

MEDICAL MARIHUANA COUNSELLING

EXECUTIVE SUMMARY

The Federal “Marihuana for Medical Purposes Regulations” (MMPR) came into effect in 2013. They allow licensed commercial producers to supply the needs of persons who require medical marihuana.

Persons requiring access to licensed commercially-grown medical marihuana may need counselling, assistance and advice on the types of products available, and the ordering of medical marihuana from licensed commercial producers. There is no Land Use Bylaw (LUB) definition to accommodate these uses. Council directed Administration through NM2015-11 to report back on the consideration of amendments to the LUB that define a use to accommodate and manage medical marihuana counselling businesses, including stakeholder consultation, good neighbour agreements and an interim method to manage medical marihuana counselling pending permanent amendments.

This report requests that Council direct Administration to define a new use in the LUB to accommodate medical marihuana counselling businesses, and add rules that confirm current Federal law. This approach will allow Calgary to effectively manage the current status of Federal medical marihuana regulation.

ADMINISTRATION RECOMMENDATION(S)

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

PREVIOUS COUNCIL DIRECTION / POLICY

On 2015 June 16, Council adopted NM2015-11 (Attachment 1), after amendment (Attachment 2), moved by Councillor Colley-Urquhart, seconded by Councillor Carra regarding Medical Marihuana Counselling and Dispensaries. NM2015-11 directed Administration to report to Council by October 2015 regarding consideration of amendments to the LUB that define a use to accommodate and manage medical marihuana counselling businesses, including stakeholder consultation, good neighbour agreements and an interim method to manage medical marihuana counselling pending permanent amendments.

Further, the motion requested the Law Department to review and consider the Federal Health Minister Rona Ambrose’s letter of April 23, 2015 written to Mayor Robertson of The City of Vancouver (Attachment 3), and to report back to Council with options and recommendations in relation to medical marihuana storefronts and dispensaries.

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BACKGROUND

In general, possession of marihuana is illegal under Federal law. However, in response to court decisions requiring access to medical marihuana, in July 2001 the Federal government adopted regulations called the “Marihuana Medical Access Regulations” (MMAR). These regulations permitted eligible individuals to possess marihuana for medical purposes. Eligible individuals were also permitted to grow their own medical marihuana under a “personal production license”, or have a designated person do so under a “designated-person production license.”

New Federal regulations called the “Marihuana for Medical Purposes Regulations” (MMPR) came into place in 2013 and replaced MMAR in March 2014. Under the MMPR, individuals are no longer allowed to grow their own marihuana or have someone else grow it for them. Instead, eligible individuals are now required to purchase medical marihuana directly from a federally licensed commercial producer and have it delivered via mail or courier.

As described in further detail below, businesses have been established that provide counselling and advice on obtaining medical marihuana, and sell associated medical marihuana paraphernalia. While it is legal to provide such counselling and sell associated medical marihuana paraphernalia, it remains illegal to directly sell medical marihuana via a storefront.

A temporary Federal Court Injunction has allowed persons with personal production licenses (or designated-person production licenses) under the old MMAR to continue growing their personal supply, pending a decision in *Allard et al v. Her Majesty the queen in right of Canada* (“Allard”). *Allard* involves a constitutional challenge to the MMPR, including its prohibition on personal production and designated-person production of medical marihuana. The *Allard* court has not yet issued its decision.

On 2014 April 14 Council amended the LUB to include a definition of “Medical Marihuana Production Facility” to accommodate licensed commercial producers of medical marihuana in accordance with MMPR.

At the time of the writing of this report there are 26 licensed commercial producers in Canada, of which one is in Alberta. Calgary is currently processing two development permit applications for “Medical Marihuana Production Facility”.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

Federal law does not allow the retail sale of medical marihuana. As of the date of this report, medical marihuana can only be obtained through a pre-existing personal production license pursuant to the old MMAR or from a licensed commercial producer pursuant to the MMPR. As previously noted, the ability to use a pre-existing personal production license may change, pending a decision in *Allard*.

The MMPR allows “medical practitioners”, i.e. a person (a) registered and entitled to practice medicine in Alberta, commonly known as a medical doctor or physician, or (b) nurse practitioners, to provide medical advice and sign a medical document authorising the use of medical marihuana. Medical practitioners may also receive shipments of medical marihuana on a patient’s behalf, which for the purposes of this report is considered to be ‘dispensing’ of

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medical marihuana. Such activities by a medical practitioner could occur in a “Medical Clinic” (as that term is defined in the LUB) or in any other context where it would be normal and customary for a physician or nurse practitioner to practice, such as a home visit, a hospice or in a hospital.

There is no definition in the LUB that defines specialised medical clinics where a physician or nurse practitioner dispenses medical marihuana. It is Administration’s understanding that in Alberta there are no specialised medical clinics where a physician or nurse practitioner specialises in dispensing medical marihuana.

