



CORPORATION OF THE TOWNSHIP OF ESQUIMALT

Municipal Hall
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Legislation Details (With Text)

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Title: First and Second Reading of Bylaw 2929 being a bylaw to amend the Zoning Bylaw to regulate Cannabis, Staff Report DEV-18-029

Sponsors:

Indexes:

Code sections:

Attachments: 1. Schedule "A" Zoning Bylaw 1992 No. 2050 Amendment Bylaw 2018 No. 2929 - Reviewed May 2 2018 Final Final, 2. Schedule "B" Health Canada Information for Municipalities Medical Use of Cannabis

Date	Ver.	Action By	Action	Result
5/7/2018	1	Council	approved	Pass

REQUEST FOR DECISION

DATE: April 30, 2018

Report No. DEV-18-029

TO: Laurie Hurst, Chief Administrative Officer

FROM: Bill Brown, Director of Development Services

SUBJECT:

Zoning Bylaw amendments to prohibit the retail sale of cannabis, cannabis lounges, and medical marijuana production facilities except with site specific rezoning.

RECOMMENDATION:

1. That Council resolves that Zoning Bylaw, 1992, No. 2050, Amendment Bylaw No. 2929, attached to Staff Report DEV-18-029 as Schedule "A", which would amend Zoning Bylaw, 1992, No. 2050 by:
 - a. Adding definitions of "Cannabis", "Cannabis Plant", "Medical Marijuana Production Facility", and "Store, Cannabis Sales";
 - b. Amending the definitions of "Business and Professional Offices" and "Store, Retail";
 - c. Prohibiting the retail sale of non-medical cannabis in all zones and on all public road ways unless the location is specifically rezoned to allow a Cannabis Sales Store;
 - d. Prohibiting Cannabis Lounges and similar facilities in all zones unless the location is specifically rezoned to allow such uses;
 - e. Prohibiting the growing or production of marijuana, cannabis and similar plants, products or derivatives except:
 - i. As a farm use on lands in the Agricultural Land Reserve;

- ii. On land specifically rezoned to permit a Health Canada licenced Medical Marijuana Production Facility use;
 - iii. As an Accessory Use under the authority of a Health Canada issued personal use licence; and
 - iv. Under the authority of one or more Health Canada issued designated producer licences.
- f. Adding the word “liquor” before the word “lounge” in Sections 60 (1) (e) (Gorge Vale Golf Course) and 67.71 (1) (a) (English Inn)
be considered for first and second reading.
2. That Council authorizes the Corporate Officer to schedule a Public Hearing for Zoning Amendment Bylaw No. 2929 and advertise for same in the local newspaper

RELEVANT POLICY:

Zoning Bylaw, 1992, No. 2050

STRATEGIC RELEVANCE:

The proposed amendment to the Zoning Bylaw is not related to any of Council’s strategic priorities.

BACKGROUND:

At the April 16, 2018 Committee of the Whole, Council directed staff to prepare a set of comprehensive amendments to the Zoning Bylaw, 1992, No. 2050 that would prohibit “Cannabis Sales Store” as a land use in Esquimalt but that could permit this use in the future through site specific rezoning. Staff have prepared the amending bylaw (Schedule “A”) which contains the following provisions:

1. Adds the following definitions to the Zoning Bylaw:
 - a. “Cannabis” means the same meaning as the Cannabis Act (Canada).
 - b. “Cannabis Lounge” means a building or part thereof including decks, patios and balconies used for medicinal or recreational consumption (smoking or oral consumption) of marijuana or cannabis and related products or derivatives.
 - c. “Cannabis Plant” means the same meaning as the Cannabis Act (Canada).
 - d. “Medical Marijuana Production Facility” means a building used for the commercial production of marijuana for medical purposes by a person, including a corporation or other form of business, who holds a valid and sustaining licence for such production from the Government of Canada.
 - e. “Store, Cannabis Sales” means the use of land, building or a structure for the retail sale of cannabis by a person, including a corporation or other form of business, who holds a valid and sustaining provincial licence to sell cannabis through the retail market in British Columbia.

These definitions are required in order to clearly differentiate between retail sales in general and the sale of cannabis specifically. Clear definitions are essential to the unambiguous interpretation of the Zoning Bylaw. Council will note that staff have added a definition of “Cannabis Lounge”. Prohibiting “Cannabis Lounges” was not part of the previous discussion with Council, however, in discussion with legal council, staff have been advised to consider treating “Cannabis Lounges” in a way similar to Cannabis Sales, that is to prohibit them except where they are approved through a site specific rezoning process. Likewise with “Medical Marijuana Production Facilities”.

2. Amends the following definitions:

- a. "Business and Professional Offices" is amended by revising the concluding exclusion to read: "but excludes all retailing stores (e.g. Retail Store, Convenience Store, Cannabis Sales Store, Liquor Store) and Personal Service Establishments."
- b. "Store, Retail" is amended by adding the following exclusion at the end of the definition: "but does not include Cannabis Sales Store or Liquor Store".

These definitions are amended to remove any ambiguity in interpretation and to close potential loopholes.

3. Prohibits the retail sale of Cannabis in all zones and on public road ways unless the location is specifically rezoned to allow a Cannabis Sales Store.
4. Prohibits Cannabis Lounges unless the location is specifically rezoned to allow such uses.
5. Prohibits the growing or production of marijuana, cannabis and similar plants, products or derivatives except:
 - a. As a farm use in the Agricultural Land Reserve;
 - b. On land specifically rezoned to permit a Health Canada licenced Medical Marijuana Production Facility Use;
 - c. As an Accessory Use under the authority of a Health Canada issued personal use licence;
 - d. Under the authority of one or more Health Canada issued designated producer licences.

