



Committee of the Whole Report

penticton.ca

Date: July 3, 2018 **File No:** 4300-01
To: Peter Weeber, Chief Administrative Officer
From: Blake Laven, Planning Manager and JoAnne Kleb, Engagement Strategist
Subject: **Non-Medical Cannabis Framework
Retail Sales and Public Consumption**

Staff Recommendation

THAT the Committee of the Whole receive the public survey results summary regarding the retail sales and public consumption of non-medical cannabis in Penticton;

AND THAT the Committee of Whole endorses the retail sales and public consumption framework outlined in this report, for the purposes of initiating Phase II of the public engagement strategy.

Executive Summary

On March 20, 2018, Council endorsed an engagement strategy intended to determine resident's views toward allowing the retail sales of non-medical (recreational) and public use of cannabis in Penticton. The strategy included a survey which ran from April 16 to May 4 and received 1,151 responses. The results showed a majority of Penticton residents agree that retail sales of non-medical cannabis should be allowed in Penticton once federal legalization occurs. The results also showed a strong desire for strict regulations on any retail stores and that the number of stores should be limited with similar restrictions in their operation as alcohol retail sales. Based on this feedback, staff have developed a proposed framework for retail sales in Penticton which limits the number of stores through the establishment of exclusion zones around schools and buffer areas between stores. The next phase of the engagement strategy introduces this framework to stakeholders and the broader community for further refinement.

Strategic priority objective

Creating regulations through public and stakeholder consultation for the safe distribution and consumption of cannabis products in Penticton is in keeping with the Council priorities of Good Governance.

Background

The Cannabis Act, the federal bill that legalizes non-medical cannabis has recently received royal assent and will become law on October 17, 2018. The BC provincial government has not yet passed accompanying legislation, but have outlined their framework for legalization, which gives broad authority to local

governments to determine the location and operational conditions of cannabis retail stores in their jurisdictions. This provincial framework was outlined in staff's previous report to Council (March 20, 2018).

On March 20, 2018, Council endorsed a four phase community engagement strategy to determine what residents' views were on the retail sales of non-medical cannabis and public consumption in Penticton with the goal of developing local regulations reflective of the community's values.

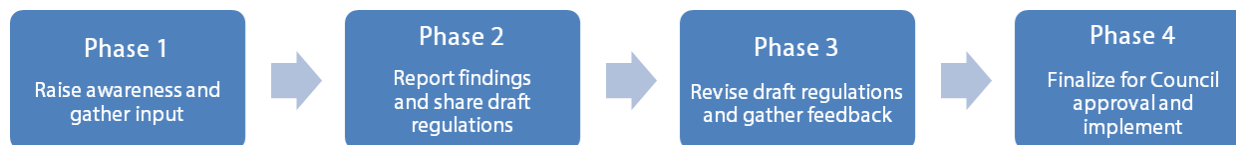


Figure 1: Four phase engagement strategy endorsed by Council

This report provides the results of that first phase of engagement and proposes a local framework for licensing non-medical cannabis retail stores in Penticton intended to lead into the second phase of engagement.

Phase 1 Engagement Summary

The following provides an overview of the engagement activities conducted in order to raise awareness and gather input.

- The primary engagement activity in the first phase was a community-wide survey. The survey ran from April 16 to May 4. Residents had the option of completing the survey in paper as well as online. The purpose of the survey was to gather data on public's preferences for the public use of cannabis in the City as well as retail sales. The City achieved record participation in the survey with 1,151 completions (including 32 paper surveys)
- Awareness of the survey and the engagement program was achieved through traditional channels including an article in the Utility Newsletter, advertisements in the newspaper, media relations and social media promotions. The program was branded with the slogan "WEED like to hear from you" to increase awareness. The slogan was very popular and effectively encouraged participation from all demographics whether or not they supported the legalization of cannabis.
- Awareness was also raised through a one-day public outreach campaign on 4/20. As part of this outreach, staff visited the Community Centre, walked the Okanagan Lakeshore, spoke with businesses and customers in the downtown and on Ellis.
- Staff also held events with interested stakeholder groups to support awareness and encourage participation. Staff attended the Chamber of Commerce and the District Parent Advisory Council meetings and visited the Penticton Seniors' Drop-in Centre.

Survey Findings

The following is a summary of the findings of the community-wide survey. The complete results are available at shapeyourcitypenticton.ca.

- *Results were weighted to reflect the demographics of Penticton's population*

The age of the respondents was 19-39 (30%), 40-64 (51%) and 65 and above (19%). Due to the high level of participation, staff was able to weigh the results to reflect Penticton's demographic as follows 19-39

(24%), 40-64 (42%) and 65 and above (34%). Due to the low response by below 19, results for that age group are not included. Results from non-residents were removed. A total of 1,056 responses were analysed.

