

To: Development Services Committee

From: Warren Munro, HBA, RPP, Commissioner,
Development Services Department

Report Number: DS-20-45

Date of Report: February 26, 2020

Date of Meeting: March 2, 2020

Subject: City of Oshawa Comments to the Provincial Government
Concerning Cannabis Consumption Establishments and
Cannabis Special Occasion Permits

File: A-2400-0002

1.0 Purpose

The purpose of this report is to obtain Council's endorsement of City comments regarding the Province's request for input on the potential implementation of additional cannabis business opportunities in the future, including:

- Facilitating the sale of cannabis for consumption in establishments such as lounges and cafés (cannabis consumption establishments); and,
- Cannabis special occasion permits.

The Provincial Regulatory Feedback Form states:

“The government is collecting feedback at this time to inform potential decisions about opportunities in an open cannabis market in the future. No changes to the cannabis framework are expected at this time nor is there a current timeframe for any additional changes that may be informed by this feedback.”

Attachment 1 is a copy of the Province's Regulatory Registry Feedback Form for this item providing information on the proposal and consultation questions/items.

Attachment 2 is a copy of Report CNCL-18-04 dated February 14, 2018 regarding a previous Provincial consultation process concerning cannabis related matters, including regulated cannabis consumption lounges.

Attachment 3 is a copy of the Region of Durham Smoking and Vaping By-law 28-2019.

Comments on the current Provincial initiative are due by March 10, 2020.

2.0 Recommendation

That the Development Services Committee recommend to City Council:

1. That Report DS-20-45 dated February 26, 2020 be endorsed as the City's comments in response to the Ontario government's request for input on the potential implementation of additional cannabis business opportunities in the future, including cannabis special occasion permits and facilitating the sale of cannabis for consumption in establishments such as lounges and cafés.
2. That staff be authorized to forward Report DS-20-45 dated February 26, 2020 and any related resolution of the Development Services Committee to the Province for its consideration and to provide a subsequent follow-up once Council has considered this matter.
3. That a copy of Report DS-20-45 dated February 26, 2020 and the related Council resolution be sent to the Premier of Ontario, the Region of Durham, all Durham area municipalities, all Durham MPP's and the Association of Municipalities of Ontario.

3.0 Executive Summary

Not applicable.

4.0 Input From Other Sources

The following have been consulted in the preparation of this report:

- Commissioner, Community Services
- Commissioner, Corporate Services
- City Solicitor

5.0 Analysis

5.1 Previous Provincial Consultation on Cannabis Consumption Lounges

In 2018, the Province undertook a consultation process on post-legalization considerations, including cannabis consumption lounges/venues. Much like the current consultation process, the Province was not proposing any regulatory changes but was seeking feedback to inform future decisions.

At that time, Council considered report CNCL-18-04 dated February 14, 2018 (see Attachment 2). Council endorsed the comments contained in that report on February 20, 2018.

5.2 Present Consultation Process

On February 10, 2020, the Province issued a request for public feedback on the potential implementation of future cannabis business opportunities, including:

- Facilitating the sale of cannabis for consumption in establishments such as lounges and cafés; and,
- Cannabis special occasion permits (S.O.P.s).

The government is not proposing any changes to the Provincial cannabis framework at this time but is collecting feedback to inform potential future changes to allow additional cannabis business opportunities.

If cannabis consumption establishments and S.O.P.s are permitted, such establishments could facilitate the purchase and consumption of cannabis in specified social settings (e.g. cafés, entertainment venues, festivals and events).

The consumption of recreational cannabis is governed by the *Smoke Free Ontario Act*, 2017, S.O. 2017, c. 26, Sched. 3 (S.F.O.A., 2017). The regulations under the S.F.O.A., 2017 prohibit the smoking of cannabis and cigarettes and the use of electronic cigarettes to vape any substance in enclosed workplaces and enclosed public places, as well as other prescribed places (e.g. restaurant and bar patios or within nine metres of such patios, etc.). Additional smoking and vaping restrictions can be implemented by municipal by-laws, employers and property owners.

The Region's Public Health Department is the lead agency in Durham Region for administering and enforcing the S.F.O.A., 2017 and O. Reg 268/18.

In addition to the S.F.O.A., 2017, Section 115(1) of the Municipal Act, 2001 authorizes both upper and lower-tier municipalities to further regulate, through a municipal by-law, the consumption of tobacco and cannabis in public places with the exception of highways. Section 115(9) of the Municipal Act, 2001 establishes that the more restrictive standard for the consumption of tobacco and cannabis shall apply in the event of any conflict between any Provincial act and municipal by-law. In other words, an upper or lower-tier municipality may approve, with the exception of certain Provincial limitations (e.g., highways), more restrictive prohibitions on the consumption of tobacco and cannabis than as prescribed in Provincial legislation.

Region of Durham By-law 28-2019 was approved on April 24, 2019 and regulates smoking and vaping in public places and in the workplace in the Region. Regional By-law 28-2019 implemented additional restrictions on smoking and vaping that were not previously included in the earlier Regional Smoking By-laws (e.g. hookah and vape lounges). Regional By-law 28-2019, in part, states that there shall be no smoking or vaping in, or within a 9 metre (29.5 ft.) radius of any entrance, exit or air intake of a public place, including but not limited to:

- (a) The prohibited places contained within Section 12(1) of the *Smoke Free Ontario Act*, 2017, S.O. 2017, c. 26, Sched. 3 or set out in any subsequent legislation;

- (b) Common areas;
- (c) Public washrooms;
- (d) Funeral home;
- (e) Racetrack;
- (f) Casino;
- (g) Bingo hall;
- (h) Billiard hall;
- (i) Bowling alley;
- (j) Hookah and vape lounge;
- (k) Restaurant;
- (l) Bar;
- (m) Patio;
- (n) Recreational facility;
- (o) Service line whether indoors or outdoors;
- (p) Shopping centres, plazas, and/or malls; and,
- (q) Public transport vehicle.

Smoking or vaping is also prohibited on any portion of the property or grounds of a municipal building and in or within a 20 metre (65.6 ft.) radius of any public park. There shall be no smoking or vaping on any external portion of the property or grounds of a post-secondary institution or long-term care home, except in a designated smoking/vaping area at least 9 metres (29.5 ft.) from any entrance, exit or air intake.

