REPORT TO COUNCIL

DATE: February 2, 2018

SUBMITTED BY: Alex Wallace
City Planner

FILE NO.: Bylaw No. 4370

SUBJECT: Zoning Amendment (18-01) Bylaw No. 4370, 2018 - Cannabis

PURPOSE
To provide Zoning Amendment (18-01) Bylaw No. 4370, 2018 to Council for consideration of first and second reading.

ANTICIPATED OUTCOME
This bylaw amendment seeks to address the current state of the proposed Cannabis Act and to prohibit the sale of recreational cannabis when it is legalized. The bylaw update will still allow production of cannabis on land that is within the Agricultural Land Reserve (ALR).

SUMMARY/BACKGROUND
Canada permits the production and distribution of cannabis for medical purposes in two ways:

1. Under Part 1 of the Cannabis for Medical Purposes Regulations (ACMPR), production and distribution of medical marihuana or cannabis oil may be undertaken by commercial production facilities licensed by Health Canada similar to the framework under the previous Marihuana for Medical Purposes Regulations;

2. Under Part 2 of the ACMPR, individuals may produce a limited amount of cannabis for their own medical purposes under a personal production license issued by Health Canada or designate someone to produce it for them under a designated person production license similar to the framework under the previous Medical Marihuana Access Regulations (MMAR).

Legal History of Cannabis:
The following background section is compiled from the Health Canada website:

The legal access to dried marihuana for medical purposes was first provided in 1999 using unique section 56 exemptions under the Controlled Drugs and Substances Act (CDSA). In 2000 it was decided that individuals with a medical need had the right to possess marihuana for medical

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1 https://www.canada.ca/en/health-canada/services/publications/drugs-health-products/understanding-new-access-to-cannabis-for-medical-purposes-regulations.html
purposes. This led to the implementation of the Marihuana Medical Access Regulations (MMAR) in 2001. MMAR enabled individuals, with the authorization of their health care practitioner, to access dried marihuana for medical purposes by producing their own marihuana plants, designating someone to produce for them, or purchasing from Health Canada.

Over time, court decisions resulted in a number of changes to the MMAR. In June, 2013, the Government of Canada implemented the Marihuana for Medical Purposes Regulations (MMPR). The MMPR created conditions for a commercial industry responsible for the production and distribution of marihuana for medical purposes. Under the MMPR, individuals with a medical need could access quality-controlled dried marihuana produced under secure and sanitary conditions.

In June 2015, the Supreme Court of Canada decided that restricting legal access to only dried marihuana was unconstitutional. The Court decided that individuals with a medical need have the right to use and make other cannabis products. In July 2015, to eliminate uncertainty around a legal source of supply of cannabis, the Minister of Health issued section 56 class exemptions under the CDSA. This allowed licensed producers to produce and sell cannabis oil and fresh marihuana buds and leaves in addition to dried marihuana, and allowed authorized users to possess and alter different forms of cannabis.

The ACMPR is Canada's response to the Federal Court of Canada’s February 2016 decision in Allard v. Canada. This decision found that limiting marihuana purchased to licensed producers violated their liberty and security rights protected by section 7 of the Canadian Charter of Rights and Freedoms. The Court found that individuals who required marihuana for medical purposes did not have "reasonable access".

Moving forward under these restrictions, Health Canada planned to evaluate how a system of medical access to cannabis should function alongside the Government's commitment to legalize, strictly regulate and restrict access to marihuana.

The ACMPR consists of four parts.

- Part 1 is similar to the framework under the MMPR. It sets out a framework for commercial production by licensed producers responsible for the production and distribution of quality-controlled fresh or dried marihuana or cannabis oil or starting materials (i.e., marihuana seeds and plants) in secure and sanitary conditions.

- Part 2 is similar to the former MMAR regime. It sets out provisions for individuals to produce a limited amount of cannabis for their own medical purposes or to designate someone to produce it for them.

