

**Planning & Development Report to
SPC on Planning and Urban Development
2019 April 03**

ISC: UNRESTRICTED

PUD2019-0337

Extension for Cannabis Store Commencement Date

EXECUTIVE SUMMARY

This report is seeking approval to amend Land Use Bylaw 1P2007 (the Bylaw) as indicated in Attachment 1 to extend the commencement date for Cannabis Store development permits. This is in response to a cannabis license moratorium from Alberta Gaming, Liquor and Cannabis (AGLC). This change will allow for the commencement deadline to be extended from one year to a maximum of three years.

ADMINISTRATION RECOMMENDATION:

That the Standing Policy Committee on Planning and Urban Development:

1. Direct Administration to:
 - a. Prepare an amending bylaw to Land Use Bylaw 1P2007 as outlined in the proposed text in Attachment 1; and
 - b. Forward the proposed bylaw, to accommodate the required advertising, and this report, directly to the 2019 April 29 Combined Meeting of Council.
2. Recommend that Council hold a Public Hearing for the proposed amending bylaw at the 2019 April 29 Combined Meeting of Council and give three readings to the proposed Land Use Bylaw Amendment in Attachment 1.

PREVIOUS COUNCIL DIRECTION / POLICY

At the 2018 July 23 Combined Meeting of Council, through PUD2018-0056, Council gave second and third reading of Bylaw 26P2018 to list the Cannabis Store use in the appropriate districts.

At the 2018 April 05 Combined Meeting of Council, through PUD2018-0056, Council adopted Bylaw 25P2018 to put in place the new Cannabis Store, Cannabis Facility, and Cannabis Counselling uses and their associated rules. Bylaw 26P2018 listed Cannabis Store in land use districts but was given first reading only, as second and third reading were withheld until the date of legalization of cannabis was known.

BACKGROUND

On 2018 July 30 the City of Calgary began issuing decisions on development permits for Cannabis Stores. These permits have primarily been for a Change of Use, which is a type of development permit. When a Change of Use is approved, the Bylaw requires that the business commence their operation (selling Cannabis) within one year of the approval, or else the permit will lapse, and the space will revert to the previous use.

Change of Use permits have a one-year commencement date with no opportunity for extension to facilitate continuous business activity and opportunity in an existing space. The commencement date is limited to one year to ensure that spaces are not left vacant for long periods of time, and so that every use decision takes the existing context into proper consideration. It is important for Administration to be able to consistently consider any new policy, community changes and citizen feedback when considering the appropriateness of a use.

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In 2018 November, Alberta Gaming, Liquor and Cannabis (AGLC) announced that it had suspended applications for new cannabis store licenses due to cannabis product shortage, and that it could take approximately 18 months before new licenses may be issued. This means it could be 2020 May before any new licenses are granted. Obtaining a provincial license is the final step before opening a store. As a result, some applicants who have received an approved development permit from the City, may not be licensed from the Province and unable to open their store before their development permit lapses.

The lapse of a development permit means that applicants, if they are still interested in pursuing this opportunity, would have to resubmit their development permit application and start the review process again from the beginning. The application would be subject to the full review process applied to any new application including separation distance rules between other stores, as well as appeal. Additionally, the application would be considered against any new policy, physical changes to the site and surrounding area, and feedback from the community. This is to say that the new development permit application may be refused, despite the fact there is currently an approval in place. The earliest date when Cannabis Store development permits may lapse is 2019 July 30 if they have not opened for business.

To date Administration has approved and released 156 Cannabis Store development permits and there are 24 stores currently open in Calgary. This means there are currently 132 development permits that may lapse due to the provincial moratorium. Additionally, there are 64 applications currently under review or pending decision. It is likely Administration will continue to receive development permit applications for Cannabis Stores in the foreseeable future.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

The present situation is an anomaly as these development permits may lapse because of the AGLC license suspension, not due to any oversight on the applicant's part. Historical examples of a development permit lapsing are a developer delaying the construction of a condominium building due to market conditions, or a restaurant not opening because of a failure on the applicant to pass health or fire inspections. The issue discussed in this report is localized specifically to Cannabis Stores and is not pervasive to Change of Use applications or other uses.

To address this issue Administration is proposing a Land Use Bylaw amendment to the rules for Cannabis Stores that would allow an extended timeline for commencement. Administration is proposing an additional year to accommodate these applicants. A development permit may receive this extension twice (i.e. a total of 3 years from the date of approval). For example, the first development permit may lapse on 2019 July 30. This applicant may request an extension to their development permit. The new commencement date would be 2020 July 30. If the applicant cannot open their store by this date because AGLC is still not issuing licenses they could request another one year extension, resulting in a commencement date of 2021 July 30. This will eliminate the need for customers to reapply for their permits, removing the costs and uncertainty of a new approval. All existing development permits will be amended to reflect the new commencement deadline in a process like other development permits. New permits will also be given the opportunity to apply for a commencement extension so that Administration can continue to approve permits despite the freeze on AGLC licenses.