A copy of Regional By-law 28-2019 is included as Attachment 3 to this Report.

The Provincial government is not considering changes to the S.F.O.A., 2017 as part of this consultation.

5.3 Provincial Consultation Questions/Items

The Province's Regulatory Registry Feedback Form (see Attachment 1) includes six questions/items that the Province is seeking input on. These questions/items are set out below together with a recommended City response.

It is noted that the Provincial consultation documents use the term "café" when referring to the types of establishments being considered. A "café" is considered a restaurant under the City's Zoning By-law 60-94 and is defined as follows:

"RESTAURANT" means a building or part of a building where food and beverages are prepared and offered for retail sale to the public for immediate consumption on or off the premises, including a licensed dining lounge, and also includes a food catering business, but excluding a tavern or nightclub."

5.3.1 Consultation Item 1:

Taking into consideration the places of use rules for cannabis under the S.F.O.A., 2017, should the government consider facilitating the sale of cannabis for consumption in establishments like lounges and cafés in Ontario? Why or why not?

Recommended City Response:

For the past few decades, the Province has been implementing and enforcing regulations to limit and restrict where individuals can smoke in an effort to improve public health. This included the prohibition of smoking indoors in restaurants and bars. Permitting the sale and consumption of cannabis in lounges and cafés in Ontario would be contrary to the public health initiatives of the last 20 years which have been directed at restricting and reducing smoking in the Province. Smoking of any substance should not be encouraged by the Provincial government through the permission of smoking cannabis in consumption establishments.

The City does not support permitting licensed and regulated cannabis consumption establishments at this time. The legalization of cannabis is in its infancy and it will take a number of years of post-legalization experience to meaningfully assess the effects of legalization on communities. Any consideration of licensed and regulated cannabis consumption establishments should be deferred until the impacts of legalization are better understood. The experiences of other jurisdictions where such establishments are permitted should be carefully reviewed including long term health and safety impacts experienced in those jurisdictions.

5.3.2 Consultation Item 2:

If cannabis consumption establishments were considered in Ontario, what other products should be permitted for sale in those establishments (e.g. cannabis accessories, food/beverage products that do not contain cannabis)?

Recommended City Response:

In terms of the sale of other products in cannabis consumption establishments, the City has no comment. However, it is important to consider that the sale of non-cannabis related products (such as food/beverage products that do not contain cannabis) in cannabis consumption establishments could result in a higher level of public exposure to cannabis products than would otherwise be the case, which would be contrary to public health initiatives as discussed in the response to question 1 under Section 5.3.1 of this Report. The sale of any product would also need to ensure compliance with any City By-law and planning instruments (Official Plan and Zoning).

5.3.3 Consultation Item 3:

In Ontario, the Alcohol and Gaming Commission of Ontario (A.G.C.O.) oversees the administration of an alcohol S.O.P. program, which allows for the sale and service of alcohol at special occasions, including large scale events that are open to the public, such as festivals.

Should the government consider establishing a similar S.O.P. program for cannabis to be sold and consumed at festivals and events? Why or why not?

If yes, what conditions should be included (e.g. should alcohol consumption at the same event be restricted, should the event be age-restricted to 19 and above, what methods of cannabis consumption should be permitted)?

Recommended City Response:

An S.O.P. program to permit the smoking of cannabis should not be established for public events. Unlike alcohol or cannabis edibles and beverages, smoked cannabis has a strong odour whose effects extend beyond the senses of the user into a larger surrounding area. Permitting the smoking of cannabis at public events through new Provincial regulations or exemptions from the Region of Durham Smoke-Free By-law would have a significant impact on non-smokers at an event in terms of their enjoyment of the event given that it is not uncommon for people to find the strong odour of cannabis offensive and/or physiologically intrusive. There would also be potential health implications for non-smokers including the potential for “contact highs” as a result of second hand smoke and allergic reactions for those with certain allergies.

Given the olfactory potency of cannabis smoke and its tendency to linger and diffuse to surrounding areas, there is significant potential for the smoke to impact areas and members of the public outside of the boundaries of any outdoor event where smoking cannabis would be permitted. This has the potential to impact children, youth and others not attending the event but who may be physically present in the general area, including in nearby residences.

For events held indoors, consideration needs to be given to the health and safety implications associated with second hand cannabis smoke for persons at these venues who are not there to consume cannabis, such as employees. Exposure to cannabis smoke, particularly in higher concentrations, could have significant impacts not only on personal health but also on the ability to maintain a safe environment for all patrons and employees, as there is the potential for both service and security staff to be impaired as a result of second hand smoke. Second hand smoke could also increase the possibility for impaired driving as non-smokers may not realize that they are impaired and assume that they are capable of driving because they have not personally been smoking cannabis.

If the government chooses to create a S.O.P. program for cannabis, the following conditions should be included:

- The event should be age-restricted to 19 and above;
- The method of cannabis consumption should be restricted to edibles or beverages; and,
- The licensing process should include notice and public consultation requirements in order that nearby residents, businesses and property owners are aware of a license application and have an opportunity to provide comments on the proposed S.O.P.

5.3.4 Consultation Item 4:

Are there any additional risks/opportunities created by cannabis consumption establishments or S.O.P.s when compared to authorized cannabis retail stores?

Recommended City Response:

There would be health and safety implications associated with second hand cannabis smoke for those in the establishments that are not there to consume cannabis, such as employees. This could negatively impact the personal health of individuals as well as the ability to maintain a safe environment for all patrons and employees, as there is the potential for both service and security staff to be impaired as a result of second hand smoke. Second hand smoke could also result in increased incidents of drug impaired driving as drivers who have not been smoking may believe they are not impaired and are capable of driving because they have not personally been smoking cannabis.

5.3.5 Consultation Item 5:

What should be a municipality's involvement, if any, in a potential framework for cannabis consumption establishments or S.O.P.s?

Recommended City Response:

The Province should provide the local municipalities with the ability to license cannabis consumption establishments or S.O.P.s or implement a licensing process similar to the licensing process for establishments serving alcohol that allows for municipal and public input. Such proposals can be reviewed on a site specific basis against any local by-laws (e.g. zoning), regulations and policies, and be subject to any necessary public consultation process. Municipalities should be permitted to establish regulations that are considered appropriate by the host municipality (e.g. hours of operation, separation distances from sensitive land uses, etc.).