- Parts 3 and 4 include:
• Transitional provisions, which mainly relate to the continuation of MMPR activities by licensed producers.

• Consequential amendments to other regulations that referenced the MMPR (i.e., Narcotic Control Regulations, New Classes of Practitioners Regulations) to update definitions and broaden the scope of products beyond dried marihuana.

As of August 24, 2016, Health Canada accepts applications from individuals who wish to register to produce a limited amount of cannabis for their own medical purposes or to designate someone to produce cannabis for them.

Health Canada will continue to accept and process applications for licensed producers that were submitted under the former MMPR. Further, all licences and security clearances granted under the MMPR will continue under the ACMPR, allowing licensed producers to continue to register and supply clients with cannabis for medical purposes. New applicants will apply for licences to produce under the ACMPR.

**Use of Medical Marihuana for Personal Use:**
The following background section is compiled from Health Canada website content²:

Individuals with a medical need, and who have the authorization of their health care practitioner, can now access cannabis in three ways: they can continue to access quality-controlled cannabis by registering with licensed producers, they can register with Health Canada to produce a limited amount for their own medical purposes, or they can designate someone else to produce it for them.

If an individual wants to produce a limited amount of cannabis for his/her own medical purposes, he/she must submit an application to register with Health Canada. An original medical document from the health care practitioner must be provided and the application must include information such as the location of where cannabis will be produced and stored.

Once successfully registered, the individual will receive a registration certificate from Health Canada that will include information required for the individual to show his/her legal authority to possess and produce cannabis. It will also include the location and maximum limits of the production and storage activities, as well as the individual's possession limit.

The ACMPR also have formulas that indicate how many plants can be grown and how much cannabis can be stored, based on the daily quantity of dried marihuana authorized in the registered person's medical document. No matter how individuals obtain cannabis (i.e., under Part 1 or 2 of the ACMPR), their possession limit is the lesser of a 30-day supply or 150 grams of dried marihuana or the equivalent amount if in another form.

In general, every one gram of dried marihuana authorized will result in the production of five (5) plants indoors or two plants outdoors. Individuals must indicate in their application whether they

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intend to produce marihuana plants indoors, outdoors, or both. Individuals seeking to produce outdoors must confirm that the production site is not adjacent to a school, public playground, daycare or other public place mainly frequented by children.

Registered and designated persons are required to maintain any measures necessary to protect the security of their cannabis. This could include, installing a home alarm system or securing cannabis in locked cabinets. Health Canada has prepared an information bulletin (attached) that highlights the safety and security rules that must be adhered to under the regulations. This document further outlines a number of simple precautions that individuals can take to reduce risks to their health and safety.

If an adult, a registered person who has a designated producer can also participate in all of the activities that the designated person is authorized to conduct. This is a significant change from the former MMAR, which limited the ability of the registered person to take part in production by the designated person.

Another notable change from the former MMAR is that registered persons, as well as designated persons, will have the ability to alter the dried marihuana they harvest into other products, such as oils. In doing so, individuals are prohibited from using organic solvents (e.g., butane), given the health and safety risks posed by use of these products.

The inclusion of provisions enabling the production of products reflects the June 2015 decision in R. v. Smith. It should also be noted that registered clients of licensed producers also have this same ability to alter dried or fresh marihuana or cannabis oil into other products.

It is the responsibility of individuals to ensure that, in performing any alteration, they stay within the possession limit outlined on the registration certificate. Because the possession limit is articulated in grams of dried marihuana, individuals must manage their limit by taking into account the equivalency of their product to dried marihuana as is outlined in the regulations.

Access to cannabis for medical purposes is only permitted under the terms and conditions set out in the regulation described above. Storefront sales of medical marihuana dispensaries remain unlawful under the Criminal Code. Dispensaries” and “Compassion Clubs” are not authorized to sell medical or recreational marihuana. These operations are considered to be unregulated, may be unsafe, and are subject to law enforcement action under Canadian law.

