



# CORPORATION OF THE TOWNSHIP OF ESQUIMALT

Municipal Hall  
1229 Esquimalt Road  
Esquimalt, B.C. V9A 3P1

## Legislation Text

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### REQUEST FOR DIRECTION

**DATE:** April 09, 2018

Report No. DEV-18-022

**TO:** Laurie Hurst, Chief Administrative Officer

**FROM:** Bill Brown, Director of Development Services

**SUBJECT:**

Options for controlling the size and location of Cannabis Retail outlets

**ESSENTIAL QUESTION:**

Which option would Council prefer to control the size and location of cannabis retail outlets?

**RECOMMENDATION:**

That the COTW receive Staff Report DEV-18-022 and direct staff to prepare a set of comprehensive amendments to the Zoning Bylaw, 1992, No. 2050 that would prohibit "Cannabis Retail" as a land use in Esquimalt but that could permit "Cannabis Retail" to be considered by Council through site specific rezoning.

**BACKGROUND:**

On April 13, 2017, Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts, was introduced in the House of Commons. When it comes into force, the Act it will allow legal access to non-medical cannabis and control and regulate its production, distribution, and sale. The Act does not however, control the distribution, licensing, retail scheme, or location of Cannabis Retail outlets. These elements have fallen to the provincial governments. In the case of British Columbia, the province has issued the B.C. Cannabis Private Retail Licensing Guide Applications and Operations (Schedule "A"). In the Guide, the province has laid out the application process for a non-medical Cannabis retail licence and information about: licences, operations, supply, inspections and compliance, and rural areas. Of particular note, are the references to local government requirements. Specifically, the Guide states:

*The Province will permit local governments to decide whether they wish to have a non-medical cannabis retail store in their community. For the Province to issue a licence, applicants must have the support of the local government in the community where the proposed store would be located.*

The Guide further states:

*The local government must ask residents in the vicinity of the proposed retail location to comment on how the store would impact the community. The local government must consider this public input when deciding whether or not to support the application and must notify the LCLB of their decision by way of a council resolution.*

The Province has also stated:

*The operating rules governing public and private retail stores will be similar to those currently in place for liquor. In urban areas, licensed retailers will not be able to sell cannabis in the same stores as liquor or tobacco.*

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

It is expected that by early August 2018, the sale of non-medical cannabis will become legal in Canada. Given that staff have already received inquiries from business owners interested in opening up non-medical cannabis retail outlets in Esquimalt, it is imperative that the Township be prepared both legally and administratively to effectively and efficiently respond to such inquiries. Given very short timelines, there is not time for a comprehensive review of potential alternatives nor is there time for a detailed community consultation prior to August 2018. In addition, the Province has yet to release its legislative framework related to the retail licensing of non-medical cannabis adding a certain degree of uncertainty to the situation. There is also the possibility of amendments to the Act as it makes its way through the Senate. Notwithstanding the short timelines and legislative uncertainty, five possible approaches to regulating the size and location of cannabis retail uses, whether medicinal in nature or not, are outlined below.

## ISSUES:

The five basic approaches available to Council to control the size and location of Cannabis Retail uses, whether medical in nature or not, are:

- 1) Do nothing;
- 2) Regulate through the business licensing process;
- 3) Add siting criteria into the Zoning Bylaw;
- 4) Permit Cannabis Retail in certain Zones only, similar to Liquor Stores; and
- 5) Regulate through a land use control process by requiring each proposed Cannabis Retail outlet to go through a site-specific rezoning process.

Each of these options has pros and cons as outlined below.

- 1) Do nothing:

If Council takes this approach, then Cannabis Retail outlets could potentially be permitted anywhere other retail uses are permitted.

The only additional step would be for the Township to ask residents in the vicinity of the proposed retail location to comment on how the outlet would impact the community. As noted above, the Provincial B.C. Cannabis Private Retail Licensing Guide Applications and Operations states that:

*The local government must consider this public input when deciding whether or not to support*

*the application and must notify the LCLB of their decision by way of a council resolution.*

Because the Township does not currently have a public consultation process related to the siting of non-medical Cannabis sales, one would have to be developed and implemented through either policy or regulation.

Furthermore, the Guide states:

*For the Province to issue a licence, applicants must have the support of the local government in the community where the proposed store would be located.*

However, it is questionable whether Council would have the ability to prohibit the establishment of a Cannabis Retail outlet if the land use is permitted by zoning, by forwarding a resolution to not support a Provincial licensing application, since ultimately that licensing decision is one made by the Provincial government. Whether the Township could ever challenge a decision of the Province to issue or not issue a licence based on the above sentence in the Provincial Guide is questionable. There is also a planning question based on the potential conflict between a proposal that fits into the permitted uses in a zone yet is not supported by Council due to neighbourhood opposition. If Council chooses this option, staff recommends that the Township obtain legal advice related to the issues outlined above.