Before the implementation of a regulatory framework for cannabis consumption establishments or S.O.P.s, municipalities should be provided with a minimum two-year lead time to allow for any necessary zoning review, public consultation and possible appeal process to the Local Planning Appeal Tribunal, as may be applicable. Local municipalities should be given the authority to determine where cannabis consumption establishments are permitted through local zoning by-laws.

5.3.6 Consultation Item 6:

We are interested in any other comments or suggestions you wish to make about cannabis consumption establishments and/or S.O.P.s.

Recommended City Response:

If the Province chooses to proceed with allowing cannabis consumption establishments and S.O.P.s, the following items should be implemented as part of any Provincial legislation:

- A clear definition of a cannabis consumption establishment should be developed by the Province to help guide and inform municipal decision making.
- A minimum age limit (19 and above years of age) for individuals to enter a cannabis consumption establishment or attend an event with a S.O.P., to ensure that underage individuals are prohibited from entering the establishment/attending the event (thereby protecting children and youth from exposure to cannabis).
- A minimum separation distance of 150 metres (492 ft.) for cannabis consumption establishments from schools and other sensitive uses should be implemented at the Provincial level, similar to the separation distance required for cannabis retail stores. However, municipalities should be given the ability to implement greater separation distances if they so choose and the ability to establish what a sensitive use is based upon local needs.
- Any necessary amendments to the Ontario Building Code should be implemented to ensure that cannabis consumption establishments have appropriate ventilation/filtration systems to ensure that odours and other vapours are contained within the establishment.

6.0 Financial Implications

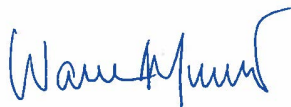
There are no financial implications associated with the recommendation in this Report.

7.0 Relationship to the Oshawa Strategic Plan

The comments are intended to advance the Accountable Leadership goal of the Oshawa Strategic Plan.



Tom Goodeve, M.Sc.Pl., MCIP, RPP, Director,
Planning Services



Warren Munro, HBA, RPP, Commissioner,
Development Services Department

REGULATORY REGISTRY FEEDBACK FORM

Potential for Cannabis Consumption Establishments and/or Cannabis Special Occasion Permits

On December 12, 2019, the government announced that it is taking steps to move to an open market for retail cannabis sales in Ontario, as it originally intended. This will provide consumers with more choice and convenience and a safe and reliable supply of cannabis. For more information, please visit <https://news.ontario.ca/mag/en/2019/12/ontario-opening-cannabis-retail-market.html>.

As part of Ontario's transition to an open market, the government would like your feedback on the potential implementation of additional cannabis business opportunities in the future, including:

1. facilitating the sale of cannabis for consumption in establishments like lounges and cafes (cannabis consumption establishments); and,
2. cannabis special occasion permits (SOPs).

The government is collecting feedback at this time to inform potential decisions about opportunities in an open cannabis market in the future. No changes to the cannabis framework are expected at this time nor is there a current timeframe for any additional changes that may be informed by this feedback.

Cannabis Consumption Establishments and Special Occasion Permits

Cannabis consumption establishments and SOPs, if brought forward, could facilitate the purchase and consumption of cannabis in specified social settings (e.g. cafés, entertainment venues, festivals and events).

Cannabis Consumption Rules

Cannabis can be smoked or vaped in many outdoor public places and in private residences.

The *Smoke-Free Ontario Act, 2017* (SFOA, 2017) and the regulations under that Act prohibit the smoking of cannabis and the use of electronic cigarettes (e-cigarettes) to vape any substance (including cannabis) in enclosed workplaces and enclosed public places, as well as other prescribed places (e.g., restaurant and bar patios or within nine metres of these patios).

The SFOA, 2017 also prohibits drivers and passengers from consuming any form of cannabis (smoking, vaping, eating) in vehicles and boats that are being driven or will be driven, subject to certain exceptions.

The SFOA, 2017 is not the only source of smoking and vaping restrictions in Ontario. Additional restrictions on cannabis consumption may be found in municipal bylaws and the policies of employers and property owners.

The government is not considering changes to the SFOA regime as part of this consultation.

For more information on Ontario's cannabis consumption rules, please visit www.ontario.ca/cannabis.

Other Forms of Cannabis Products

On June 26, 2019, Health Canada published regulations for the production and sale of three new classes of cannabis products:

- *cannabis edibles* – cannabis products that can be consumed in the same manner as food (e.g. food or beverage)
- *cannabis extracts* – cannabis products that are produced using extraction processing methods or by synthesizing phytocannabinoids (e.g., oils, capsules, hash, wax)
- *cannabis topicals* – cannabis products that can be used on a body surface (e.g. lotion)

These new federal regulations came into force on October 17, 2019 and the new classes of cannabis products became available for sale in Ontario on January 6, 2020.

For more information on Health Canada's rules for edibles, extracts and topicals, please visit: <https://www.canada.ca/en/health-canada/news/2019/06/health-canada-finalizes-regulations-for-the-production-and-sale-of-edible-cannabis-cannabis-extracts-and-cannabis-topicals.html>

Other Jurisdictions

At this time, no other Canadian jurisdiction has implemented a framework for cannabis consumption establishments, like lounges or cafes, or SOPs.

Some jurisdictions in the United States that have legalized recreational cannabis have allowed regulated cannabis consumption establishments and SOPs where individuals are permitted to consume recreational cannabis. However, it should be noted that in those states, the consumption of recreational cannabis is restricted to private residences only (i.e. cannabis consumption is not permitted in any public place). In these jurisdictions, cannabis consumption establishments/SOPs might assist in mitigating certain equity issues in a more restrictive consumption rules framework (e.g. tourism, individuals who are not permitted to consume cannabis in their private residence per condominium/building policies).

Instructions

Please provide your feedback to the questions below on this form and submit to cannabis@ontario.ca.

The closing date for providing feedback is March 10, 2020.

Contact Information

Please provide your name, title and the full name and address of your organization (if you are submitting comments on behalf of an organization).

(please insert contact information)

About You or Your Organization

(please check the appropriate box/boxes)

- Health organization
- Educator
- Law enforcement
- Municipality
- Indigenous organization/community
- Other _____

Region

(please refer to map and check appropriate box)

- 1. Central Ontario
- 2. Eastern Ontario
- 3. Greater Toronto Area
- 4. Northern Ontario
- 5. Southeastern Ontario
- 6. Southwestern Ontario
- 7. Western Ontario
- 8. Provincial



Cannabis Consumption Establishments/Special Occasion Permits

1. Taking into consideration the places of use rules for cannabis under the SFOA, 2017 (as outlined on page 1), should the government consider facilitating the sale of cannabis for consumption in establishments like lounges and cafes in Ontario? Why or why not?