**Agricultural Land Use Discussion:**
The Agricultural Land Reserve Use Subdivision and Procedure Regulation (B.C.) recognizes the production of marihuana under the previous MMPR as a farm use in the Agricultural Land Reserve. Pursuant to section 2 of the regulation, local governments can therefore regulate but not prohibit the production of marihuana on lands within the ALR. The Regulation has not been amended since the MMPR so it is not clear the extent to which the production of marihuana or cannabis is permitted as a farm use under the current ACMPR or the proposed Cannabis Act. Therefore, the drafted bylaw amendment will allow the production of cannabis as permitted under the Agricultural
Land Reserve Use Subdivision and Procedure Regulation.

The zoning amendment defines cannabis as:

“CANNABIS” means any part of a cannabis plant including its preparations and derivatives but does not include: 1) a non-viable seed of a cannabis plant; 2) a mature stalk of a cannabis plant, without any leaf, flower, seed or branch, and fiber derived from such stalks; and 3) the root or any part of the root of a cannabis plant.

And states:

No person shall use any land or building for the production, distribution or sale of cannabis, except the production of cannabis as permitted as a designated farm use under s. 2(2) of the Agricultural Land Reserve Use, Subdivision and Procedure Regulation, B.C. Reg. 171/2002 on lands designated as Agricultural Land Reserve.

The proposed Cannabis Act seeks to make non-medical cannabis legal in Canada by July 1, 2018; the act provides the federal government with the ability to regulate the commercial production of non-medical cannabis. Provincial governments will have the authority to regulate certain aspects such as the distribution and sale of cannabis. The province of B.C. has recently announced that the wholesale distributor of non-medical cannabis will be the BC Liquor Distribution Branch and that cannabis will be sold at both public and private retail stores. Further information on the provincial cannabis framework, including proposed legislation, is expected in early 2018. It is recommended that until the federal and provincial direction is provided the City prohibits production, distribution or sale of cannabis and exempts land within the ALC. After legalization it is recommended applications for dispensaries are dealt with on a case-by-case basis after legalization and tailor the zoning regulations thereafter. There are a number of bylaws that need to be updated after legalization. The next section discusses these updates.

Next Steps

Draft Cannabis Act

The purpose of the Cannabis Act as currently drafted is to legalize possession and use of cannabis for recreational purposes, in a similar manner to the regulation of alcohol. This draft legislation would permit the following:

- Persons aged 18 and older to possess up to 30 grams of dried cannabis (or an equivalent amount in other prescribed forms) in a public place. Possession over the limit or possession of “illicit cannabis” obtained from somewhere other than a licence producer may still be prosecuted as an indictable offence.
- Adults may also grow their own cannabis, subject to a limit of four plants of one meter or less in size per residence. Growing rights may not be assigned to another person. Medical
access will continue to be regulated by ACMPR. Staff has been researching best practices on Nuisance Bylaw Updates to regulate smell, light and damage to personal property.

- The draft Cannabis Act established a tickable offences regime, whereby infractions may be dealt with by way of a standard ticket form or combining a ticket and a summons; this would be issued by a peace officer. The draft act states that the Attorney General of Canada may enter into agreement with provincial or local government regarding the prosecution of tickable offences committed in their jurisdictions, the collection of fines and fees, and the sharing of such revenue for the purpose of compensation for the administration and enforcement of the ticketing regime. Council may wish to update its MTI Bylaw and Bylaw Notice Bylaw to include cannabis bylaw enforcement.

- Provincial Governments are specifically empowered and are generally expected to enact their own legislative measures authorizing and regulating cannabis sales within their jurisdiction consistent with the federal Cannabis Act. Permissible provincial deviations from the federal framework include: increasing the minimum age, lowering the personal possession limit, reducing or eliminated home grow operation and restricting the consumption of recreational cannabis to certain specified locations. Staff suggests waiting for direction from the province on these topics.