- *The majority of participants identified themselves as Concerned Citizens*

Participants were asked to identify their primary interest(s) in completing the survey. The majority of participants identified themselves as Concerned Citizens (70%). Many also identified themselves as Customers of Recreational Cannabis (21%) and Customers of Medical Cannabis (18%). 13% of respondents identified themselves as members of the Business Community. A small percentage of participants identified their interests as prospective retail operators (2%), representatives of health or social agency (3%) and other (9%) or no response (4%).

- *The majority of participants support legitimizing and regulating retail cannabis sales*

Participants were reminded that the Government of Canada is legalizing and strictly regulating cannabis to “keep it out of the hands of Canadian youth and to prevent organized crime from continuing to profit from the illegal cannabis market.” At 78%, participants agreed or strongly agreed that regulating retail cannabis sales and having legitimate cannabis businesses will be good for Penticton.

- *The majority of participants agree that retail cannabis sales should be allowed in Penticton*

Participants were reminded that municipalities have the option of choosing to allow or prohibit retail cannabis sales in Penticton. The same number (78%) agreed or strongly agreed that retail cannabis sales should be allowed in Penticton.

- *Participants support allowing retail sales downtown and in established commercial areas but not along the city's lakeshores*

There was support for allowing retail sales downtown (56%), in other downtown areas (67%), in established shopping centres (51%), and in commercial areas along Main Street (59%). There was minimal support for allowing retail sales along the Okanagan or Skaha lakeshores (29%) and in neighborhood or corner stores (18%). The preference was to have retail stores spread across the city (47%) as opposed to clustered in a few commercial areas (21%). 25% of the respondents were open to a combination of the options. In an open-ended question, participants asked if any locations were missing from the list provided. Some of the themes in the response included: all commercial areas, anywhere alcohol is sold, and in the industrial area.

- *Participants support capping the number of stores*

The majority of participants support capping the number of stores with 67% agreeing or strongly agreeing to a cap. Participants were asked for their opinion on an appropriate cap and were informed that there are 8 stores licensed to sell liquor in the City for context. 42% would like to see the cap the

same as liquor stores and 28% would like to see the cap less than liquor stores. Another 30% don't believe it should be capped.

- *Participants strongly support requiring a minimum distance from schools*

There was strong support to require a minimum distance of retail stores from schools or public facilities at 86%. When asked which other public facilities in an open-ended question, the most common response was to avoid public areas frequented by youth including: beaches, parks, playgrounds, library, and community centre. The hospital was also frequently mentioned. At 81%, the majority of participants would like to see a minimum of a 200 m distance from schools. In the open-ended section, 1% of participants asked for a greater distance such as 400 or 600 m.

- *Participants do not feel strongly about a minimum distance between stores*

55% of participants agree or strongly agree that there should be a minimum distance between the cannabis stores. When asked what an appropriate distance would be, 51% suggested 200 m and 40% suggested letting the market decide.

- *Participants would like to see the hours of operation of stores restricted*

64% of participants agree or strongly agree that the hours should be restricted. Participants were provided with the hours of liquor stores as a comparison. In an open ended question, participants were asked what the hours should be if they should be restricted further. The most common themes suggested the stores should close before 9 pm, should be similar hours of operation to liquor stores and should not be allowed to be open for 24 hours.

- *Participants would like to see use limited to private property*

Participants were asked three different questions to gauge their tolerance for public cannabis use. At 56%, the majority of participants agree or strongly agree that adults should be able to smoke and vape cannabis in the same public places you can smoke tobacco. At 53%, the majority of participants agree that smoking and vaping cannabis should be banned in all public places. A further question asking for opinion on specific locations provided more specific direction on what was acceptable to participants.

- Participants identified the following places as acceptable for cannabis use: back yard (78%), front yard (65%) and outdoor concert where permitted (54%).
- Participants identified the following places as unacceptable for cannabis use: public park (63%), bus stop (86%), restaurant patio (78%), walking down the street (63%) or any outdoor public space (62%).

Participants were given the opportunity to share their comments in open-ended questions. The complete comments are available at shapeyourcitypenticton.ca. A summary of the comments is included in the Attachment A.

Proposed framework for Penticton

Based on the feedback provided in the surveys and through research into how other jurisdictions have approached the issue of cannabis retailing, staff have developed a framework for Council's consideration. If Council is generally in support of the framework, the framework will be presented to the public and specific stakeholder groups for further comment, refinement and ultimately integrated in to the various bylaws that govern business operations in Penticton.

