



THE CORPORATION OF THE CITY OF COURTENAY

## STAFF REPORT

**To:** Council

**File No.:** 3360-20-1811

**From:** Chief Administrative Officer

**Date:** June 18, 2018

**Subject:** Zoning Amendment Bylaw No. 2935 (Storefront Cannabis Retailers)

### PURPOSE:

The purpose of this report is for Council to consider zoning amendments to define and restrict storefront cannabis retailers within Courtenay in addition to adopting a Council Policy on the criteria to be considered with future applications to rezone for storefront cannabis retailers.

### CAO RECOMMENDATIONS:

That based on the June 18, 2018 staff report "Zoning Amendment Bylaw No. 2935 (Storefront Cannabis Retailers)" Council approve OPTION 1 and proceed to First and Second Readings of Zoning Amendment Bylaw No. 2935, 2018; and

That Council direct staff to schedule and advertise a statutory public hearing with respect to Zoning Amendment Bylaw No. 2935, 2018 on July 3, 2018 at 5:00 p.m. in the City Hall Council Chambers; and

That Council adopt the Storefront Cannabis Retailers Policy as outlined in Attachment No. 2 to this report.

Respectfully submitted,

David Allen, BES, CLGEM, SCLGM  
Chief Administrative Officer

### BACKGROUND:

The Government of Canada has previously announced its intention to legalize recreational cannabis. The *Cannabis Act* (Bill C-45) passed third reading in the Senate with approximately 40 amendments on June 7th. The bill must now go back to the House of Commons for the government to decide to approve, reject or modify the changes before returning to the Senate for another vote. It is anticipated the bill will become law this summer.

In general terms, the *Cannabis Act* will allow Canadians to lawfully cultivate, purchase, possess and consume limited quantities of Cannabis.

Subject to the Federal *Cannabis Act* some authority will be granted to the Provincial Government. To this end, two Provincial Acts have worked their way through the Legislative Assembly. These are the *Cannabis*

*Control and Licensing Act* (Bill 30) and the *Cannabis Distribution Act* (Bill 31). These bills were introduced to the Legislative Assembly on April 26, 2018 and received Royal Assent on May 31<sup>st</sup>.

Through these bills, the Province intends to restrict the purchase and possession of recreational cannabis to individuals over the age of 19; control the wholesale distribution of cannabis through the Liquor Distribution Branch; permit public and private retail sales; and permit cannabis consumption in the same places where tobacco consumption is permitted with the exception of areas frequented by children including beaches, parks and playgrounds.

At the Local Government level the legislation provides Local Government the authority to regulate certain criteria such as zoning, business licencing (hours of operation, security requirements), public consumption (nuisance bylaws, smoking bylaws) and procedures for public consultation on licence applications.

## **DISCUSSION:**

There are many different approaches being taken at the local government level regarding implementation of the retail sales of recreational cannabis. These include, for example, the complete restriction on sales (not common), or permissive zoning/policy subject to limitations on proximity to a range of uses such as other cannabis stores, schools, daycares and public places. Staff have reviewed some of the existing and proposed approaches to regulation which are summarized in the table attached as Attachment No.1. Many communities are still in the development stage of their regulations and on a frequent basis new regulations are coming forward. Therefore some more recent approaches such as Langford's and Esquimalt's are not included in the table.

The legal framework at both the Federal and Provincial levels has yet to be adopted and many communities have been holding off consideration of bylaw amendments. The prevailing legal advice for municipalities is at a minimum to define the use and restrict it as an interim measure. This is seen as stage 1 of a two stage process to develop regulation. The general intent is to prevent any retailers from establishing themselves prior to adoption of a clear legislative framework (this approach has been taken by Comox and the Comox Valley Regional District is in the process of adopting a similar zoning amendment).

Although the federal legislation has yet to be adopted staff believe the proposed bill with the approved provincial legislation can be used to guide the creation of local regulations. To this end, staff recommend that the City define the use and restrict it, as recommended by local government law firms, thereby requiring an interested retailer to apply for a zoning amendment. In addition to this zoning restriction, a companion policy is recommended that outlines rezoning considerations such as minimum distance to schools and the maximum number of stores permitted in the City. As a guiding document this policy would not fetter Council's decision making authority in relation to each application which would be considered on its own merits. The policy would however provide a guide to applicants and staff in this process.

This regulatory framework is being contemplated by many local governments and is currently in place in the City of Victoria. It is supported from a legal perspective and has recently been discussed in a City of Victoria court case where the Chief Justice of BC accepted that such a policy would not entitle an applicant to rezoning even if they met the general criteria.