(insert comments – if necessary the box will expand as you type)

2. If cannabis consumption establishments were considered in Ontario, what other products should be permitted for sale in those establishments (e.g. cannabis accessories, food/beverage products that do not contain cannabis)?

(insert comments – if necessary the box will expand as you type)

3. In Ontario, the Alcohol and Gaming Commission of Ontario (AGCO) oversees the administration of an alcohol SOP program, which allows for the sale and service of alcohol at special occasions, including large scale events that are open to the public, such as festivals.

Should the government consider establishing a similar SOP program for cannabis to be sold and consumed at festivals and events? Why or why not?

If yes, what conditions should be included (e.g. should alcohol consumption at the same event be restricted, should the event be age-restricted to 19+, what methods of cannabis consumption should be permitted)?

For more information on the current alcohol SOP program, please visit:
<https://www.agco.ca/alcohol/special-occasion-permits-private-event>

(insert comments – if necessary the box will expand as you type)

4. Are there any additional risks / opportunities created by cannabis consumption establishments or SOPs when compared to authorized cannabis retail stores?

Cannabis Consumption Establishments:

(insert comments – if necessary the box will expand as you type)

SOPs:

(insert comments – if necessary the box will expand as you type)

5. What should be a municipality’s involvement, if any, in a potential framework for cannabis consumption establishments or SOPs?

(insert comments – if necessary the box will expand as you type)

We are interested in any other comments or suggestions you wish to make about cannabis consumption establishments and/or SOPs.

(insert comments – if necessary the box will expand as you type)

Please submit your feedback on the Regulatory Registry by March 10, 2020
Privacy Statement

Please note that unless requested and agreed otherwise by the Ministry of the Attorney General, all materials or comments received from organizations in response to this consultation will be considered public information and may be used and disclosed by the ministry to assist the ministry in developing potential amendments to the cannabis framework. This may involve disclosing materials or comments, or summaries of them, to other interested parties during and after the request for public comment process.

An individual who provides materials or comments and who indicates an affiliation with an organization will be considered to have submitted those comments or materials on behalf of the organization so identified. Materials or comments received from individuals who do not indicate an affiliation with an organization will not be considered public information unless expressly stated otherwise by the individual. However, materials or comments from individuals may be used and disclosed by the ministry to assist in developing potential amendments.

Personal information of those who do not specify an organizational affiliation, such as an individual's name and contact details, will not be **disclosed by the ministry without the individual's consent unless required by law.** If you have any questions about the collection of this information, please contact the Legalization of Cannabis Branch at cannabis@ontario.ca.



Public Report

To: Council in Committee of the Whole

From: Jag Sharma, City Manager,
Office of the City Manager

Report Number: CNCL-18-04

Date of Report: February 14, 2018

Date of Meeting: February 20, 2018

Subject: City of Oshawa Comments to the Provincial Government
Concerning Cannabis Consumption

File: A-2400-0002

1.0 Purpose

The purpose of this report is to:

1. Provide information to Council on the proposed regulations under the Cannabis Act, 2017 that would:
 - Prescribe restrictions on where medical cannabis can be used in a form that is not smoked or vaped;
 - Clarify the places of use rules for recreational cannabis; and
 - Provide exemptions to permit the consumption of cannabis in hotel, motel and inn rooms, vehicles and boats that are used as residences and in private residences that are also workplaces.
2. Obtain Council's endorsement of City comments regarding the Province's request for input on the following Post Legalization Considerations:
 - Permitting licensed and regulated cannabis consumption lounges and venues; and
 - Permitting owners or operators of multi-unit dwellings to designate outdoor areas for the smoking/vaping of recreational cannabis.

These two items are under consideration and will have additional consultation when posted to the Registry but comments now can help inform the policy development.

Attachment 1 to this report is a Provincial document entitled "Proposed Regulations under the Cannabis Act, 2017" that is currently posted on the Ontario Regulatory Registry (the Registry) for comment.

Comments on the document are due by March 5, 2018.

2.0 Recommendation

It is recommended to City Council:

1. That Report CNCL-18-04 dated February 14, 2018 be endorsed as the City's comments on the Ontario government's Post Legalization Considerations to permit licensed and regulated cannabis consumption lounges and venues and to permit owners or operators of multi-unit dwellings to designate outdoor areas for the consumption of recreational cannabis under the Cannabis Act, 2017.
2. That a copy of Report CNCL-18-04 and the related Council resolution be sent to the Premier of Ontario, the Region of Durham, all Durham area municipalities, all Durham MPP's and the Association of Municipalities of Ontario.

3.0 Executive Summary

Not applicable.

4.0 Input From Other Sources

Development Services, Corporate Services and the Association of Municipalities of Ontario (AMO) have been consulted during the preparation of this report.

AMO intends to advise through the consultation process that municipalities should be able to license these cannabis lounges/venues at their discretion with jurisdiction over location, proximity to sensitive uses such as schools and places of worship as well as proximity to other lounges/venues, hours of operation, etc.

5.0 Analysis

5.1 Proposed Regulations under the Cannabis Act, 2017

On January 18, 2018 the Province issued a request for public feedback on the document entitled "Proposed Regulations under the Cannabis Act, 2017" which forms Attachment 1 to this Report. The document states that the Ontario Ministry of the Attorney General is considering regulations under the Cannabis Act, 2017 that would:

- Prescribe restrictions on where medical cannabis can be used in a form that is not smoked or vaped;
- Clarify the places of use rules for recreational cannabis; and
- Provide exemptions to permit the consumption of cannabis in hotels, motels and inn rooms, vehicles and boats that are used as residences and in private residences that are also workplaces.

Staff have no comments on the proposed regulations.

5.2 Post Legalization Considerations: Multi-Unit Dwellings and Consumption Lounges/Venues

The Province advises that it is committed to monitoring public health and safety as a result of the consumption of cannabis, both medical and recreational. The monitoring will provide baseline information to inform the future considerations of adjustments to the Provincial framework, if an adjustment is warranted.