**What is happening in B.C.?**

On February 5, 2018 the province announced the following:

### Personal public possession:
- Anyone 19 years old or older will be allowed to possess up to 30 grams of non-medical cannabis in a public place, which aligns with the government’s proposed possession limit.
- While driving, cannabis will have to be in a sealed package or inaccessible to the vehicle’s occupants. People will not be allowed to use marihuana in any vehicle.

### Public use:
- Smoking marihuana will be allowed in public spaces where tobacco smoking and vaping are permitted.
- Smoking and vaping of non-medical marihuana will be banned in areas frequented by children, including community beaches, parks and playgrounds.
- Local governments will be able to set additional restrictions, as they do for tobacco use. In addition, landlords and strata councils will be able to restrict or prohibit non-medical cannabis smoking and vaping at tenanted and strata properties.

### Personal cultivation:
- Adults to grow up to four cannabis plants per household but the plants must not be visible from public spaces off the property.
- Home cultivation of non-medical cannabis will be banned in dwellings used as daycares.
- Landlords and strata councils will be able to restrict or prohibit home cultivation.

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5 Ministry of Public Safety and Solicitor General – Cannabis retail, driving laws amongst new fir-on-safety policy decision – February 5 2017
Retail framework and licencing:
- This spring, the Province will launch an early registration process for individuals and businesses who are interested in applying for a cannabis retail license. Although B.C. will not cap the number of retail licenses available, licenses will not be issued without the support of local governments, which will have the authority to make local decisions, based on the needs of their communities.
- British Columbians of legal age will be able to purchase nonmedical cannabis through privately run retail stores or government-operated retail stores and government online sales. B.C.’s Liquor Distribution Branch (LDB) will operate a new standalone network of public retail stores and the Liquor Control and Licensing Branch (LCLB) will be responsible for licensing private stores and monitoring the retail sector.
- The Liquor Control and Licensing Branch (“LCLB”) will be responsible for licencing and enforcement.
- Licensed retailers will not be able to sell cannabis in the same stores as liquor or tobacco.
- Retail access for people in rural areas will require a different approach than those used in urban communities and will establish exceptions for rural non-medical cannabis retail stores, similar to those of rural liquor stores. The criteria for determining these rural areas are currently under development.

Local Government Influence on Licensing:
Local governments will have significant control over the non-medical cannabis (“NMC”) retail environment:
- Local government support is a mandatory prerequisite to issuance of a Provincial licence to any applicant, including for public retail stores. Local governments will indicate their support (or lack thereof) by means of council/board resolution sent to LCLB after mandatory consultation with residents in the vicinity of a proposed store about community impacts.
- Local governments will be able to regulate the location of retail stores, including their distance from schools and other stores, through zoning; and
- Local governments will be able to regulate the number of retail stores in their boundaries, including prohibiting them altogether.
- Notably, the Province will not be implementing its own regulations regarding the location of NMC stores or the number of stores allowed in each community.

Municipal Bylaw Impacts

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<tr>
<th>Bylaw</th>
<th>Effect</th>
<th>Suggested Timeline</th>
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<tbody>
<tr>
<td>Smoking Regulation Bylaw No. 4240</td>
<td>Staff will need to consider the impacts of smoking cannabis in public spaces and buildings. Local governments need to assess the impacts of second-hand-smoke in public places.</td>
<td>Before July 2018</td>
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<tr>
<td>Nuisance (controlled substance) Bylaw No. 3874</td>
<td>Impact of household production of marihuana will need to be considered. Historically these cases have been problematic due to the growing conditions of the species of plants. Residents improperly alter electrical,</td>
<td>After provincial regulations are finalized.</td>
</tr>
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ventilation and water systems without permits. These actions create safety hazards and health risks such as mould, pesticide exposure and fire. Personal production licenses under the *MMPR* or *ACMPR* can number in the hundreds of plants. A license to grow medical marihuana does not constitute a license to make unauthorized or illegal alterations to household systems. Many local governments have updated their Controlled Nuisance Bylaw which imposes certain consequences and clean up requirements for properties which have been used for the production of certain drugs, including marihuana. This type of bylaw may not be necessary in the context of smaller four plant grow operations (permitted under the proposed *Cannabis Act*). This type of bylaw may need to be considered for a more situation-specific approach to when it comes to marihuana growing.