This amendment is intended to address the immediate cannabis product shortage and be temporary in nature. The proposed Bylaw amendment provide the opportunity to request a

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commencement extension to development permits approved up to 2021 December 31, well past the AGLC indicated 18 month moratorium. This is to accommodate more time for the cannabis supply market to stabilize. Development permits approved after 2021 December 31 would revert to the typical one-year commencement date. However, Administration will continue to closely monitor the cannabis industry to determine if the provincial moratorium is likely to continue and affect development permits that would lapse past 2021 December 31.

Stakeholder Engagement, Research and Communication

No specific consultation was undertaken; however, Administration communicated to industry stakeholders the proposed changes to the Bylaw.

Strategic Alignment

The proposed Land Use Bylaw amendment is consistent with the Municipal Development Plan policies supporting business and investment including:

- Attract and retain suitable business and industry in Calgary by fostering economic diversification and providing a climate that supports and enhances economic activity (subsection 2.1.2.a.)
- Remain open to innovation and provide flexibility to accommodate the changing needs of business (subsection 2.1.2.e.)
- Create and maintain clear policy direction, application procedures and development standards to reduce uncertainties and risks to the economy (subsection 2.1.2.f.)

Social, Environmental, Economic (External)

Social

Cannabis Stores provide legal and safe opportunities for regulated cannabis sales versus sales that may otherwise occur in the unregulated black market. Government licensed stores sell products that have been tested and approved. The stores will provide safe and legal access to products that may otherwise be purchased on the black market. These businesses will provide legal jobs and their revenue will be taxed rather than being the non-taxed proceeds of criminal activity.

Environmental

Broad opportunities for cannabis sales means the impacts of noise, lighting, traffic and parking that may have occurred with fewer, more limited number of stores, should not occur.

Economic (External)

Ensuring appropriate, safe, and regulated opportunities for businesses to open cannabis stores assists the local economy.

Financial Capacity

Current and Future Operating Budget:

No implications identified.

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Current and Future Capital Budget:

No implications identified.

Risk Assessment

Those customers who were refused on their Cannabis Store development permit because they were “second in line” for a specific site or were too close to another store that was approved ahead of them may feel that it is unfair these permits may not lapse according to their original timeline. Extending the commencement timelines means that those customers with approved development permits can hold the market within 300 metres of that location for an additional two years, with no guarantee that they will ever receive a license from AGLC.

Customers who were refused can reapply for their permit after six months of the refusal, meaning some applicants may be anticipating making another application thinking that when the original approved development permit lapses, their application may be next in line for approval. If the commencement date is extended these customers would have to wait at least another year to make an application if those existing sites do not commence; or may even lose the opportunity to make an application if those sites obtain their AGLC license.

Extending the commencement date addresses an issue that is specific to Cannabis Stores and does not seem to be systemic to Change of Use applications. Administration is recommending up to two, one-year extensions to respect the intent of Change of Use rules. It is important for Administration to be able to consistently consider any new policy, community changes and citizen feedback when considering the appropriateness of a use. However, to mitigate the risk of the cannabis supply shortage continuing past 2020 May, Administration is proposing to allow for a commencement extension until 2021 December 31.

Should these amendments not be approved, there is a risk that many approved development permits will lapse. This would most likely result in a duplication of the initial cannabis implementation period: a rush of applications for competing sites, application refusals, Subdivision Development Appeal Board appeals, and ultimately a replication of the work previously completed.

A great deal of resources was committed to ensuring the cannabis implementation program was a smooth and equitable experience for customers, specifically the application intake and review process. Not extending the commencement date may be viewed as not supporting these businesses and this new and emerging industry.

REASON(S) FOR RECOMMENDATION(S): Due to the provincial moratorium on cannabis licenses, current approved development permit holders have not been given an opportunity to open their stores before their development permit lapses. If their development permit lapses they would have to go through the planning approval process again without a guarantee of approval. The proposed two time, one-year extension addresses this issue while respecting the intent of the current rules for Change of Use development permits.

ATTACHMENT(S)

1. Attachment 1 – Proposed Amendments to Land Use Bylaw 1P2007
2. Attachment 2 – Cannabis Store Rules and Policy Background
3. Attachment 3 – Cannabis Store Permit Information