This adjustment may include exploring the feasibility of increasing the options for where cannabis can be consumed without significantly increasing exposure to second-hand smoke and vapour.

At this time, the Ministry is also seeking early feedback on Post Legalization Considerations to permit licensed and regulated cannabis consumption lounges/venues and designated outdoor smoking and vaping areas for cannabis for multi-unit dwellings.

The document (Attachment 1) does not provide any specific regulations concerning these two matters.

It is recommended that Council endorse the following comments:

- The City does not support permitting licensed and regulated cannabis consumption lounges/venues at this time. The legalization of cannabis is in its infancy and it will take a number of years of post-legalization experience to determine the effects of legalization on communities. Any consideration of licensed and regulated cannabis consumption lounges/venues should be deferred until the impacts of legalization are better understood.
- A clear definition of a cannabis consumption lounge/venue should be developed by the Province.
- The Province should provide the local municipalities with the ability to license cannabis consumption lounges/venues. Such proposals can be reviewed on a site specific basis against any local by-laws (e.g. zoning), regulations, policies and subject to any necessary public consultation process. Municipalities should be permitted to set any regulations that are considered appropriate (i.e. hours of operation, separation distances from sensitive land uses, etc.).
- Before implementation of a regulatory framework for cannabis consumption lounges/venues, municipalities should be provided with a minimum two year lead time to allow for any necessary zoning review, public consultation and possible appeal process to the Ontario Municipal Board or Local Planning Appeal Tribunal, as the case may be. Local municipalities should be given the authority to determine where the lounges/venues are permitted.
- A minimum age limit (19 years of age) for individuals to enter a cannabis consumption lounge/venue to ensure that underage individuals are not allowed in the establishment should be established to protect our children and youth.

- The health and safety (e.g. related to those driving that have inhaled second hand smoke) implications of second hand cannabis smoke for those in the establishments and not there to consume cannabis (i.e. employees) should be reviewed by the Province.
- Any necessary amendments to the Ontario Building Code to ensure that cannabis consumption lounges/venues have appropriate ventilation systems to ensure that odours and other vapours are contained within the establishment should be investigated by the Province.
- The City also does not support permitting owners/operators of multi-unit dwellings to designate outdoor areas for the smoking/vaping of cannabis and support the regulations that prohibits the designation of outdoor areas for cannabis consumption for multi-unit dwellings (i.e. condominiums and apartments). Permitting designated areas for consumption at multi-unit dwellings may affect the ability of non-users to enjoy the outdoor amenity space that is available at multi-unit dwellings or on adjacent properties as they may be subject to second-hand cannabis smoke.

6.0 Financial Implications

There are no financial implications associated with the recommendation in this Report.

7.0 Relationship to the Oshawa Strategic Plan

The comments are intended to advance the Accountable Leadership goal of the Oshawa Strategic Plan.



Jag Sharma, City Manager,
Office of the City Manager

Proposed Regulations under the Cannabis Act, 2017

Regulation Number (s): N/A

Bill or Act: Cannabis Act, 2017

Summary of the Proposal:

In April 2017, the federal government introduced [Bill C-45, the Cannabis Act](#), to legalize and regulate recreational cannabis in Canada by July 2018. Once in force, Bill C-45 will create rules for producing, distributing, selling and possessing cannabis across Canada.

In preparation for the federal legalization of cannabis, Ontario has developed a [safe and sensible framework](#) to govern recreational cannabis within the province. Ontario's safe and sensible approach was informed by the province's experience managing tobacco and alcohol, advice from public safety and health partners, and lessons learned from jurisdictions that have recently legalized cannabis.

As part of this plan, the Government of Ontario introduced [Bill 174, Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017](#), on November 1, 2017. Bill 174 received Royal Assent on December 12, 2017. Schedule 1 of the Bill, which enacts the [Cannabis Act, 2017](#), will be proclaimed into force when federal Bill C-45, the Cannabis Act, comes into force. Schedule 3 of the Bill, which enacts the [Smoke-Free Ontario Act, 2017](#), will be proclaimed into force on a date named by the Lieutenant Governor in Council.

The *Cannabis Act, 2017* establishes provincial rules respecting the sale, distribution, purchase, possession, transportation, cultivation and consumption of cannabis. The Act also creates stringent penalties for individuals or corporations convicted of illegally selling or distributing cannabis, and for landlords who knowingly permit these activities on their premises to combat the illegal market. The *Smoke-Free Ontario Act, 2017* includes rules regarding the smoking and vaping of medical cannabis specifically.

The Ministry of the Attorney General is considering regulations under the *Cannabis Act, 2017* that would:

1. Prescribe restrictions on where medical cannabis can be used in a form that is not smoked or vaped
2. Clarify the places of use rules for recreational cannabis
3. Provide exemptions to permit the consumption of cannabis in hotel, motel and inn rooms, vehicles and boats that are used as residences and in private residences that are also workplaces

The Ministry is also seeking early feedback on prospective proposals to permit licensed and regulated cannabis consumption lounges/venues¹ and/or designated outdoor smoking and vaping areas for cannabis for multi-unit dwellings.

Additional regulatory proposals related to the retail and distribution of cannabis in Ontario, the *Smoke-Free Ontario Act, 2017*, and road safety measures, including impaired driving, have been separately posted on the Regulatory Registry for feedback.

More information on Ontario's approach to federal cannabis legalization is available at: <https://www.ontario.ca/cannabis>

1. Places of Use for Medical Cannabis

Ontario's cannabis legislation regulates the use of recreational and medical cannabis separately, as each has different purposes and considerations.

Medical cannabis is obtained for health-related purposes in accordance with applicable federal law. Because this type of cannabis is a form of medical treatment and requires authorization by a health care practitioner, it should be considered from a health perspective.

In addition, individuals who use medical cannabis may need to use their medication in places where the use of recreational cannabis is not permitted.

The *Cannabis Act, 2017* prohibits the use of any form of recreational cannabis in public places, workplaces, motor vehicles and boats and permits medical cannabis users to use cannabis for medical purposes in any place where cannabis use is otherwise prohibited, subject to any restrictions set out in the regulations or in the *Smoke-Free Ontario Act, 2017*. The *Smoke-Free Ontario Act, 2017* places restrictions on where medical cannabis can be smoked or vaped, but it does not restrict the consumption of other forms of medical cannabis.