The framework developed for retail sales of non-medical cannabis in Penticton is as follows:

Siting requirements

- Non-medical cannabis retail stores will be permitted in the following zones as a permitted use: C4 (General Commercial), C5 (City Centre Commercial), C6 (Mixed Use Commercial)
 - o This would avoid the need for case-by-case rezoning application being submitted, subject to compliance with the eventual regulations.
- No stores will be permitted within an exclusion zone
- Exclusions zones are calculated as follows:
 - o 300m of a public or private elementary, middle or high school (measured as a buffer from the outer boundary of the school property)
 - o 100-300 Blocks of Main Street and Front Street
 - o All other areas of the downtown: 300m of another non-medical cannabis retail store (measured as a buffer from the floor plate of the retail store)
 - o In all other areas of the city: 750m from another non-medical cannabis retail store (measured as a buffer from the floor plate of the retail store)

Operational regulations

- Stores will be permitted to operate from 9 am to 8 pm, seven days a week
- Sales of accessory items, not exceeding 20% of the retail floor areas will be permitted
- Security measures, including video surveillance, must be in place and operation at all times

Application process

A detailed process cannot be established until the provincial application process is better understood. According to the provincial communique, the application process and portal will be on line in early summer.

Nevertheless, staff have drafted the following framework that could be established locally:

- Applications for non-medical cannabis retail stores, or the relocation of a store will be processed by the City's Planning Department, with on-going licensing of stores processed through the City's Licensing Department.
- Only complete applications will be accepted. A complete application will include:
 - o Agency agreement and certificate of title showing authority to make the application
 - o Locational information
 - o Floor Plans

- Elevations of what the store frontage will look like.
- Security plan
- Business plan outlining organizational values
- Other items as required to prove good 'fit' with the community (detailed criteria on this item is still being developed and will be workshopped with the business community and prospective retailers)
- Once an application is received it will be checked for compliance with zoning and other regulations, including the siting provisions outlined above.
- Once an application is deemed to meet basic technical requirements, notification will be sent to all residents and property owners within a 45m radius of the subject location. A sign will also be erected on the property, notifying the public of the application. Notification will provide for a 14 day referral period where comment on the application will be received. During the referral period, information about the application will be made available where public notification information is normally available (City Hall, Library, Community Center etc.).
- Staff will prepare a report to City Council providing an overview of the technical aspects of the application, a summary of the public comments and concerns and a recommendation to provide a positive resolution, a positive resolution with conditions or a negative resolution.
- Applicants will have the opportunity to address Council directly in the case where staff are recommending against the issuance of a positive resolution.
- The public will not generally be provided the opportunity to address Council directly.

First intake

Given the strong demand expected from prospective retailers, both local and national, to operate in Penticton, and the restrictions that are favoured by the community, selecting which applicants will receive support from the City in their provincial applications must be done in a fair and transparent manner. Staff have outlined the following process that is intended to begin on October 17, 2018.

- As a first intake, staff will accept as many applications that are made from Oct 17 – November 14th, but will not begin processing applications until after the initial application period has closed.
- Applications will be processed as above as they are received.
- In cases where stores have made applications in close locational proximity to each other (and in conflict with the siting rules listed above), staff will make a recommendation to Council on which store should be given support. Recommendations will be made based on the merit of the application. Applications will be graded based on the following evolving criteria:
 - Appropriateness of the location
 - Appearance of the store
 - Strength of the business plan
 - Fit with the community

The criteria will be further developed through deeper analysis of the survey results and planned stakeholder consultation.

There will be no priority given to wellness centres that have already located within the City of Penticton.

Public Consumption

Under provincial rules adults are allowed to use non-medical cannabis in public spaces where tobacco smoking and vaping are permitted. To minimize child and youth exposure, smoking and vaping of non-medical cannabis is banned in areas frequented by children, including community beaches, parks and playgrounds. Use of cannabis in any form will also be banned for all occupants in vehicles. In addition, landlords and strata councils will be able to restrict or prohibit non-medical cannabis smoking and vaping at tenanted and strata properties.

The provincial framework allows local government to further restrict the smoking and vaping of cannabis in public spaces. Based on the feedback from the community and the strong preference for limiting the negative impact of cannabis smoke and vapor, staff are recommending a restriction on the smoking of cannabis in public places.

Bylaw Amendments Required

While the framework is still in development, staff anticipate changes to several local bylaws as part of this process and will introduce amendments to the zoning bylaw, business licence bylaw, fees and charges bylaw and notice of enforcement bylaw among others as the framework becomes more solidified through the next round of public consultation.

Engagement Next Steps

In Phase 2 of the engagement strategy, staff will meet with key stakeholder groups and the community at large to share the survey findings and discuss the draft framework. The following activities are proposed during this phase of the engagement process:

- Consult with businesses (i.e. Chamber of Commerce, Downtown Penticton Association, and PIDA members)
- Consult with City committees (i.e. Downtown Revitalization, Economic Development)
- Consult with experts and stakeholders (i.e. legal counsel and regional planners)
- Open house and online consultation to discuss recommendations with the community
- Information session with prospective retailers

Analysis

Responses to the public survey show that residents are open to the retail sales of cannabis in Penticton. The results of the survey show, however, that a strong regulatory framework is favoured to limit the proliferation of cannabis retail stores in the community and to keep stores away from schools.

