued under the *Cannabis Act* (Canada) to produce cannabis for commercial purposes.

Affiliates

2. (1) In paragraph 2 of subsection 4 (4) of the Act and this Regulation, an affiliate of a person is,

- (a) a corporation that is affiliated with the person for the purposes of the *Business Corporations Act*, as set out in subsection 1 (4) of that Act;
- (b) a corporation that is affiliated with another corporation in the manner referred to in clause (a), if that other corporation is at the same time affiliated with the person in that manner;
- (c) a corporation of which the person beneficially owns or controls, directly or indirectly, shares or securities currently convertible into shares carrying more than 9.9 per cent of the voting rights under all circumstances or by reason of the occurrence of an event that has occurred and is continuing, or a currently exercisable option or right to purchase such shares or such convertible securities;
- (d) a partner in the same partnership as the person;
- (e) a trust in which the person has a substantial beneficial interest, whether vested or contingent, or with respect to which the person acts as a trustee;
- (f) a member of the same joint venture, unincorporated association, unincorporated syndicate or unincorporated organization as the person; or
- (g) a person who is deemed under subsection (2) or (3) to be an affiliate of the person or an affiliate of an affiliate of the person.

(2) A person is deemed to be an affiliate of another person if the person is a corporation and the other person, or a group of persons or entities acting jointly or in concert with the other person, owns a beneficial interest in shares of the corporation,

- (a) carrying at least 50 per cent of the votes for the election of directors of the corporation and the votes carried by the shares are sufficient, if exercised, to elect a director of the corporation; or
- (b) having a fair market value, including a premium for control if applicable, of at least 50 per cent of the fair market value of all the issued and outstanding shares of the corporation.

(3) A person is deemed to be an affiliate of another person if the other person, or a group of persons or entities acting jointly or in concert with the other person, has any direct or indirect influence that, if exercised, would result in control in fact of that person.

(4) Subsections (2) and (3) apply with respect to a group of persons or entities acting jointly or in concert with another person whether or not they are acting pursuant to an agreement or arrangement.

GENERAL INELIGIBILITY**Ineligibility, prescribed offences**

3. The following offences are prescribed for the purposes of paragraph 3 of subsection 3 (4) of the Act, paragraph 2 of subsection 4 (6) of the Act and paragraph 2 of subsection 5 (4) of the Act:

- 1. An offence under the Act.
- 2. An offence under section 6, 7, 8, 8.1, 13 or 15 of the *Cannabis Control Act, 2017* or, before the day on which section 1 of Schedule 1 to the *Cannabis Statute Law Amendment Act, 2018* came into force, the *Cannabis Act, 2017*.
- 3. An offence under Division 1 of Part 1 of the *Cannabis Act* (Canada).

Ineligibility, contravention of prescribed provisions

4. The following provisions are prescribed for the purposes of paragraph 4 of subsection 3 (4) of the Act, paragraph 3 of subsection 4 (6) of the Act and paragraph 3 of subsection 5 (4) of the Act:

- 1. Sections 6, 7, 8, 8.1, 13 and 15 of the *Cannabis Control Act, 2017* or, before the day on which section 1 of Schedule 1 to the *Cannabis Statute Law Amendment Act, 2018* came into force, the *Cannabis Act, 2017*.
- 2. Sections 8, 9, 10, 11, 12, 13 and 14 of the *Cannabis Act* (Canada).

Prescribed offences under *Controlled Drugs and Substances Act* (Canada)

5. Sections 4, 5, 7 and 7.1 of the *Controlled Drugs and Substances Act* (Canada) are prescribed for the purposes of subsections 3 (6) and 5 (5) of the Act.

Retail operator licence, compliance with tax laws

6. A person is not eligible to be issued a retail operator licence if any of the following circumstances apply, as confirmed by the Ministry of Finance for the purposes of the application for the licence:

- 1. The person is in default of filing a return under a tax statute administered and enforced by the government of Ontario, or of paying any tax, penalty or interest assessed under any such statute for which payment arrangements have not been made.
- 2. If the person has a business number with the Canada Revenue Agency, the person is in default of filing a return under the *Taxation Act, 2007*, the *Income Tax Act* (Canada), Part IX of the *Excise Tax Act* (Canada) or an Act of another province or territory that imposes a tax on corporations and is administered and enforced by the Canada Revenue Agency.

Retail operator licence, corporation owned by licensed producer

7. A corporation is not eligible to be issued a retail operator licence if more than 9.9 per cent of the corporation is owned or controlled, directly or indirectly, by one or more licensed producers or their affiliates.

Ineligibility, other circumstances

8. A person is not eligible to be issued a licence or authorization under the Act if the person is or has been a member of a criminal organization as defined in subsection 467.1 (1) of the *Criminal Code* (Canada), or is or has been involved in, or contributes or has contributed to, the activities of such an organization.

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.

Maximum permissible authorizations

12. The Registrar shall refuse to issue a retail store authorization if,

- (a) the applicant already holds 75 retail store authorizations; or
- (b) the applicant and its affiliates between them already hold 75 retail store authorizations.