The proposed approach aligns with the Provincial legislation. While the Provincial Government has the authority to issue licences for the retail sale of cannabis, the City will retain control over land use management criteria such as zoning and determining where and how many cannabis retail stores will be

permitted in Courtenay. Furthermore, pursuant to the proposed *Cannabis Control and Licensing Act* (s.33) the province will not issue a licence for the retail sale of cannabis unless the local government is supportive of the proposal. Similar to the existing liquor licensing process, the City will be required to gather the views of residents prior to forwarding comments to the province. As such the public hearing process required for a rezoning application can also be used to gather the views of residents for the provincial license.

The proposed policy is attached and includes the following considerations for rezoning applications:

1. Storefront cannabis retailers will only be considered in an established retail location where the current zoning permits retail sales.
2. A storefront cannabis retailer should be:
  - a. at least 300 m (in a straight line from closest lot line to closest lot line) from a public or independent preschool, elementary, middle or secondary school including the Comox Valley Child Development Association.
  - b. at least 400 m (in a straight line from closest lot line to closest lot line) from another lot where a storefront cannabis retailer is permitted, whether or not a storefront cannabis retailer is active on that lot.
3. Cannabis sales are not permitted at special events, public markets or farmers markets.
4. This Policy does not limit Council from considering variances to the separation distances noted in (2) based on circumstances related to a specific application.
5. The off-street parking requirements applicable to retail stores as outlined in Division 7 of Zoning Bylaw 2500, 2007 and amendments thereto will apply to storefront cannabis retailers.
6. Only one storefront cannabis retailer will be allowed per lot.
7. The maximum number of storefront cannabis retailers in the City is five (5).

The distances proposed above are derived from those used in a variety of other jurisdictions which generally range between 150m and 500m from schools and between 50m and 1000m from other retailers. Staff believe the distances proposed in the policy are reasonable and note that since they are set by policy rather than bylaw, Council will maintain discretion on individual applications to determine if the location meets the general public interest.

In addition to defining and restricting storefront cannabis retailers the proposed zoning amendment modifies the definition of retail store to clarify it is distinct from cannabis sales. Bylaw 2935 also replaces references in the zoning bylaw to the Medical Purposes Regulation (MMPR) with the more current Access to Cannabis for Medical Purposes Regulations (ACMPR).

While staff recommend OPTION 1 to move forward with First and Second Readings of Bylaw 2935 and adopt the attached Council Policy, staff suggest that at a minimum Bylaw 2935 move forward at this time to restrict retail cannabis sales.

**FINANCIAL IMPLICATIONS:**

The Application fee for rezoning will be \$3,000 and the fee for consideration of the provincial licence will be \$500. These are the same fees charged for a liquor store.

Staff will bring forward amendments to the business licence bylaw to add the category of Storefront Cannabis Retailer and set the annual licence fee at \$1,000.

**ADMINISTRATIVE IMPLICATIONS:**

The Planning Division is currently responsible for processing liquor licence applications and will be responsible for processing any storefront cannabis retailer licences. As a new, and yet to be fully implemented provincial licensing regime, it is difficult to estimate the time required to process each application. However, current liquor licence applications take on average 10 hours to process.

Applications to rezone to permit the retail sale of cannabis are anticipated to take approximately 40 hours.

At this time bylaw enforcement implications are anticipated to be minimal with respect to the retail sale of cannabis from a land use perspective. Should Council consider other regulations such as limiting smoking in public, the implications on bylaw enforcement could be significant.

**ASSET MANAGEMENT IMPLICATIONS:**

There are no asset management implications with the proposed zoning or policy.

