Planning Services Report

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Report To: Planning and Development Committee
Date of Meeting: March 11, 2019
Report Number: PSD-017-19 Resolution:
File Number: PLN 12.12 By-law Number:
Report Subject: Cannabis Retail Stores Siting Policy

Recommendations:

1. That Report PSD-017-19 be received;

2. That the draft Municipal Cannabis Retail Store siting policy (Attachment 1 to Report PSD-017-19) be approved; and

3. That any interested parties be notified of Council’s decision.
1. Background

1.1 On January 15, 2019 Clarington Council approved Resolution #C-016-19, which permits cannabis retail stores in the Municipality of Clarington. That Resolution also directs staff to draft a Municipal Cannabis Retail Store siting policy for Council’s approval.

1.2 The primary purpose of the siting policy is to provide direction to municipal staff when reviewing individual applications for retail cannabis stores in Clarington and preparing written submissions to the Alcohol and Gaming Commission of Ontario (AGCO).

1.3 The siting policy will also assist prospective cannabis retailers in identifying appropriate locations for cannabis retail stores in the Municipality.

2. Scope of Siting policy

2.1 The Cannabis License Act, 2018 and O. Reg. 468/18 provide municipalities the opportunity to provide written submissions in response to a proposed cannabis retail store. A municipality has fifteen days to provide comments, once AGCO has posted an application for a new store on their website.

2.2 O. Reg. 468/18 clearly states the AGCO will only consider written submissions that address the public interest, which is defined as follows:

   1. Protecting public health and safety;
   2. Protecting youth and their access to cannabis; and
   3. Preventing illegal cannabis activities.

2.3 The draft recommended Municipal Cannabis Retail Store Siting policy has been developed based on the recommended draft statement developed by AMO, plus review of the legislation, planning principles, and municipal staff input. Draft statements of other municipalities have also been taken into consideration.

3. Existing Regulations and Standards

3.1 The Cannabis License Act, its associated Regulations, and the AGCO’s Standards provide some regulations for cannabis retail stores.
3.2 Subsection 20(1) of O. Reg. 468/18 states that licensees must ensure that no individual who appears to be under 25 years of age is permitted to enter the cannabis retail store unless they can produce photo ID. No one under the age of 19 is permitted in a cannabis retail store.

3.3 The Cannabis License Act, 2018 and O. Reg. 468/18 provide the AGCO with the authority to establish standards and requirements. These have been published as the “Registrar’s Standards for Cannabis Retail Stores.” These Standards are the regulations and requirements cannabis retail store licensees are required to adhere to. There are strict store requirements in place for advertising, visibility of product, and access to the product. Highlights of the Registrar’s Standards include:

- Stores must have a secure, high resolution surveillance system and cannabis must be securely stored at all times;
- Cannabis and accessories are prohibited from being visible from the exterior of the premises;
- Licensees must take reasonable measures to ensure patrons are not purchasing cannabis or accessories for minors;
- The exterior signage of stores must not communicate information about cannabis, appeal to young persons, or promote cannabis in a positive manner; and
- Licensees may only promote cannabis within the store, and promotion is limited to factual information (e.g. price and availability).

4. **Correspondence**

4.1 The Municipality has received correspondence from Municipal Solutions with a wording request for zoning or licensing (attachment 2). They request that preference be given to cannabis retail stores “that have a Health Canada approved medicinal cannabis health clinic with a medical practitioner on site”.

4.2 The Municipality is prohibited from regulating cannabis retail stores through zoning or licensing and thus unable to satisfy this request. As well, during the 15-day notification period, staff would be unable to determine if a proposed cannabis retail store would have a health clinic or medical practitioner on site.

4.3 The Municipality has received correspondence from the Peterborough, Victoria, Northumberland, and Clarington Catholic District School Board (attachment 3). Their letter expresses concern that the AGCO’s 150 metre minimum setback from schools is too close, and requests the Municipality implement a distance of 500 metres. Their concern is related to the perception that there is nothing preventing students from gathering near these stores or students recruiting adults to make purchases on their behalf.
4.4 The Municipality is prohibited from regulating cannabis retail stores through zoning and is thus unable to implement a greater distance from schools. Furthermore, the AGCO has indicated that they will not consider greater minimum distances to schools as they have decided 150 metres is sufficient in light of other measures to ensure youth are not exposed to cannabis. Nuisance by-laws (such as By-law 2011-099) can be used to disperse students if they are found gathering around cannabis retail stores. As noted above, the Registrar’s Standards include the requirement that licensees must take measures to ensure patrons are not purchasing for youths. It should also be emphasized that persons under 19 are not only prohibited from purchasing cannabis, but are prohibited from even entering cannabis retail stores.