The Ministry of the Attorney General is proposing to bring forward a regulation that would prohibit medical cannabis users from using medical cannabis while driving or having care or control of a vehicle or boat, whether or not the vehicle or boat is in motion. Medical cannabis users would still be permitted to consume cannabis if they are a passenger in a vehicle or boat, provided the cannabis is not smoked or vaped.

In order to ensure that passengers who are authorized medical cannabis users are able to access their medical cannabis, the Ministry of the Attorney General proposes to exempt medical cannabis users from the prohibition on transporting cannabis as long as the following conditions are met:

- The cannabis was obtained in accordance with applicable federal law respecting medical cannabis

¹ Legislative amendments would be required to implement this proposal.

- The person transporting the cannabis is a medical user
- The cannabis is not made readily available to the driver or operator of the vehicle or boat

2. Places of Use for Recreational Cannabis

Clarification of Places of Use Rules

The Ministry of the Attorney General is also proposing that certain places where recreational cannabis **cannot** be used be prescribed for greater certainty without limiting the generality of the places of use rules and to ensure alignment with the *Smoke-Free Ontario Act, 2017*, where appropriate:

- A school within the meaning of the *Education Act*.
- A building or the grounds surrounding the building of a private school within the meaning of the *Education Act*, where the private school is the only occupant of the premises, or the grounds annexed to a private school, where the private school is not the only occupant of the premises.
- A child care centre within the meaning of the *Child Care and Early Years Act, 2014*.
- A place where an early years program or service is provided within the meaning of the *Child Care and Early Years Act, 2014*.

It is also proposed to restrict the smoking or vaping of recreational cannabis in any indoor or outdoor common area in a condominium, apartment building or university or college residence, including, without being limited to, elevators, hallways, parking garages, party or entertainment rooms, laundry facilities, lobbies and exercise areas. This is consistent with our safe and sensible approach to cannabis legalization and with the public health intent of the *Smoke-Free Ontario Act, 2017* to protect youth and young adults from exposure to smoke and vape. The use of other forms of recreational cannabis would not be restricted in these areas.

3 (a) *Hotel, Motel and Inn Rooms*

The Ministry of the Attorney General is proposing a limited exemption to permit the use of recreational cannabis in hotel, motel and inn rooms. Under the proposed regulation, registered guests or invited guests of registered guests would be permitted to use recreational cannabis in a hotel, motel or inn room, provided the room is primarily designated as sleeping accommodation and the cannabis is not being smoked or vaped. The smoking or vaping of cannabis would only be permitted in designated smoking rooms to align with the *Smoke-Free Ontario Act, 2017*.

Vehicles and Boats as Private Residences

The Ministry of the Attorney General is proposing a limited exemption to permit the use of recreational cannabis in vehicles and boats when they are in use as temporary or

permanent living places. This is consistent with the rules respecting alcohol consumption under the *Liquor Licence Act* and regulations made under that Act.

Consumption of recreational cannabis would be permitted in a vehicle equipped with sleeping accommodation and cooking facilities when the vehicle is parked and being used as a residence. The exemption would not apply while the vehicle is on a highway.

Consumption of recreational cannabis would be permitted in boats with permanent sleeping accommodations and permanent cooking and sanitary facilities while the boat is at anchor or secured to a dock or land. The dock or land would also be exempt from the consumption prohibition, except at times where the public is invited or permitted access. Boats used to carry passengers for hire would not be included in the exemption.

3 (b) Workplaces in Private Residences

The Ministry of the Attorney General is proposing to exempt most private residences that are also workplaces from the prohibition on consuming cannabis in workplaces. The proposed exemptions are similar to the consumption rules respecting smoking, e-cigarettes and medical cannabis in the *Smoke-Free Ontario Act, 2017*.

The following residences that also serve as workplaces would be subject to specific conditions on where and how recreational cannabis can be consumed:

- Long-term care homes within the meaning of the *Long-Term Care Homes Act, 2017*.
- A residential facility that is operated as a retirement home and that provides care, in addition to accommodation, to the residents of the home.
- A supportive housing residence funded or administered through the Ministry of Health and Long-Term Care or the Ministry of Community and Social Services.
- Homes for special care licensed under the *Homes for Special Care Act*.
- Psychiatric facilities formerly designated under the now repealed *Mental Hospitals Act*,
- Specific veterans' facilities: the Parkwood Hospital site of St. Joseph's Health Care London, and the Kilgour wing (K wing) and the George Hees wing (L wing) of the Sunnybrook and Women's College Health Sciences Centre.

Consistent with the approach under the *Smoke-Free Ontario Act, 2017*, and regulations proposed under that Act, the smoking or vaping of recreational cannabis would only be permitted in the abovementioned facilities under the same conditions in which tobacco smoking, the use of e-cigarettes and the smoking or vaping medical cannabis is permitted:

- The room has been designated as a controlled area for smoking or the use of electronic cigarettes, or both.

- A resident who desires to use the room must be able, in the opinion of the proprietor or employer, to do so safely without assistance from an employee. An employee who does not desire to enter the room shall not be required to do so.
- Use of the room is limited to residents of the residence.
- The room is an enclosed space fitted with proper ventilation and is identified as a controlled area by means of signs.

The consumption of other forms of recreational cannabis would not be prohibited.

As well, the smoking and vaping of recreational cannabis would be prohibited in places where home child care is provided within the meaning of the *Child Care and Early Years Act, 2014*, whether or not children are present. This is consistent with the rules for smoking, e-cigarettes and medical cannabis in home child care settings set out in the *Smoke-Free Ontario Act, 2017*. Other forms of recreational cannabis would not be prohibited in these places as long as children are not present when the cannabis is being used.

Post-Legalization Considerations: Multi-Unit Dwellings and Consumption Lounges/Venues

Ontario's precautionary approach to the consumption of recreational cannabis under the *Cannabis Act, 2017* is intended to protect the health and well-being of all Ontarians, especially children, youth and other vulnerable populations, by limiting exposure to second-hand smoke and vapour and is consistent with the Ontario government's safe and sensible approach to cannabis legalization.