**STRATEGIC PRIORITIES REFERENCE:**

**We actively pursue vibrant economic growth**

- Continue to improve our relationship with business in our community

**OFFICIAL COMMUNITY PLAN REFERENCE:**

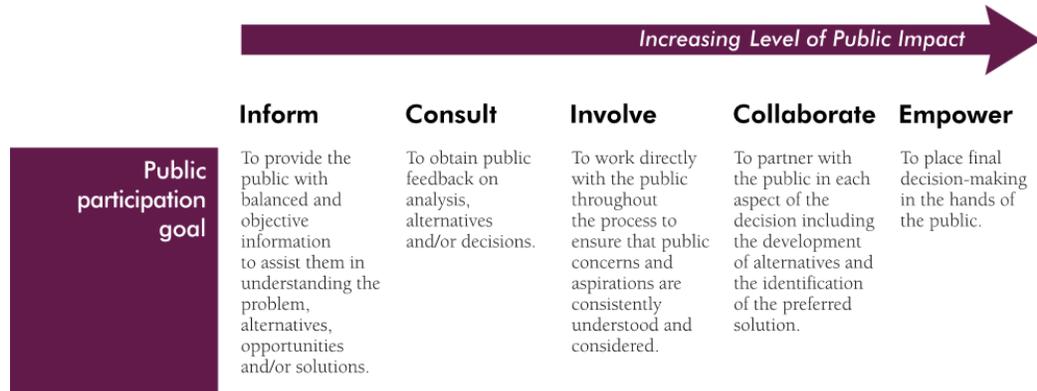
There are no direct references in the Official Community Plan to this use, however the OCP generally supports the utilization of existing serviced and designated commercial lands prior to considering new commercial development areas. The proposed policy requires storefront cannabis retailers to locate in an established retail location where the current zoning permits retail sales.

**REGIONAL GROWTH STRATEGY REFERENCE:**

The proposed zoning amendment aligns with the Regional Growth Strategy policy to locate retail and other commercial employment activities within Core Settlement Areas.

**CITIZEN/PUBLIC ENGAGEMENT:**

Similar to other rezoning applications staff will **consult** the public through neighbourhood information meetings and public hearings as requests come forward.



Staff have consulted with the Downtown Courtenay Business Improvement Association (DCBIA) to gauge their desire for cannabis retailers in the Downtown area. Following a survey from their members the following statement came from their board. "**Downtown Courtenay will allow for dispensaries Downtown Courtenay but must be a limited number of 3**". It is noteworthy that like most land use issues, the opinion was not unanimous among the membership. The discretion in the proposed policy framework is designed to take into consideration concerns of immediate neighbours in the decision making process.

**OPTIONS:**

**OPTION 1 (recommended)**

That Zoning Amendment Bylaw No. 2935, 2018 (Storefront Cannabis Retailers) proceed to First and Second Readings; and

That Council direct staff to schedule and advertise a statutory public hearing with respect to Zoning Amendment Bylaw No. 2935, 2018 on July 3, 2018 at 5:00 p.m. in the City Hall Council Chambers; and

That Council adopt the Storefront Cannabis Retailers Policy as outlined in Attachment No. 2.

**OPTION 2**

That Zoning Amendment Bylaw No. 2935, 2018 (Storefront Cannabis Retailers) proceed to First and Second Readings; and

That Council direct staff to schedule and advertise a statutory public hearing with respect to Zoning Amendment Bylaw No. 2935, 2018 on July 3, 2018 at 5:00 p.m. in the City Hall Council Chambers; and

That Council direct staff to make specific amendments to the Storefront Cannabis Retailers Policy outlined in Attachment No. 2.

**OPTION 3**

That Zoning Amendment Bylaw No. 2935, 2018 (Storefront Cannabis Retailers) proceed to First and Second Readings; and

That Council direct staff to schedule and advertise a statutory public hearing with respect to Zoning Amendment Bylaw No. 2935, 2018 on July 3, 2018 at 5:00 p.m. in the City Hall Council Chambers; and

That Council direct staff to conduct an Open House on the proposed Storefront Cannabis Retailers Policy outlined in Attachment No.2 prior to bringing it back to Council for consideration.

Prepared by:



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Ian Buck, MCIP, RPP  
Director of Development Services

Attachments: Attachment No.1 – Comparison Table  
Attachment No.2 – Proposed Policy