2) Regulate through the business licensing process:

Although Section 8 (6) of the *Community Charter* states:

*A council may, by bylaw, regulate in relation to business*

Section 8 (7) (c) states that a business regulation:

*may not be used to do anything that a council is specifically authorized to do under Part 14 [Planning and Land Use Management] or Part 15 [Heritage Conservation] of the Local Government Act.*

Since land use is part of the zoning power in Part 14 of the *Local Government Act*, *ipso facto* business regulations should not be used to regulate the size and location of Cannabis Retail outlets, that is, whether the use is permitted or not.

This in no way means that Cannabis Retail outlets should not have a business licence - in fact they absolutely should be required to have one as the application for a business licence is one of the ways in which the Township can ensure compliance with various bylaws including but not limited to: the Building Bylaw, the Sign Bylaw, the Zoning Bylaw and the Parking Bylaw. Business licensing authority also allows the imposition of reasonable conditions and requirements on the operation of the business, but section 60 of the *Community Charter* notes that a business licence must not be unreasonably refused (and reasons must be given). Legal advice would be recommended to assist in outlining the scope of business licensing conditions if this was the only option chosen.

In addition to the limitations imposed by the *Community Charter*, there is no process for public consultation related to the application for, the review of, or issuance of a business licence, unless

Council creates one. (Note: the applicant has a right to be heard if the licence is refused). Given that the Provincial Government Guidelines state that:

*The local government must ask residents in the vicinity of the proposed retail location to comment on how the store would impact the community. The local government must consider this public input when deciding whether or not to support the application and must notify the LCLB of their decision by way of a council resolution,*

an entirely new public consultation process would have to be developed if the Township tried to control Cannabis Retail sales using business licence regulations.

3) Add siting criteria in the Zoning Bylaw:

Adding siting criteria such as distances from schools, day cares, or already established Cannabis Retail outlets can be added to the Zoning Bylaw; however, there may be situations where an outlet meets the distance criteria but is still opposed by the residents. Furthermore, given that the minimum distance criteria are somewhat arbitrary and do not necessarily result in the optimal location for a Cannabis Retail outlet, this approach is somewhat questionable. There could be unintended consequences associated with this approach due to a potential lack of knowledge of all of the potential impacts of this use on adjacent uses as well as the consequences of changing urban land use patterns and residents' understanding of potential impacts over time.

As for community consultation, other than the initial public hearing process to amend the Zoning Bylaw to include setback distances, no additional public consultation process would be required related to the Zoning Bylaw. There would still need to be some form of public consultation as required by the Province's Guide; however, that process is unlikely to be as robust as the public hearing process that is required with rezoning applications, unless Council so directs.

4) Permit "Cannabis Retail" in certain Zones only:

This approach is similar to the approach currently used for Liquor Stores. Liquor Stores are a type of Retail Store but are dealt with separately in the Zoning Bylaw, a distinction that is recognized by case law, and are only allowed on land specifically zoned to allow them as a permitted use. Currently, Liquor Stores are only permitted in the following zones:

- Core Commercial Liquor [C-3A] Zone,
- Licensed Liquor Establishment [C-6] Zone,
- Licensed Liquor Establishment - Professional Office [C-6A] Zone,
- Comprehensive Development District No. 80 [CD No. 80] Zone, and
- Comprehensive Development District No. 99 [CD No. 99] Zone.

If this approach is applied to Cannabis Retail, then Zoning Bylaw Amendments are required to create the distinction from other retail and to identify the zones where Cannabis Retail would be permitted. These amendments would go through the normal Council-initiated rezoning process, including a statutory public hearing.

It is noted that the Official Community Plan is silent on cannabis and marijuana related uses, therefore, it does not contain any impediments to locating Cannabis Retail on land designated as “Commercial Mixed-Use”, but it also does not require such location.

5) Requiring site-specific rezoning:

This approach first requires a series of amendments to the Zoning Bylaw that would completely prohibit Cannabis Retail sales and similar uses. This would mean that the only way to legally operate a Cannabis Retail outlet would be through site-specific rezoning. Requiring site-specific rezoning means that the public and Council would have an opportunity to adjudicate each application on its own merits based on the prevailing conditions at the time of the application.

As part of the rezoning process, Council would be able to consider the potential impacts of the proposed retail outlet on nearby citizens as well as the overall community impact. Issues such as: potential impacts on residents in the neighbourhood, compatibility with nearby land uses, impacts due to traffic, issues related to crime prevention through environmental design, and overall community acceptability, can all be considered through the rezoning process. In addition, there is an already well established robust statutory public consultation process that would not require the development of a new consultation process as it would for the previous options. There is also an existing bylaw requirement for the applicant to host a neighbourhood meeting early in the application process which represents an additional level of community consultation. This approach is understood in the community and represents the most transparent and accountable approach to regulating the size and location of Cannabis retail outlets.

## **ALTERNATIVES:**

1. That the COTW receive Staff Report DEV-18-022 and direct staff to prepare a set of comprehensive amendments to the Zoning Bylaw, 1992, No. 2050 that would prohibit “Cannabis Retail” as a land use in Esquimalt but that could permit “Cannabis Retail” to be considered by Council through site specific rezoning.
2. That the COTW provide alternative direction to staff.
3. That the COTW request further information from staff.