4.5 The Municipality received a letter from Dr. Robert Kyle, Commissioner & Medical Officer of Health, in which he expresses numerous concerns about cannabis use in general (attachment 4). Dr. Kyle’s letter lists a great number and variety of uses that he feels should have minimum setbacks from cannabis retail stores.

4.6 As noted, municipalities are prohibited from zoning cannabis retail stores, meaning the Municipality cannot impose setbacks. However, some of the uses Dr. Kyle lists fall within the defined “public interest” and are addressed in the Siting policy (e.g. discouraging cannabis retail stores nearby properties designed to serve youth).

5. Concurrence

This report has been reviewed by the Municipal Clerk and Municipal Solicitor who concur with the recommendations.

6. Conclusion

In support of Council’s decision to “opt in” and allow for cannabis retail sales within the Municipality of Clarington, the draft Municipal Cannabis Retail Store siting policy (attachment 1) is recommended to Council for adoption. The draft Policy contemplates the legislative restrictions, planning principles, the health and safety of our community, the need for limiting access to cannabis for our youth, and the desire to mitigate illegal cannabis activities.
Submitted by: Michael Seamen, MCIP, RPP, Director of Planning Services
Reviewed by: Andrew C. Allison, B. Comm, LL.B
CAO

Staff Contact: Mark F. Jull, Planner 1, 905-623-3379 x2426 or mjull@clarington.net

Attachments:
Attachment 1 – Municipal Cannabis Retail Store Siting policy
Attachment 2 – Correspondence from Municipal Solutions
Attachment 3 – Correspondence from Peterborough, Victoria, Northumberland, and Clarington Catholic District School Board
Attachment 4 – Correspondence from Dr. Robert Kyle

A list of interested parties is available in the Planning Services Department.
Municipal Cannabis Retail Store Siting Policy
March 18, 2019

On January 15, 2019 Clarington Council approved Resolution #C-016-19, which permits cannabis retail stores in the Municipality of Clarington. That Resolution also directed staff to draft a Municipal Cannabis Retail Store siting policy for Council’s approval.

1 Purpose

The purpose of this siting policy is to provide direction to municipal staff when preparing written submissions to the Alcohol and Gaming Commission of Ontario (AGCO) if a cannabis retail store is proposed to be located within the Municipality of Clarington.

This siting policy will also assist prospective recreational cannabis retailers in identifying appropriate locations for cannabis retail stores in the Municipality.

2 Background and Context

Clarington has chosen to allow cannabis retail stores within the Municipality.

The AGCO is the provincial authority that licenses cannabis retail operators, authorizes cannabis retail locations, and licenses senior store staff. Municipal governments have no licensing authority. Municipal governments are prohibited from passing a by-law for the purpose of regulating cannabis retail stores any differently than other retail stores.

The AGCO regulates and reviews all aspects of the retail operation including municipal and public input, and that the proposed store location is consistent with the public interest as defined in the regulations.

The AGCO will not directly inform the Municipality of an application for a cannabis retail store, but will post a notice on the AGCO’s website. The AGCO will consider written submissions from the Municipality for a period of 15 days after the application notice has been posted.

Only written submissions that address the public interest (as defined) will be considered by the AGCO.

The public interest is defined as:

1. Protecting public health and safety
2. Protecting youth and their access to cannabis
3. Preventing illegal cannabis activities
The following provides municipal staff with guidance when preparing written comments to be submitted to the AGCO when a cannabis retail store is proposed in the Municipality.

3 Definitions
Cannabis Retail Store: A store licensed by the Alcohol and Gaming Commission of Ontario to sell cannabis.

4 Principles for Cannabis Retail Store Locations

4.1 Relationship to Other Applicable Law

Land Use Planning: The provincial licensing process does not remove the requirement to comply with the zoning by-law and other municipal planning documents. The definitions within the municipality’s Official Plan and Zoning By-law are applicable to all retail, including cannabis retail stores. Retail sale of cannabis from a provincially licensed store is legal and the Municipality permits cannabis retail stores where retail uses are permitted, subject to the policy directions outlined in this Cannabis Retail Siting policy.

Municipal Building Inspections: While the licensing of the store operation is the responsibility of the AGCO, the Building Code applies to cannabis retail store locations. Therefore, where a building permit is required, the Municipal Building Inspector will undertake duties as usual. Ontario Fire Code compliance is also mandatory.

