

**MISCELLANEOUS - MEDICAL MARIHUANA COUNSELLING  
CITYWIDE  
BYLAW 28P2016**

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**EXECUTIVE SUMMARY**

This report proposes a definition called “Medical Marihuana Counselling” for the Land Use Bylaw 1P2007 (LUB). It accommodates counselling on all aspects of medical marihuana that is provided by persons who are not medical professionals, such as advice on organising the documentation needed to take to a medical professional (e.g. a medical doctor) to obtain a “medical document” (a prescription), and advice on the various types and brands of medical marihuana available and how to order them from a licensed producer.

Advice on alternatives and brands of prescription medicine used to treat illnesses has traditionally been provided by medical professionals, with advice also provided by pharmacists. Most new medicines undergo randomised double-blind placebo-controlled clinical trials to ensure their safety, efficacy and dosage, so that medical professionals have a sound basis on which to prescribe medicine.

For patients that do not obtain their medical marihuana through the Marihuana Medical Access Regulations (MMAR), the Marihuana for Medical Purposes Regulation (MMPR) requires them to purchase and have it shipped from a licensed producer, with the patient selecting the type, or strain, from a licensed producer.

There has been a significant increase in the use of medical marihuana as a medicine over the past few years. There are now many licensed medical marihuana producers, each producing a variety of types or strains of medical marihuana. Medical marihuana is dispensed directly by the manufacturer without a pharmacist as a bridge. Each type or strain of medical marihuana has not necessarily undergone traditional scientific pharmaceutical testing. These issues have resulted in demand for counselling advice by persons who are not medical professionals.

A business where counselling on medicine is done by a medical professional is accommodated under the “Medical Clinic” definition in the LUB. Other types of non-medical counselling are accommodated under the “Counselling Service” definition. A person who is not a medical professional that operates a business that provides advice related to medical marihuana falls somewhat outside of both of these definitions, but would be accommodated in the new “Medical Marihuana Counselling” definition. Medical professionals will continue to be able to provide counselling on any type of medicine, including medical marihuana, in any of the traditional settings where medicine is practised.

**PREVIOUS COUNCIL DIRECTION**

On 2015 June 16, Council adopted NM2015-011 that directed Administration to report to Council by October 2015 regarding consideration of amendments to the LUB that defined a use to accommodate and manage medical marihuana counselling businesses.

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On 2015 October 6, Council considered C2015-0710 and directed Administration to:

- Develop a definition in the LUB to accommodate medical marihuana counselling as a distinct use, including rules to manage clustering, proliferation and separation from schools;
- Encourage future medical marihuana counselling business owners to consult with the local community and neighbours and to consider the use of a good neighbor agreement;
- Ensure that rules in the LUB comply with Federal Law relating to how medical marihuana can be dispensed; and
- Include stakeholder consultation during development of the amendments.

**ADMINISTRATION RECOMMENDATION**

2016 April 21

That Calgary Planning Commission recommends **APPROVAL** of the proposed amendments to the Land Use Bylaw 1P2007.

**RECOMMENDATION(S) OF THE CALGARY PLANNING COMMISSION**

That Council hold a Public Hearing on Bylaw 28P2016; and

1. **REFUSE** the proposed amendments to the Land Use Bylaw (1P2007); and
2. **ABANDON** the proposed Bylaw 28P2016.

**REASONS FOR THE RECOMMENDATION:**

Administration recommends approval of the amendments to the LUB that define “Medical Marihuana Counselling” and list it as a discretionary use in most commercial and industrial districts, because it manages a business that is not clearly accommodated in either the “Medical Clinic” or “Counselling Service” definitions.

The “Medical Marihuana Counselling” use does not allow the retail sale of medical marihuana, in accordance with Federal law, but it does accommodate and manage counselling activities by persons who are not medical professionals. Administration does not foresee significant future demand for the “Medical Marihuana Counselling” businesses, especially considering a recent Court decision (the “Allard” decision) that allows persons who were licensed under the MMAR to continue produce marihuana in a residential context, and the intention of the Federal Government to change the rules relating to the sale of marihuana. However, counselling businesses can be controversial because they are sometimes seen by the public as a precursor to the retail sale of medical marihuana, and because of the aesthetic aspect of the business (signage and imagery related to marihuana). The new definition will clearly accommodate the scope of these businesses and ensure they do not cluster or locate close to schools.