The framework development follows from the results of the survey and favours a model whereby the number of stores in the community is limited through exclusion zones rather than an overall cap. This approach was taken as it better reflects industry norms and reflects the preference among survey participants for stores to be spread out through the commercial areas of the community rather than congregated in one location. The framework also establishes the application process for prospective retailers and a method for dealing with the first intake of applications.

This framework will form the basis of the next phase of public consultation on this issue. The public and stakeholders will have the opportunity to comment on what has been drafted to date and refine the

regulations and application process. Once a more refined approach is established, staff will bring forward bylaw amendments to formalize the framework. Until such time, the retail sales of cannabis remain prohibited in Penticton.

Attachments

Attachment A – Selection of comments from the ‘open form’ questions on the survey


Attachment B – Zoning Map with C4, C5 and C6 Zoning, with School Exclusion Zones

Respectfully submitted,

Blake Laven, RPP, MCIP
Planning Manager

JoAnne Kleb,
Engagement Strategist

Approvals

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| Director  | Chief Administrative Officer PW |
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Attachment A
Selected open-ended survey results

Participants were given the opportunity to share their comments in open-ended questions. The complete comments are available at shapeyourcitypenticton.ca. A summary of the comments is provided below.

Participants would like to ensure licensing process rewards responsible business ownership.

As this is a new industry for the city, staff asked for suggestions from the community on what the process for approving licenses should involve in addition to exploring practices in other communities and for comparable industries. Some of the common themes from the feedback include:

- Lottery (10%)
- Grandfather (9%)
- Based on quality of business plan (7%)
- Let market decide (5%)
- Clean criminal record (5%)
- Anti-auction (4%)
- Auction (3%)
- People should have industry knowledge (3%)
- Selection committee, bid or tender (3%)
- First come, first served (3%)
- Based on location (2%)
- Disqualify illegal operators (2%)
- Same as liquor stores (1%)

Some of the unique suggestions include:

- Check Good Neighbor Bylaw infractions
- Make it probationary to start
- Merit-based approach to ensure organizations are properly managed and funded (i.e. product knowledge, legal knowledge, financial stability, business experience, criminal record, ethics)
- Existing stores should not be allowed to operate if they wish to apply (quiet period)
- Public process and input on applications
- Auction will ensure full city and taxpayer benefit
- Combination of auction and lottery
- Rules for appearance, should be classy (no leaves or big green crosses)
- Definitely not an auction, rewards big business and crime
- Delay as long as possible
- Require contribution to children's charity

When asked if participants had any other questions or concerns about the legalization of cannabis and what it means to Penticton, the City received 1,404 comments. The most common themes included:

- Offended by the smell (8%)
- Concerned about second hand smoke (7%)
- Restrict public use similar to cigarettes (6%)
- Restrict public use similar to alcohol (6%)

- No public use (5%)
- Oppose legalization (5%)
- Support for tourism and economic benefits (4%)
- Pro legalization (4%)
- Worried about impaired driving (3%)
- Enforcement (3%)
- Medical use only (3%)
- No smoke in backyard (3%)
- Educate public on use and bylaws (2%)
- Know people who benefit (2%)
- Concern about balconies (2%)
- Hope it reduces black market and fentanyl issues (2%)

The following is a selection of the comments received in a final open-ended question inviting general comments. Residents had the following to say:

- "I think the economy will benefit from it provincially and federally. We are now able to grow money on trees so to speak!"
- "Already it is difficult walking downtown without smelling cannabis and it's not even legal yet. Can't even breathe the fresh air."
- "Please do not allow those of us who do not want to be tainted by the smell of the smoke to have to breathe it. I, and my son, are allergic to it."
- "All of the rules and boundaries... who is going to enforce them the paltry City police? They can't enforce skateboarding on sidewalks."
- "There should be significant fiscal fines to store owners and license retraction if there are violations."
- "I highly support grandfathering existing stores."
- "Kudos to the city for getting the conversation going."
- "I hope our community can come up with a plan that is both safe for our community and helps the consumers be able to access cannabis legally."
- "Be aware that a front porch or balcony in a privately owned apartment often is not a permitted area."
- "Can't wait! It'll be a great addition to our already established tourist attractions."
- "Cannabis should be regarded in the same way as liquor, not compared to cigarettes."
- "I believe cannabis needs to be sold in a responsible manner."
- "I do not care what people do in the privacy of their homes but I do not want to go out in public and be force to breathe in second hand smoke."
- "I favour as little government interference as possible."

Attachment B
Zoning Map with C4, C5 and C6 Zoning, with School Exclusion Zones