**Attachment No. 1 Comparison Table**

Regulation	Vancouver (Medical)	Port Alberni (Medical)	Cumberland (Medical, Temporary Use Permit 1-yr)	Victoria	Nelson (Under Consideration)	Port Hardy (Under Consideration)	Calgary (Proposed)	Edmonton (Under Consideration)	Washington State (Default)
Rezoning required				✓	unknown	✓			unknown-various
Distance from other cannabis sales	300m	1,000m (many times defended in Council)	50m (from permitted lot, active or no)	400m (from permitted lot, active or no)	300m		300m (some zone exceptions)	200m	300m (1,000ft)
Distance from schools	300m	300m	150m (public or independent, elementary, middle or secondary)	200m (public or independent, elementary, middle or secondary)	150m-500m	150m	150m	200m (public or private)	300m (1,000ft)
Distance from community centres	300m				150m-500m				
Distance from neighbourhood houses	300m								
Distance from youth facilities that serve vulnerable youth	300m								
Distance from recreation centres							100m (City recreation centres)		300m (1,000ft)
Distance from parks					150m-500m				300m (1,000ft)
Distance from playgrounds						100m			300m (1,000ft)
Distance from daycares						150m (licensed day care)	explicitly none after consultation		300m (1,000ft)
Distance from libraries						100m	200m		300m (1,000ft)
Distance from provincial healthcare facilities							100m		
Distance from municipal and school reserve parcels							100m		
Distance from emergency shelters							150m		
Distance from public transit centre									300m (1,000ft)
Distance from game arcade (where minors allowed)									300m (1,000ft)
Distance Flexibility				Can consider variances			Development Authority can reduce, but by 10% max for schools		All but schools and public playgrounds can be reduced to 30m (100ft) by local gov'ts
<b>Regulation</b>	<b>Vancouver (Medical)</b>	<b>Port Alberni (Medical)</b>	<b>Cumberland (Medical, Temporary Use Permit 1-yr)</b>	<b>Victoria</b>	<b>Nelson (Under Consideration)</b>	<b>Port Hardy (Under Consideration)</b>	unexamined - different regulatory contexts		
Hours of operation (Provincially 9am-11pm, local gov't may further restrict)	8am-10pm	8am-8pm		7am-9pm	possibly close as early as 8pm				
Capped number of stores					possibly as few as 4, 9+, or no cap; surveyed by City region				
Air filtration system				✓					
Minimum of two employees on site	✓			✓					
Video surveillance cameras	✓	✓		✓					
Security and fire alarm system	✓	✓		✓					
Secure storage of valuables	✓			✓					
Good neighbour agreement	✓								
License fee	\$30,000 (\$1,000 for compassion club)	\$550	\$1,000-\$2500+ costs	\$5,000					
DP/rezoning fee	\$5,100 max DP			\$7,500					

**Attachment No. 2 – Proposed Policy**

<b>City of Courtenay</b>	<b>Policy</b>	<b>Page 1 of 2</b>
<b>Section 13 - Planning and Development</b>	<b>Policy #</b>	
<b>Subject: Storefront Cannabis Retailers</b>	<b>Revision #</b>	<b>1</b>

The purpose of this policy is to outline the criteria that may be considered by City Council as part of a rezoning application or temporary use permit application to allow for retail cannabis sales at a particular location. This policy is intended to guide applicants and City staff as part of the application process but it is not intended to fetter Council's discretion when dealing with individual applications, each of which will be evaluated on its own merits.

This policy was established in response to the anticipated legalization, or partial legalization, of cannabis by the federal government and the potential unregulated proliferation of storefront cannabis retailers. It is intended to address potentially adverse community impacts of storefront cannabis retailers, including inappropriate exposure of minors to cannabis and the undesirable concentration of storefront cannabis retailers.

**B. DEFINITIONS**

**Applicant** means an applicant for a rezoning that would allow for a storefront cannabis retailer at a particular location.

**Storefront Cannabis Retailer** means the use of land, water, buildings or structures for the retail sale of cannabis subject to a valid and sustaining provincial license issued pursuant to the Cannabis Control and Licensing Act.

**C. POLICY STATEMENTS**

***Rezoning Considerations***

1. Storefront cannabis retailers will only be considered in an established retail location where the current zoning permits retail sales.
2. A storefront cannabis retailer should be:
  - a. at least 300 m (in a straight line from closest lot line to closest lot line) from a public or independent preschool, elementary, middle or secondary school including the Comox Valley Child Development Association.

<b>AUTHORIZATION:</b>	<b>DATE:</b>
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<b>Section 13 - Planning and Development</b>	<b>Policy #</b>
<b>Subject: Storefront Cannabis Retailers</b>	<b>Revision # 1</b>

- b. at least 400 m (in a straight line from closest lot line to closest lot line) from another lot where a storefront cannabis retailer is permitted, whether or not a storefront cannabis retailer is active on that lot.
- 3. Cannabis sales are not permitted at special events, public markets or farmers markets.
- 4. This Policy does not limit Council from considering variances to the separation distances noted in (2) based on circumstances related to a specific application.
- 5. The off-street parking requirements applicable to retail stores as outlined in Division 7 of Zoning Bylaw 2500, 2007 and amendments thereto will apply to storefront cannabis retailers.
- 6. Only one storefront cannabis retailer will be allowed per lot.
- 7. The maximum number of storefront cannabis retailers in the City is five (5).

***Application Process***

The applicant must undertake all of the standard processes required for a rezoning application pursuant to Development Application Procedures Bylaw No. 2790, 2014 and amendments thereto.

<b>AUTHORIZATION:</b>	<b>DATE:</b>
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