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**ATTACHMENT**

1. Proposed Bylaw 28P2016

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**ADMINISTRATION RECOMMENDATION TO CALGARY PLANNING COMMISSION**

Recommend that Council **ADOPT**, by bylaw, the proposed amendments to Land Use Bylaw 1P2007 (APPENDIX I).

Moved by: **G.-C. Carra**

**LOST: 4 - 5**

Opposed: G. Morrow, M. Wade,  
C. Friesen, M. Foht and  
J. Gondek

**2016 April 21**

**MOTION:**

The Calgary Planning Commission **FILED** Administration's recommendation of **APPROVAL** and recommends that Council:

The Calgary Planning Commission recommended that Council:

1. **REFUSE** the proposed amendments to the Land Use Bylaw (1P2007); and
2. **ABANDON** the proposed Bylaw.

Moved by: **G. Morrow**

**Carried: 5 – 4**

Opposed: R. Wright, M. Tita,  
G.-C. Carra and  
S. Keating

Reasons for support of the Refusal recommendation from Mr. Morrow:

- As per my comments on Item 5.06 (M-2016-010), this would be best handled through a "Conditional Use Permit" (CUP) process. Councillor Keating has asked that I write a background report on CUPs, which he will distribute to Council, on this file, I believe it is premature until federal legislation regulating marijuana is passed – when this occurs, it is highly likely that we will once again need to update our policies.

Reasons for support of the Refusal recommendation from Ms. Gondek:

- This is a process counselling, not medical counselling that requires intake, assessment or assessment of the person seeking "counselling" on process can do it virtually (phone or electronically) and we eliminate land use consideration.
- When federal legislation/regulation is clarified, our land use bylaw should focus in the holistic delivery if marijuana-related services.
- This should not be placeholder to convert "counselling centres" to

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dispensaries.

- With all things said, I greatly appreciate and respect the amount of time Mr. Kimber has spent on this Council-directed process.

Reasons for support of the Refusal recommendation from Ms. Wade:

- Recommend that Council consider Medical Marijuana Dispensary and coordinate with federal government legislation.
- Currently Medical Marijuana Dispensaries exist in Vancouver, Squamish and provide "Counselling Services" by Naturopaths, etc. A dispensary seems to be an appropriate fit to the intent
- Health Canada has supported these dispensaries in BC so my assumption there is a legal regulation for them to exist and operate.
- The federal government is to consider legalization of marijuana in Spring of 2017, creating land use policies that may be defunct in less than a year. Maybe better to focus on dispensaries and future change in the federal law to manage the existing situations arising in Calgary.

Reasons for support of the Refusal recommendation from Mr. Foht:

- The use contemplated as a "Medical Marihuana Counselling" is neither medical nor counselling; without qualifications of the operator.
- This is premature at this point, until the federal government gives direction on the legality or otherwise regarding marihuana.

Reasons for support of the Refusal recommendation from Mr. Friesen:

- I voted against this Land Use because I don't think this is primarily a planning issue. The business described is consulting on the medical use of this substance but it does not include sale of the substance itself. The businesses are being regulated like alcohol outlets when no drug is being sold.
- This stigmatizes a legal activity which is meant to help unfortunate people with an illness which generally seems like a very strange thing to do. I realize that social engineering is often part of planning regulation but in this case the balance is too far away from actually planning. It may be that these businesses are jumping the gun in anticipation of legalization. If they are many will disappear but I don't think the City needs to overreact to this premature activity.

Reasons for opposition of the Refusal recommendation from Mr. Wright:

- Council gave specific direction to deal with an issue it felt needed to be addressed. Administration's proposal was a reasoned response, especially given the changing legal landscape. The proposed amendment should be incorporated into the bylaw with the acknowledged proviso in may require further amendments with changes by the federal government.

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**REGULATORY DISCUSSION**

**BACKGROUND**

Counselling on prescription medicine has traditionally occurred anywhere a medical professional works, such as medical clinics, hospitals, hospices or in a person's home. Pharmacists have also provided a second level of counselling regarding prescription medicine.

Medical marihuana, under the MMPR, is a unique prescription medicine because it is not dispensed by a pharmacy, and because there are a wide variety of manufacturers that produce a variety of products, or strains, with different attributes. The patient is also able select the type or strain from the licensed producer.

This unique situation has created some demand from patients for counselling from third parties as this service is not being provided by pharmacists because they do not dispense medical marihuana, and because not all medical professionals have expertise on all of the licensed producers and the various types or strains of medical marihuana.