These provisions acknowledge some of the limitations placed on regulating marijuana and cannabis by local governments due to other legislation, specifically the:

- Agricultural Land Reserve Use, Subdivision And Procedure Regulation 171/2002;
- Access to Cannabis for Medical Purposes Regulations SOR/2016-230; and
- The Canadian Charter of Rights and Freedoms.

Under legislation governing the Agricultural Land Reserve (ALR), local governments cannot prohibit the growing of marijuana as a farm use on ALR land. The Township contains one ALR parcel, namely the Gorge Vale Golf Course. Although the Township can not prohibit the growing of marijuana on the Golf Course lands, it can regulate the location of any buildings associated with the growing of marijuana on the ALR. To this end, the bylaw requires that the production of marijuana must occur within a building and the minimum setbacks for the building would be 25 metres from all property lines and 150 metres from schools, day cares, parks, playgrounds, club houses, convenience stores, or other public places frequented mainly by persons under 18 years of age.

The proposed bylaw would also prohibit Medical Marijuana Production Facilities in the Township unless they first obtained site specific rezoning.

Council also discussed access to medical marijuana as an issue governed by the Charter of Rights and Freedoms. The proposed amendments acknowledge that the legislation allows authorized individuals to grow their own medical marijuana. The proposed amendments would permit someone with a personal use licence from Health Canada to produce marijuana in a building located in the Rear Yard at least 5 metres from all property lines and at least 250 metres from schools, day cares, parks, playgrounds, convenience stores, or other public places frequented mainly by persons under 18 years of age.

Related to the above is the ability of a person requiring medical marijuana to obtain it from a designated producer. In this case, the production of medical marijuana must take place in a building that is:

- Setback a minimum of 10 metres from all property lines;
- Located more than 50m from any building that contains a residential Use; and
- Located more than 250 metres from schools, day cares, parks, playgrounds, convenience stores, or other public places frequented mainly by persons under 18 years of age.

The Government of Canada documentation attached as Schedule “B” to this report helps to explain the relationship between local governments and medical marijuana.

6. Adds the word “liquor” in front of the word “lounge” in Sections 60 (1) (e) (Gorge Vale Golf Course) and 67.71 (1) (a) (English Inn).

Finally, the proposed amendments would add the word “liquor” in front of the word “lounge” in two locations in the Zoning Bylaw. Again, this is to reduce any ambiguity as much as possible.

ISSUES:

1. Rationale for Selected Option

The proposed amendments to the Zoning Bylaw reflect Council’s direction to staff related to the regulation of the “Sale of Cannabis”. In addition, staff, after having discussed the issue with legal counsel, recommend additional amendments that reduce ambiguity, regulate “Cannabis Lounges” and “Medical Marijuana Production Facilities”, and recognizes the role of the other relevant legislation including the:

- Agricultural Land Reserve Use, Subdivision and Procedure Regulation 171/2002;
- Access to Cannabis for Medical Purposes Regulations SOR/2016-230; and
- Canadian Charter of Rights and Freedoms.

2. Organizational Implications

The processing of rezoning applications takes a fair amount of staff time, however, it is a process that staff are well versed in and one that is clearly outlined in legislation. In addition, the process provides a robust review of applications, allows for extensive community input, and gives Council the discretionary authority to approve or refuse an application.

3. Financial Implications

There are no direct financial implications.

4. Sustainability & Environmental Implications

There are no direct sustainability or environmental implications.

5. Communication & Engagement

As this is an amendment to the Zoning Bylaw, a statutory public hearing will be required if Council gives the bylaw first and second reading. A notice of the public hearing will be published in a local

newspaper.

ALTERNATIVES:

First Alternative:

1. That Council resolves that Zoning Bylaw, 1992, No. 2050, Amendment Bylaw No. 2929, attached to Staff Report DEV-18-029 as Schedule “A”, which would amend Zoning Bylaw, 1992, No. 2050 by:
 - a. Adding definitions of “Cannabis”, “Cannabis Plant”, “Medical Marijuana Production Facility”, and “Store, Cannabis Sales”;
 - b. Amending the definitions of “Business and Professional Offices” and “Store, Retail”;
 - c. Prohibiting the retail sale of non-medical cannabis in all zones and on all public road ways unless the location is specifically rezoned to allow a Cannabis Sales Store;
 - d. Prohibiting Cannabis Lounges and similar facilities in all zones unless the location is specifically rezoned to allow such uses;
 - e. Prohibiting the growing or production of marijuana, cannabis and similar plants, products or derivatives except:
 - i. As a farm use on lands in the Agricultural Land Reserve;
 - ii. On land specifically rezoned to permit a Health Canada licenced Medical Marijuana Production Facility use;
 - iii. As an Accessory Use under the authority of a Health Canada issued personal use licence; and
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 - f. Adding the word “liquor” before the word “lounge” in Sections 60 (1) (e) (Gorge Vale Golf Course) and 67.71 (1) (a) (English Inn)

be considered for first and second reading.

2. That Council authorizes the Corporate Officer to schedule a Public Hearing for Zoning Amendment Bylaw No. 2929, and advertise for same in the local newspaper.

Second Alternative:

That Council defeat Zoning Amendment Bylaw No. 2929.

Third Alternative:

That Council request that staff provide more information.