The College of Physicians and Surgeons of Alberta (CPSA) Standards of Practice state that “a physician must not dispense or provide marihuana to any patient or person” Similarly the College & Association of Registered Nurses of Alberta (CARNA) has stated to Administration that nurse practitioners cannot, at this time, prescribe or dispense medical marihuana.

The positions of the CPSA and CARNA mean it is not possible for a person to obtain medical marihuana in Alberta other than (a) directly from a licensed commercial producer pursuant to the MMPR, or (b) pursuant to the MMAR, pending a decision in *Allard*. The MMPR only allows licensed commercial producers to mail or courier medical marihuana to an authorised user; it cannot be purchased at the production facility.

The MMPR may have created a demand for businesses which, although they cannot legally dispense medical marihuana, provide counselling and advice to persons who have been authorised to purchase medical marihuana, or who need advice on the process to obtain authorisation to purchase medical marihuana. These businesses may provide advice regarding the variety of products available, the medical marihuana ordering process and the documentation needed to obtain a medical document. A medical document is the authorization document required by the MMPR for a person to purchase medical marihuana, and it must be signed by a physician or nurse practitioner. These businesses may also sell associated medical marihuana paraphernalia, such as vaporisers (a device commonly used to consume medical marihuana).

It is legal to provide such counselling, and to sell associated medical marihuana paraphernalia. There is currently one business in Calgary that provides counselling with regards to medical marihuana, the “420 Clinic”, which is located in Inglewood and was approved by the SDAB under a development permit for a “Medical Clinic” (as that term is defined in a direct control bylaw under LUB 2P80). This clinic only provides counselling on medical marihuana, it does not and cannot sell medical marihuana. There is no specific LUB definition to accommodate businesses where a non-physician or non-nurse practitioner provides advice on the type of medical marihuana or the ordering process.

LUB amendments that define a use which provides counselling and advice with regards to medical marihuana undertaken by non-health care practitioners is likely the appropriate approach to managing these unique uses, because it gives clarity to business, communities and Administration as to where these businesses can occur and what activities they can undertake.

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Pending the development and Council approval of a new definition to manage medical marihuana counselling as discussed above, Administration recommends that in the interim, all medical marihuana counselling businesses can only be accommodated under the “medical clinic” definition in the LUB and be issued temporary development permits until such time as a new definition is created and included in the appropriate land use districts.

Stakeholder Engagement, Research and Communication

Preliminary discussions have been held with the:

- College of Physicians and Surgeons of Alberta (CPSA);
- College & Association of Registered Nurses of Alberta.
- Calgary Police Services; and
- Alberta Health services.

Further consultations are planned with professional and business associations, communities and business prior to developing a use definitions, rules and list of districts where the use may apply.

Strategic Alignment

The Municipal Development Plan (MDP) states the City should “Create and retain viable local retail and mixed-use areas that encourage business creation, residential development and community services; while maintaining compatibility with the neighbourhood-oriented character of the retail”. In addition there are other policies in local area plans that emphasise compatibility with adjacent residential development and evaluating impacts of commercial development to ensure that adjoining residential areas are not negatively impacted.

Social, Environmental, Economic (External)

Social

It is important that The City provide opportunities for businesses that provide counselling and guidance to persons who are in pain or have other medical challenges, and that this is balanced with ensuring opportunities for other businesses, minimising negative impacts on residential uses and ensuring a high quality aesthetic environment, particularly along mixed-use corridors and in neighbourhood and community commercial areas.

Economic

Developing a use definition to accommodate medical marihuana counselling businesses supports The City’s policies of being open to innovation and providing flexibility to accommodate the changing needs of businesses and accommodating a variety of employment opportunities, as well as supporting healthcare.

Financial Capacity

Current and Future Operating Budget:

Developing a new use definition and rules in the LUB will be funded from existing operating budget in Planning, Development & Assessment.

Current and Future Capital Budget:

None

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Risk Assessment

As the Honourable Rona Ambrose stated in her April 23, 2015 letter, marihuana remains an illegal substance, and municipalities do not have the authority to legitimize its sale via storefronts or dispensaries.

However, it is currently legal for a non-physician or non-nurse practitioner to provide advice and counselling regarding medical marihuana, and to sell related paraphernalia. Medical marihuana counselling businesses are new uses that have arisen as a result of changes in Federal law. Not explicitly accommodating them in the LUB may result in them not being accommodated in appropriate locations with appropriate rules.

REASON FOR RECOMMENDATIONS:

Municipal-level planning and development rules are required that reflect current Federal law on the sale and dispensing of medical marihuana to ensure clarity on how medical marihuana is managed within Calgary. Creating a definition for medical marihuana counselling businesses will accommodate these businesses and assist in the management of potential clustering and aesthetic issues.

ATTACHMENTS

1. Notice of Motion NM2015-11
2. Minutes of Council meeting regarding NM2015-11 from 2015 June 16
3. Letter from Federal Health Minister Rona Ambrose to Mayor Robertson of the City of Vancouver