

EMERGING TRENDS IN MUNICIPAL LAW 2018

Cannabis in your Community:  
Can it be Controlled?



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Barristers & Solicitors

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Preparing for Legalization

- Policing
- Business Tax
- Business Licencing
- Land Use Bylaw
- Other Bylaw Making Powers



Overview



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Terminology

- Federal statute – Cannabis Act
- Provincial statute – Bill 26

“An Act to Control and Regulate Cannabis”



Overview



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**Cannabis Legalization**

**Policing**

- Objective of *Cannabis Act* to reduce the burden on the criminal justice system
- Will legalization limit the illegal market?
- What will be costs of policing under legalization?
- Will Province be sharing revenue with municipalities to help with any additional costs?

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**Taxation**

**Business Tax**

- Current municipal powers would not allow for imposition of a tax on cannabis sales
- Nothing in *Cannabis Act* or Bill 26 that would broaden taxation powers
- Could tax businesses through business tax powers
- Business tax regime set out in MGA

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**Business Regulation**

**Business Licencing**

- Do you have an existing Business Licencing process?
- Opportunity for specific operational rules
- Rules cannot contradict provincial regulations
- More rules = more enforcement
- Business Licence fee may help offset costs

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**Land Use Bylaw**

**What can you do now?**

- Add new use classes
- Establish application process
- Develop use specific regulations
- Determine where uses will be allowed

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**Land Use Bylaw**

**Use Class Definitions**

- Growers/Cultivation
- Processing
- Retailers
- Other Uses



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**Land Use Bylaw**

**Growers/Cultivators**

- Federally licenced
- Currently - large facilities growing medical cannabis
- Under Cannabis Act
  - Growers of medical cannabis will continue to operate
  - Growers of non-medical cannabis - # of categories
- May need to create a number of use classes

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**Land Use Bylaw**

**Processing**

- Federally licenced
- Is the land use impact of the processing of cannabis any different than other processing uses?
- Different types of cannabis processing activities will have different licences
- Different sizes

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**Land Use Bylaw**

**Retailers**

- Provincially licenced
- Privately owned
- Limited to sale of cannabis, cannabis products and cannabis accessories
- Options: define as separate uses, combined use class or treated as part of retail sale

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**Land Use Bylaw**

**Retailers**

- Distinct Use Class or Classes

“Cannabis Retail Sales” means a retail store, licensed by the Province of Alberta, where non-medical Cannabis and Cannabis accessories are sold to individuals who attend at the premises”

- Exclusion from other use classes

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**Land Use Bylaw**

**“Grow Your Own”**

- Not the “grow op” with large numbers of plants
- 4 plants per dwelling
- Must be indoors



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**Land Use Bylaw**

**“Grow Your Own”**

- Can this be made a distinct Use Class?
- What are the planning impacts of growing cannabis vs. growing other plants?
- Practicalities of enforcement if made a Use Class

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**Land Use Bylaw**

**Other Uses**

- Cannabis Lounge
- Cannabis Café
- Sale of edibles will not be legalized at this time



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**Land Use Bylaw**

**Application Process**

- Special requirements for application for a development permit for a cannabis related use?
  - i. Proof of federal license
  - ii. Proof of provincial license
  - iii. Details of site location and surrounding uses
  - iv. Neighbourhood consultation requirements

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**Land Use Bylaw**

**Use Specific Regulations**

- Time limit on development permit
- Compliance with CPTED Principles
- Parking
- Signage

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**Land Use Bylaw**

**Use Specific Regulations**

- Buffer or separation distances
- Province has said regulations will set separation distances – to keep retail locations for cannabis away from schools, daycares and community centres
- Provincial restrictions will govern

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**Land Use Bylaw**

**Amendment to Section 640 of the MGA**

(7) A land use bylaw must be consistent with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act*, respecting the location of premises described in a cannabis licence and distances between those premises and other premises.

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**Land Use Bylaw**

**Amendment to Section 642 of the MGA**

(5) Despite subsections (1) and (2), a development authority must not issue a development permit if the proposed development does not comply with the applicable requirements of regulations under the *Gaming, Liquor and Cannabis Act*, respecting the location of premises described in a cannabis licence and distances between those premises and other premises.

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**Land Use Bylaw - SDAB Jurisdiction**

**New Subsection 687(3)(a.4) of MGA**

687(3)(a.4) must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act*, respecting the location of premises described in a cannabis licence and distances between those premises and other premises.

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### Land Use Bylaw


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#### Districting

- Standard District
  - Permitted
  - Discretionary
- Direct Control
- Defined but not listed as permitted or discretionary in any district



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### Other Bylaw Possibilities

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#### Conduct on Licensed Premise

- Section 90.19(1)(a)
  - (1) No cannabis licensee or employee or agent of a cannabis licensee may permit any activity in the licensed premises that
    - (a) is contrary to any municipal bylaw or any Act or Regulation of Alberta or Canada
- Same wording as Section 69 of the current AGLC Act with respect to premises licensed for sale of liquor

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### Other Bylaw Possibilities

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#### Leaving licensed premises on closing

- Section 90.21
  - Persons other than the licensee or employee or agent of licensee must leave licensed premises when sale or use of cannabis in those premises are required to cease under the regulations or municipal bylaws
- Same wording as Section 71 of the current AGLC Act with respect to premises licensed for sale of liquor except refers to stadium and not municipal bylaws

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**Other Bylaw Possibilities**

**Regulations**

- Section 129 (1)(r.4)
  - Lieutenant Governor in Council may, by regulation, authorize municipalities to pass bylaws in specified classes of licensed premise that prescribe hours of sale and use of cannabis in licensed premises and areas of licensed premises where the sale and use of cannabis may occur
- Same wording as Section 129(1)(r)
- Current regulation provides for stadium bylaws

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**Other Bylaw Making Powers**

**Section 7 (a), (b), (c) of the MGA**

(a) safety, health and welfare of people and the protection of people and property

(b) people, activities and things in, on, or near a public place or place that is open to the public

(c) nuisances, including unsightly property

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**Other Bylaw Making Powers**

**Activities in, on, or near a public place**

- Can a Municipality prohibit public consumption?
- Section 90.28 restricts where a person can smoke or vape cannabis
  - i. 90.28(a) refers to *Tobacco and Smoking Reduction Act* and where prohibited by the bylaws of a municipality
  - ii. 90.28(b) hospital, school or child care facility property
  - iii. 90.28(c) within distance of playground, sports or playing field....

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Can Cannabis be Controlled?

- Business Licensing
- Land Use Bylaw
  - i. Define Use Classes
  - ii. Prepare possible use specific regulations



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CONCLUSION

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In the Future:

- Watch
- Be Ready to Respond



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CONCLUSION

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Presented by:



CHARLOTTE ST. DENNIS  
Edmonton Office  
cstdennis@brownleelaw.com  
Direct: 780-497-4829

**B** BROWNLEE LLP  
www.brownleelaw.com

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