Display of authorization

13. It is a condition of a retail store authorization that the holder display the authorization in a conspicuous place in the cannabis retail store.

Distribution services

14. (1) It is a condition of a retail store authorization that the holder not enter into contracts or agreements with any person or entity for the provision of cannabis distribution services.

(2) Subsection (1) does not apply with respect to,

- (a) a contract or agreement with the Ontario Cannabis Retail Corporation or with a person or entity acting under a contract to provide distribution services to or on behalf of the Ontario Cannabis Retail Corporation; or
- (b) a contract of employment with the holder to work in a cannabis retail store.

REVOCATIONS AND SUSPENSIONS

Revocation without proposal, prescribed contraventions

15. For the purposes of clause 11 (3) (c) of the Act, section 9 of the *Cannabis Act* (Canada) is prescribed.

16. (1) If a retail store authorization is suspended, the holder shall prominently display a sign respecting the suspension in a conspicuous place that is visible from the exterior of the public entrance to the cannabis retail store.

(2) The sign referred to in subsection (1) shall be in the form approved by the Registrar and shall be displayed for the duration of the suspension.

OPERATION OF CANNABIS RETAIL STORES

Permissible hours of operation

17. A cannabis retail store is authorized to be open to the public between 9:00 a.m. and 11:00 p.m. on any day.

Additional items that may be sold

18. For the purposes of paragraph 2 of section 18 of the Act, the holder of a retail store authorization may sell the following items at a cannabis retail store:

1. Cannabis accessories within the meaning of subsection 2 (1) of the *Cannabis Act* (Canada).
2. Shopping bags.

Cannabis retail seal

19. (1) For the purposes of subsection 7 (2) of the Act, the holder of a retail store authorization shall, in accordance with this section, prominently display the cannabis retail seal set out in Schedule 1 to this Regulation.

(2) The cannabis retail seal shall be displayed in a conspicuous place that is visible from the exterior of the public entrance to the cannabis retail store.

(3) The displayed cannabis retail seal shall be at least 17 centimetres in width at its widest point by 20 centimetres in height.

(4) Either the French version, the English version or both versions of the cannabis retail seal may be displayed.

(5) The holder of a retail store authorization that is revoked or fails to be renewed shall ensure that the cannabis retail seal is removed from display as soon as practicable after the revocation or non-renewal.

Preventing entry of individuals under 19 years of age

20. (1) The holder of a retail store authorization shall ensure that no individual who appears to be under 25 years of age is permitted to enter the cannabis retail store unless the holder or an employee of the holder has required the individual to provide a form of identification prescribed for the purposes of subsection 7 (2) of the *Cannabis Control Act, 2017* and the holder or employee is satisfied that the individual is at least 19 years of age.

(2) For the purposes of subsection (1), subsection 7 (3) of the *Cannabis Control Act, 2017* applies with necessary modifications.

Training requirements

21. (1) The Board may approve training courses or programs, including but not limited to training courses or programs respecting,

- (a) the responsible sale of cannabis;
- (b) record keeping requirements under the Act; and
- (c) measures required to be taken under the Act to reduce the risk of cannabis being diverted to an illicit market or activity.

(2) The following individuals are required to successfully complete training courses or programs approved under subsection (1):

1. Holders of a retail store authorization.
2. Holders of a cannabis retail manager licence.
3. Individuals employed to work in a cannabis retail store.

(3) The holder of a retail store authorization shall ensure that every holder of a cannabis retail manager licence or other individual employed to work in the cannabis retail store meets the requirements of subsection (2).

MATTERS RESPECTING MUNICIPALITIES

Notice of resolution

22. (1) For the purposes of subsection 41 (5) of the Act, a municipality shall provide to the Registrar written notice of a resolution passed under that section no later than three business days after the resolution is passed.

(2) Despite subsection (1), notice of a resolution referred to in subsection 41 (1) of the Act shall not be provided to the Registrar later than January 22, 2019.

(3) In subsection (1),

"business day" means a day from Monday to Friday, other than a holiday.

MATTERS RESPECTING RESERVES

Notice of resolution

23. For the purposes of subsection 43 (5) of the Act, a council of the band shall as soon as practicable after the passing of a resolution referred to in that section

COMMENCEMENT

Commencement

24. This Regulation comes into force on the later of the day clause 49 (1) (a) of Schedule 2 to the *Cannabis Statute Law Amendment Act, 2018* comes into force and the day this Regulation is filed.

SCHEDULE 1
CANNABIS RETAIL SEAL



Text alternative: Illustration of English cannabis retail seal consisting of "ONTARIO AUTHORIZED" in white capitalized text, above a white horizontal line, above an illustration of a white trillium, on a black background with a white border. This text alternative is provided for convenience only and does not form part of the official law.



Text alternative: Illustration of French cannabis retail seal consisting of "DÉTAILLANT AUTORISÉ EN ONTARIO" in white capitalized text, above a white horizontal line, above an illustration of a white trillium, on a black background with a white border. This text alternative is provided for convenience only and does not form part of the official law.