At the same time, Ontario has committed to closely monitoring the public health and safety outcomes of cannabis legalization to inform future consideration of potential adjustments to the provincial framework, if warranted. This includes proactively exploring the feasibility and implications of potential approaches that would provide more options for where people can consume cannabis without significantly increasing exposure to second-hand smoke and vapour. Currently, the Ministry is considering the following approaches:

- Permitting licensed and regulated cannabis consumption lounges and venues; and
- Permitting owners or operators of multi-unit dwellings to designate outdoor areas for the consumption of recreational cannabis.

These approaches are under consideration and will require additional consultation. Feedback on this proposal will be used to inform future policy development and consultations.

Next Steps:

This summary report will be posted for public and stakeholder review and feedback from January 18 to March 5, 2018. In preparing the proposed draft regulations, the government will consider the feedback received through the Regulatory Registry.

If the final proposed regulations are approved, it is expected that they would take effect in July 2018 to align with the federal government's anticipated timeline for legalization.

We will continue working with municipalities, health and safety organizations, law enforcement, Indigenous communities and stakeholders as we progress towards legalization, which will ensure a safe and sensible approach to this substance.

By-law Number 28-2019
of The Regional Municipality of Durham

Being a by-law to regulate smoking and vaping in public places and in the workplace.

Whereas the *Municipal Act*, 2001, S.O. 2001 c.25 as amended (the "*Municipal Act*") authorizes municipalities to pass by-laws respecting health, safety and well-being of persons within their jurisdiction;

And whereas subsection 115(5) of the *Municipal Act* provides that a regional municipality may pass a by-law regarding the smoking of tobacco or cannabis if a majority of the councils of the lower-tier municipalities within the regional municipality representing a majority of the population of the regional municipality approve the exercise of such powers;

Now therefore, the Council of The Regional Municipality of Durham hereby enacts as follows:

1. Definitions

1.1 In this by-law,

- (a) "ashtray" means a receptacle of any type being used for ashes and butts of smoking products;
- (b) "bar" means an establishment licensed by the Alcohol and Gaming Commission of Ontario where persons under 19 years of age are not permitted to enter, either as a patron or as an employee;
- (c) "cannabis" has the same definition as in section 2(1) of the *Cannabis Act* (Canada);
- (d) "casino" means a place which is kept for the purpose of playing a lottery scheme conducted and managed by the Ontario Lottery and Gaming Corporation under the authority of paragraph 207(1)(a) of the Criminal Code;
- (e) "common area" means any indoor area of a building or structure that is open to the public for the purpose of access and includes elevators, escalators, corridors, stairways, passageways, hallways, foyers, parking garages, and space for the receiving or greeting of customers, clients or other persons;
- (f) "designated smoking area" is an outdoor area that may be sheltered with not more than two walls and a roof and must comply with all other applicable rules in the *Smoke-Free Ontario Act, 2017* or this by-law;
- (g) "employee" means a person who performs any work for or supplies any service to an employer with or without compensation and includes owners and volunteers;
- (h) "employer" means a person who, as an owner, manager, contractor, superintendent, or overseer of any activity, business, work, trade, occupation or profession, has control over or direction of, or is indirectly or directly responsible for, the employment or services of an employee;
- (i) "enclosed" means closed in by a roof or ceiling and walls with an appropriate opening or openings for ingress or egress, provided that such openings are kept closed when not in use for such ingress or egress;

- (j) “inspector” means a person appointed by the Region to enforce this by-law;
- (k) “long-term care home” has the same definition as contained in the *Long-Term Care Homes Act, 2007*, S.O. 2007, c.8 or any subsequent legislation;
- (l) “Medical Officer of Health” has the same definition as in section 1(1) of the *Health Protection and Promotion Act*;
- (m) “medicinal cannabis” means cannabis prescribed by a health care professional for use in treating and managing illness, the access to which is regulated exclusively by the federal government;
- (n) “municipal building” means any building or structure owned, leased, controlled or used by the Region or any area municipality in the Region including but not limited to libraries, museums, community centres and recreational facilities;
- (o) “no-smoking sign” means a sign at least 10 centimetres in diameter showing an illustration of a black, lit cigarette on a white circle surrounded by a red border with a width equal to one tenth of the diameter, with a red diagonal stroke of the same width crossing over the cigarette from the upper left to the lower portion of the circle;
- (p) “no-vaping sign” means a sign at least 10 centimetres in diameter showing an illustration of a black vape apparatus on a white circle surrounded by a red border with a width equal to one tenth of the diameter, with a red diagonal stroke of the same width crossing over the cigarette from the upper left to the lower portion of the circle;
- (q) “patio” means a restaurant or bar patio is an area that is not an enclosed public place or an enclosed workplace and that meets all the criteria set out in the following subparagraphs:
 1. The public is ordinarily invited or permitted access to the area, either expressly or by implication, whether or not a fee is charged for entry, or the area is worked in or frequented by employees during the course of their employment, whether or not they are acting in the course of their employment at the time.
 2. Food or drink is served or sold or offered for consumption in the area, or the area is part of or operated in conjunction with an area where food or drink is served or sold or offered.
 3. The area is not primarily a private dwelling;
- (r) “post-secondary institution” has the same meaning as educational institution in the *Post-secondary Education Choice and Excellence Act, 2000* S.O. 2000, c.36;
- (s) “proprietor” includes the person or persons who own, occupy, operate, maintain, manage, control or direct the activities carried on within any premises referred to in this by-law;
- (t) “public park” means a municipally owned property containing playgrounds, sports fields, gazebos, covered picnic areas, fountains, splash pads or water parks and the Waterfront Trail or a publicly owned property being used for an outdoor special event with a permit issued by a municipality;
- (u) “public place” means the whole or part of an indoor area of any place that is open to the public or to which the public has access by right, permission or invitation, express or implied, whether by payment of

money or not, and whether publicly or privately owned and includes, without limiting the generality of the foregoing, the indoor area of those places designated as public places in section 2 of this by-law;