4.2 Permitted Zones

Subject to the policy directions outlined in this Cannabis Retail Store Siting policy and the respective Zoning By-laws’ regulations, cannabis retail stores are permitted where Zoning By-law 84-63 permits a “Retail Commercial Establishment” or a “Retail Store.” These zones include but are not limited to:

- C1 (including all C1 exception zones that permit a “Retail Commercial Establishment”);
- C3 (including all C3 exception zones that permit a “Retail Store”);
- C8 (including all C8 exception zones that permit a “Commercial/Retail Establishment”); and
- C9 (including all C9 exception zones that permit a “Commercial/Retail Establishment”).
4.3 Discouraged Zones
The Municipality discourages cannabis retail stores in buildings or neighbourhoods where the primary use is residential but commercial uses are permitted.

The discouraged zones include but are not limited to the following zones in Zoning By-law 84-63:

- Neighbourhood Commercial (C2) Zone (including all C2 exception zones); and
- Mixed-Use (MU) Zones which permit buildings containing apartments dwellings and at least one non-residential use (usually on the main floor).

The discouraged zones include but are not limited to the following zone in Zoning By-law 2005-109:

- Neighbourhood Commercial (C6).

4.4 Cannabis Retail Stores and Sensitive Uses
Only written submissions that address the public interest (as defined) will be considered by the AGCO.

The public interest is defined as:

1. Protecting public health and safety
2. Protecting youth and their access to cannabis
3. Preventing illegal cannabis activities

4.5 Protecting Public Health and Safety
In order to help protect public health and safety, a cannabis retail store should not be located within 150 metres of the following:

- Other cannabis retail stores, which helps to protect public health and safety by encouraging a diversity of uses in commercial areas and by dispersing stores which may lend themselves to smoking or consumption within the immediate vicinity of the stores; and

- Residences of the most vulnerable people in the community, which include addiction treatment centres and community based residential facilities (halfway houses).
4.6 Protecting Youth and their Access to Cannabis

In order to protect youth and restrict their access to cannabis, Section 11 of O. Reg. 468/18 prohibits the AGCO from permitting a cannabis retail store within 150 metres of a school.

For the same reasons, the Municipality discourages cannabis retail stores from properties within 150 metres of uses designed to serve youth.

These uses include:

- Libraries and recreation facilities that provide services for youths and families;
- Parkland designed for youth;
- Municipally operated drop-in centres for youth, including but not limited to:
  - The Firehouse Youth Centre (132 Church);
  - The Loft (1595 Prestonvale); and
  - The Newcastle Youth Centre (1780 Rudell).

4.7 Preventing Illegal Cannabis Activities

An express purpose of legalizing cannabis is to displace the illegal cannabis market. To assist in preventing illegal cannabis activities, cannabis retail stores are encouraged to adhere to the following general principles to help ensure equity of access to legal cannabis:

- Be located in different commercial areas of the Municipality;
- Be located in the Municipality’s “Gateway Commercial Centres” and “Urban and Village Centres” as defined in the Official Plan; and
- Be accessible by transit and active transportation.
From: John Mutton [mailto:jmutton@municipalsolutions.ca]
Sent: December-07-18 4:09 PM
Subject: Correspondence for the Council Agenda

Mayor and Members of Council,

On behalf of Cannapiece Corporation, the industry leader in health and regulatory compliance in the cannabis sector, we would respectfully ask Council to refer our zoning/licensing bylaw request to staff if Council chooses to "opt in" to recreational cannabis sales in your municipality.

Based on our expertise across North America, we would like to offer the following suggested wording to ensure that the recreational cannabis dispensaries have the highest compliance level, both for health and security of the patients/clients and the public.

We would request that "Preference be given to those recreational cannabis dispensaries that have a Health Canada approved medicinal cannabis health clinic with a medical practitioner on site"

Best Regards,

--
John Mutton | President and Chief Executive Officer

Municipal Solutions - Energy and Infrastructure

Cell: 905-441-0791

Municipal Solutions Energy and Infrastructure, LLC
USA | Canada

www.municipalsolutions.ca
December 18, 2018

The Honourable Lisa M. Thompson,
Minister of Education
Mowat Block, 22nd Floor
900 Bay Street
Toronto, Ontario M7A 1L2

The Honourable Caroline Mulroney
Attorney General
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, ON M7A 2S9

Dear Minister Thompson and Minister Mulroney:

We are writing on behalf of the Peterborough Victoria Northumberland and Clarington Catholic District School Board to express our concern over the decision to establish a minimum distance of 150 metres between the proposed Cannabis Stores and schools operated by district school boards. In short, it is our firm conviction that this distance is much too close. It puts these stores in close proximity to young students, and while there are rules in place to restrict access to the stores to adults over the age of 19, there are no safeguards to prevent or even discourage the gathering of students near those stores and the potential recruitment of adults to make purchases on their behalf, or to discourage the sale of cannabis to young people.