The regulatory structure of medical marihuana is in flux, as the 2016 February 24 Court decision on *Allard et al v. Her Majesty the Queen in right of Canada* ("Allard") resulted in the MMPR being struck down, with the decision effective August 2016 unless an extension is sought. The Federal Government has signalled that it will not appeal the decision and will address the court decision by writing a new Regulation.

In addition to the Court decision, the Federal Government has also publicly stated its intention to change Federal rules regarding the sale of marihuana.

The Court decision and the Federal Government's stated intention to change public policy on the sale of marihuana means that the current dual regulatory system on medical marihuana, with some persons licensed to grow in a residential context under the MMAR, and other persons using medical documents (i.e. a prescription) to purchase from licensed manufacturer's under MMPR, will continue until new Federal Regulations are introduced.

When new Federal Regulations are introduced it may mean that the City of Calgary will need to amend its planning and development rules. It is also unknown at this time how or if Provinces and municipalities will be involved in the Federal rule change process.

**THE PROPOSED LAND USE BYLAW AMENDMENT**

The amendment shown in APPENDIX I defines a use where counselling on medical marihuana is provided by a person who is not a medical professional. Medical professionals will continue to be allowed to provide this same activity in any of the traditional locations (e.g. hospitals, medical clinics, etc.).

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The definition includes rules that require Medical Marihuana Counselling uses to be separated by 300 metres from each other and 150 metres from schools. These rules are intended to manage clustering, proliferation and distances from schools, in accordance with Council's 2015 October 06 direction. The separation distance is aligned with the similar rules used for Liquor Stores.

The amendments propose that Medical Marihuana Counselling be listed in the same districts where Medical Clinic is listed. The amendments will not affect parcels managed by direct control districts in pre LUB 1P2007 bylaws (e.g. Bylaw 2P80 and 8600).

An advantage of defining Medical Marihuana Counselling separately from Medical Clinic and Counselling Service is that it gives the City the ability to manage the potential that clustering could occur in some areas. The name of the use also communicates clearly to communities what is proposed to occur when a business applies for a development permit, lessening the chance that the public will be surprised when a use, approved as a Medical Clinic, operates a Medical Marihuana Counselling business.

Additionally, should Council wish to consider approving the LUB amendments in APPENDIX I, Administration will implement a recommendation in our processes that will suggest that each applicant for a Medical Marihuana Counselling business consider the use of a "Good Neighbour Agreement". A "Good Neighbour Agreement" is a document that allows unique businesses and care providers the ability to build a relationship with the local community, by establishing protocols about the business or service and how the relationship will be successfully managed, including methods that the community can use to ask questions and resolve complaints and concerns about the operation of the business.

**REGULATION IN OTHER JURISDICTIONS**

The planning regulation of counselling on medical marihuana appears not to be specifically regulated in other municipal jurisdictions. Many such clinics exist in Canada, but appear to operate under the auspices of a medical clinic, office or other planning definitions.

For example, a medical marihuana counselling business operates in Markham Ontario, providing administrative assistance, information and other services such as connections to medical professionals that prescribe medical marihuana. This business occurs in a land use district that does not have a specific use to accommodate medical marihuana counselling.

Although medical marihuana counselling is not specifically regulated in other jurisdictions, it is important to remember that most municipal jurisdictions have their own history, culture and method of planning regulation and definitions.

Although the retail sale of marihuana is illegal in Canada, there are different rules in the United States.

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For example, four states have legalised recreational marihuana (Alaska, Colorado, Oregon and Washington) and nineteen other states allow it to be used for medical purposes. There are a variety of state regulations.

There are also a variety of rules at the municipal level. One example, the City of Aurora, Colorado (part of the Denver metropolitan area) requires that retail marihuana stores be separated 1,000 feet (300 metres) from a school and 150 metres from a hospital and substance abuse facilities, measured from the property boundaries.

**CONSULTATION**

Administration held an industry stakeholders session on 2016 March 11 to discuss the proposed use and the status of medical marihuana regulation in Calgary. There are currently only two known medical marihuana counselling businesses in Calgary. This meeting resulted in ideas and feedback about the definition, but also resulted in establishing communications between Administration and persons in the medical marihuana industry.

Additionally, Administration circulated the draft amendments to community and industry groups, as well as BRZ s, which resulted in some feedback.

Some of the feedback received related to issues and ideas outside the City's jurisdiction.