- (v) “public transport vehicle” means any vehicle used for transporting the public and includes a bus and a passenger vehicle used for hire such as a taxi or limousine;
- (w) “recreational facility” includes, but is not limited to, an arena, swimming pool, concert hall, theatre, auditorium, gymnasium, museum and art gallery;
- (x) “Region” means the geographic area of the Regional Municipality of Durham or the Regional Municipality of Durham acting as a body corporate, as the context requires;
- (y) “restaurant” means an establishment engaged in the sale and service of food or drink or both food and drink to the public for consumption on the premises but does not include a bar;
- (z) “service line” means a line of two or more persons providing, receiving, or awaiting service of any kind, regardless of whether or not such service involves the exchange of money, including but not limited to sales services, provision of information, transactions or advice and transfers of money or goods;
- (aa) “smoke or smoking” includes but is not limited to the carrying or holding of a lighted cigar, cigarette, pipe, water pipes, hookahs, medicinal cannabis, cannabis, or any other lighted or heated smoking product;
- (bb) “vape or vaping” means the use and/or activation of a vaporizer or inhalant-type device, whether called an electronic cigarette or any other name, that contains a power source and/or heating element designed to heat a substance and produce vapour intended to be inhaled by the user of the device, whether or not the vapour contains nicotine, medicinal cannabis or cannabis; and
- (cc) “workplace” means a building or structure or part thereof in which one or more employees work, including but not limited to amenity areas, corridors, eating areas, elevators, entrances, escalators, exits, foyers, hallways, laundry rooms, lobbies, lounges, meeting rooms, parking garages, reception areas, stairways and washrooms, and includes a public transport vehicle and any other vehicle in which an employee works but does not include a private dwelling.

2. No Smoking and/or Vaping in Public Places

2.1 There shall be no smoking or vaping in, or within a 9m radius of any entrance, exit or air intake of, a public place, including but not limited to:

- a) the prohibited places contained within section 12(1) of the *Smoke Free Ontario Act, 2017* S.O. 2017 c.26 or as set out in any subsequent legislation;
- b) common area;
- c) public washrooms;
- d) funeral home;
- e) racetrack;
- f) casino;
- g) bingo hall;
- h) billiard hall;

- i) bowling alley;
- j) hookah and vape lounges;
- k) restaurant;
- l) bar;
- m) patio;
- n) recreational facility;
- o) service line whether indoors or outdoors;
- p) shopping centres, plazas, and/or malls, and;
- q) public transport vehicle.

2.2 There shall be no smoking or vaping on any portion of the property or grounds of a municipal building.

2.3 There shall be no smoking or vaping on any external portion of the property or grounds of a post-secondary institution, except in a designated smoking/vaping area at least 9m from any entrance, exit or air intake. The inclusion of any designated smoking/vaping area shall be at the individual institution's sole and absolute discretion.

2.4 There shall be no smoking or vaping on any external portion of the property or grounds of a long-term care home except in a designated smoking/vaping area at least 9m from any entrance, exit or air intake. The inclusion of any designated smoking/vaping area shall be at the individual institution's sole and absolute discretion.

2.5 There shall be no smoking or vaping in or within a 20m radius of any public park.

3. Smoking and/or Vaping in Workplaces

3.1 No person shall smoke and/or vape in an enclosed workplace.

3.2 No person shall place an ashtray for the use of smokers in an enclosed workplace.

3.3 No employer shall permit a person to smoke and/or vape in an enclosed workplace.

3.4 No employer shall permit a person to place an ashtray for the use of smokers in an enclosed workplace.

4. Signs

4.1 The proprietor of a public place shall ensure that such public place is posted with no-smoking and no-vaping signs in a conspicuous manner at each entrance to the public place to indicate that smoking and vaping are prohibited.

4.2 Every employer shall ensure that the enclosed workplace is posted with no-smoking and no-vaping signs in a conspicuous manner at each entrance to the workplace to indicate that smoking and vaping prohibited.

5. Enforcement

5.1 The Medical Officer of Health of the Region may, from time to time, appoint inspectors for the purpose of enforcing this by-law.

5.2 An inspector may, at any reasonable time, enter any public place or workplace (other than a private dwelling) without warrant or notice for the purpose of determining whether there is compliance with this by-law.

- 5.3 An inspector may make such examinations, investigations and inquiries as are necessary to determine whether there is compliance with this by-law.
- 5.4 A person has a duty to identify themselves when requested by an inspector.
- 5.5 No person shall hinder, obstruct or interfere with an inspector carrying out an inspection under this by-law.
- 6. Offence**
- 6.1 Any person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine of not more than \$5,000.00 exclusive of costs, as provided in the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.
- 7. Conflict**
- 7.1 If any provision of this by-law conflicts with any Act, regulation or other municipal by-law, the provision that is the most restrictive shall prevail.
- 8. Severability**
- 8.1 If any section of this by-law or parts thereof are found by any Court to be illegal or beyond the power of the Region to enact, such section or parts thereof shall be deemed to be severable and all other sections or parts of this by-law shall be deemed to be separate and independent therefrom and to be enacted as such.
- 9. Legislation**
- 9.1 Any reference in this By-law to all or any part of any statute, regulation, by-law or rule shall, unless otherwise stated, be taken as a reference to that statute, regulation, by-law or rule or the relevant part thereof, amended, replaced or re-enacted from time to time.
- 10. Set Fines**
- 10.1 Set fines for contraventions of this by-law shall be in accordance with Schedule A to this by-law, attached hereto and forming part of this by-law.
- 11. Effective Date**
- 11.1 This by-law shall come into force and effect once a triple majority has been obtained in accordance with section 115(5) of the Municipal Act, 2001.
- 11.2 That by-law 66-2002 shall be repealed on the date this by-law comes into force and effect.

This By-law Read and Passed on the 24th day of April, 2019.

J. Henry, Regional Chair and CEO

R. Walton, Regional Clerk

Schedule A

Set Fine Schedule

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Offence Creating Provision	COLUMN 3 Set Fine (Includes costs)
1	Smoke in a prohibited place	*	*
2	Vape in a prohibited place	*	*
3	Smoke in an enclosed workplace	*	*
4	Vape in an enclosed workplace	*	*
5	Place ashtray in an enclosed workplace	*	*
6	Failure to prohibit persons from smoking in an enclosed workplace	*	*
7	Failure to prohibit persons from vaping in an enclosed workplace	*	*
8	Failure to prohibit persons from placing ashtrays in an enclosed workplace	*	*
9	Failure to post No Smoking signs in a public place	*	*
10	Failure to post No Vaping signs in a public place	*	*
11	Failure to post No Smoking signs in an enclosed workplace	*	*
12	Failure to post No Vaping signs in an enclosed workplace	*	*
13.	Obstruct Inspector	*	*

Note: The penalty provision for the offences indicated above is Section 10 of the By-law.

* These fields will be determined by the Regional Senior Justice of Central Ontario at a later date.