The use of cannabis by young people has been proven to be destructive. The brain development of a young person is not complete until the early twenties, and cannabis use has been shown to have adverse effects both on development and on the mental health of young people.

We strongly encourage that your government reconsider this decision and implement a safer, minimum distance of 500 metres.

We appreciate your attention to this matter and look forward to a response at your earliest convenience.

With kind regards,

Michelle Griepsma
Chairperson

Michael Nasello
Director of Education
cc.: Nancy Naylor, Deputy Minister
Denise Dwyer, Assistant Deputy Minister
Beverley Eckensweiler, President, Ontario Catholic Trustees Association
Jim Costello, President, Council of Directors of Education
Diane Therrien, Mayor, City of Peterborough
Andy Letham, Mayor, City of Kawartha Lakes
Adrian Foster, Mayor, Municipality of Clarington
Mark Lovshin, Warden, County of Northumberland
Hon. Laurie Scott, MPP, Haliburton-Kawartha Lakes-Brock
David Piccini, MPP, Northumberland-Peterborough South
Dave Smith, MPP, Peterborough-Kawartha
Lindsey Park, MPP, Durham
Interoffice Memorandum

Date: October 24, 2018

To: Brian Bridgeman, Commissioner of Planning & Economic Development

From: Dr. Robert Kyle, Commissioner & Medical Officer of Health

Subject: Bill 36 and Suggested Setbacks for Cannabis Retail Store Locations

On October 17, 2018, Bill 36, the Cannabis Statute Law Amendment Act, 2018, received Royal Assent. The Bill amends various Acts and enacts one new Act in relation to the use and sale in Ontario of cannabis and of vapour products.

As you may know, cannabis use carries significant health risks, especially if used frequently and/or use begins at an early age (CAMH, 2014). When used frequently, cannabis is associated with increased risk of problems with cognitive and psychomotor functioning, respiratory problems, cancer, dependence, and mental health problems including anxiety, depression and schizophrenia.

There is little evidence that illustrates safe recreational cannabis use for individuals and communities. It is very difficult to tighten regulations once in place. It is best to take an approach that aims to prevent future harms, rather than adding regulations later. Efforts should be made to maximize benefits while minimizing harms, promoting health and reducing inequities for individuals, communities and societies (CCSA, 2015; Council of CMOHs of Canada 2016).

Kids are vulnerable to negative long-term effects of cannabis use, since their brains are still developing. Use of cannabis before age 25 can cause long-term problems with attention span, memory, problem-solving and emotional control (CCSA, 2015).

If you require this information in an accessible format, please contact the Durham Health Connection Line at 1-800-841-2729.
The protection of our kids is paramount and should be as important, if not more so, than the economic interests of cannabis and vapour product retailers and suppliers.

A municipality may pass a resolution by January 22, 2019, prohibiting cannabis retail stores from being located in the municipality. Such a prohibition may be lifted by a later resolution passed by the municipality, but a municipality’s decision to do so is final and may not be further reversed.

For municipalities that do not prohibit cannabis retail stores, the Registrar of the Alcohol, Cannabis and Gaming Commission of Ontario shall give notice of an application for a retail store:
- by displaying a notice at the location of the proposed cannabis retail store;
- by posting a notice on the commission’s website; and
- in any other manner the Registrar considers appropriate

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 submission to the Registrar, which must be made no later than 15 days after the notice is first given, 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 refuse to issue a retail store authorization if the proposed cannabis retail store would be located less than the distance specified by or determined in accordance with the regulations from a school, as defined in the Education Act.

Municipalities have the opportunity to influence location, setbacks and density thresholds of cannabis retail stores, through the Registrar’s notice of application written submission process.

The following setbacks and density measures related to cannabis retailers, ought to be considered:
- Child care centres
- Post-secondary schools
- Elementary and secondary schools
- Beer and LCBO stores
- Tobacco and vaping product retailers
- Gaming facilities, such as Great Blue Heron Casino in Scugog and Ajax Downs
• Healthcare facilities, such as hospitals and mental health and addition services
• Long-term care homes
• Recreation centres
• Arcades, amusement parks, and other places where children and youth congregate
• High priority neighbourhoods where there is a higher degree of crime or higher socioeconomic disparity. The Health Department’s Health Neighbourhoods information can be found here: https://www.durham.ca/en/health-and-wellness/health-neighbourhoods.aspx
• Separation distances between sites to control cannabis retail density

We would appreciate it if you would convey this advice to your lower-tier counterparts if and when they plan to make written submissions as regards notices of applications of cannabis retail store authorizations in their respective municipalities.

Respectfully submitted,

Dr. Robert Kyle

R.J. Kyle, BSc, MD, MHSc, CCFP, FRCPC, FACPM
Commissioner & Medical Officer of Health