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APPENDIX I

PROPOSED AMENDMENTS TO LAND USE BYLAW 1P2007

- (a) Add a new section 233.2:

“233.2 **Medical Marihuana Counselling**”

- (a) means a **use**:
    - (i) where counselling on medical marihuana is provided by persons who are not medical professionals; and
    - (ii) that may include the ancillary retail sale or rental of merchandise;
  - (b) is a **use** within the Care and Health Group in Schedule A to this Bylaw;
  - (c) except in the C-R2 and C-R3 districts, must not be located within 300.0 metres of any other **Medical Marihuana Counselling use** when measured from the closest point of a **Medical Marihuana Counselling use** to the closest point of another **Medical Marihuana Counselling use**;
  - (d) except in the C-R2 and C-R3 districts, must not be located within 150.0 metres of a **parcel** that contains a **School – Private** or a **School Authority – School**, when measured from the closest point of a **Medical Marihuana Counselling use** to the closest point of a **parcel** that contains a **School – Private** or **School Authority – School**;
  - (e) requires a minimum of 4.0 **motor vehicle parking stalls** per 100.0 square metres of **gross usable floor area**;
  - (f) does not require **bicycle parking stalls – class 1**; and
  - (g) requires a minimum of 1.0 **bicycle parking stalls - class 2** per 250.0 square metres of **gross usable floor area**.”
- (b) Add a new subsection (j.1) to subsections 703(3), 924(2), 939(2) and 1249(3):
- “(j.1) **Medical Marihuana Counselling**,”
- (c) Add a new subsection (n.1) to subsections 723(3) and 1259(3):
- “(n.1) **Medical Marihuana Counselling**,”

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- (d) Add a new subsection (r.2) to subsection 740(3):  
“(r.2) **Medical Marihuana Counselling;**”
- (e) Add a new subsection (t.2) to subsections 759(3) and 1164(3):  
“(t.2) **Medical Marihuana Counselling;**”
- (f) Add a new subsection (q.2) to subsections 778(3), 863(3) and 1181(3):  
“(q.2) **Medical Marihuana Counselling;**”
- (g) Add a new subsection (z.2) to subsection 798(3):  
“(z.2) **Medical Marihuana Counselling;**”
- (h) Add a new subsection (w.1) to subsection 815(3):  
“(w.1) **Medical Marihuana Counselling;**”
- (i) Add a new subsection (c.1) to subsection 830(4):  
“(c.1) **Medical Marihuana Counselling;**”
- (j) Add a new subsection (p.2) to subsection 882(3):  
“(p.2) **Medical Marihuana Counselling;**”
- (k) Add a new subsection (q.1) to subsections 955(2) and 1278(3):  
“(q.1) **Medical Marihuana Counselling;**”
- (l) Add a new subsection (k.1) to subsections 1134(3) and 1269(3):  
“(k.1) **Medical Marihuana Counselling;**”
- (m) Add a new subsection (u.1) to subsection 1307(3):  
“(u.1) **Medical Marihuana Counselling;**”
- (n) Amend Schedule A, Care and Health Group, by adding “**Medical Marihuana Counselling**” to the list after “**Medical Clinic**”.

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**APPENDIX II**

**C2015-0710 MINUTES FROM THE COUNCIL MEETING OF 2015 OCTOBER 05 AND 06**

10.1.2 MEDICAL MARIHUANA COUNSELLING, C2015-0710

ADOPT, Moved by Councillor Colley-Urquhart, Seconded by Councillor Carra, that Administration Recommendations 1 and 4 contained in Report C2015-0710 be adopted, as follows:

That Council direct Administration to:

1. Develop a definition within the Land Use Bylaw to accommodate medical marihuana counselling as a use that solely provides counselling in regards to medical marihuana, including rules that manage clustering, proliferation and separation from schools; and
4. Encourage future owners of medical marihuana counselling businesses to consult with the local community and neighbours and to consider the use of a good neighbour agreement.

Opposed: D. Farrell, B. Pincott

CARRIED

ADOPT, Moved by Councillor Colley-Urquhart, Seconded by Councillor Carra, that Administration Recommendations 2 and 3 contained in Report C2015-0710 be adopted, as follows:

That Council direct Administration to:

2. Ensure that rules within the Land Use Bylaw comply with Federal law relating to how medical marihuana can be dispensed; and
3. Include stakeholder consultation during development of the amendments.

CARRIED