| Zoning Bylaw No. 4115 | As marihuana becomes legalized dispensaries a number of zoning related items will need to be considered:
| - Vape lounges will need to be added to the Zoning Bylaw.  
- Farmers markets or outdoor markets have the potential for becoming a space for sales. Council will need to decide the best locations for this type of business in the community.
| - Home Cultivation.
- The Province will not be regulating the location of cannabis retail stores or the number of stores allowed in each community.
| - Local governments may regulate the number of retail stores within their boundaries, and may prohibit them altogether.
- Local governments may regulate the location of retail stores, including their distance from schools and other stores.
- Local governments may impose security requirements and additional restrictions on hours of operations - retail stores can otherwise operate between 9 am to 11 pm.
| After provincial regulations are finalized. |

| Business Licence Bylaw No. 4288 | Items to be considered:
| - Refusing to support licence applications submitted by existing unlawful retail stores.
| - Imposition of security requirements and restrictions on |
| After provincial regulations are finalized. |

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1. LIDSTONE & COMPANY Barristers and Solicitors - Local Government To Do List to Prepare for Cannabis Sales
2. LIDSTONE & COMPANY Barristers and Solicitors - Local Government To Do List to Prepare for Cannabis Sales
hours of operation
- Requiring proof of Provincial licence issuance and successful completion of the Provincial employee training program as prerequisites to business licence issuance.
- Adopting procedures for public consultation on licence applications.
- Creating a new category of business licence fees.
- Require business licences event if a business is operated by a society if a non-profit.

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<th>Parks Bylaw (Draft)</th>
<th>Bylaw being developed it will need to account for the use of marihuana in recreational public spaces (baseball diamonds, soccer fields etc.) does council plan on prohibiting the use.</th>
<th>After provincial regulations are finalized.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fetal Alcohol Syndrome Warning Sign Bylaw No. 3767</td>
<td>Maybe need to be updated to address marihuana while pregnant.</td>
<td>After provincial regulations are finalized.</td>
</tr>
<tr>
<td>Municipal Ticketing Information System Bylaw No. 4278</td>
<td>Will need to be updated to reflect any infractions or ticketing the City will be conducting relating to marihuana.</td>
<td>After provincial regulations are finalized.</td>
</tr>
<tr>
<td>Bylaw Notice Enforcement Bylaw No. 4277</td>
<td>Will need to be updated to reflect any infractions relating to marihuana.</td>
<td>After provincial regulations are finalized.</td>
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**ALTERNATIVES**

1. Consider marihuana dispensaries a federal jurisdiction issue. Council may not be prepared at this time to make a clear statement on medical marihuana retail dispensaries before the federal government implements legalization/regulation of marihuana.

2. Council may choose to regulate dispensaries ahead of the *Cannabis Act* and direct staff to update the Zoning Bylaw 4115, 2011 to reflect this.
**IMPLICATIONS**

(1) Social  
Legalization of marihuana is a vast and complex issue. The regulation of the use and sale of marihuana, like tobacco and alcohol, has been a very controversial issue due to various moral, ethical, public health, legislative and logistic issues associated with the matter. These amendments may need to be revised when the legalisation is passed by the Federal government.

(2) Environmental  
None anticipated.

(3) Personnel  
Planning and Administration Department process bylaw amendments.

(4) Financial  
The regulation and/or enforcement of medical marihuana dispensaries may take considerable staff resources, in planning, licensing and bylaw enforcement.

(5) Risk Assessment  
Compliance: *Local Government Act, Community Charter.*

Risk Impact: High.

Internal Control Process: Bylaw Amendments must be considered and approved by Council. Public notice and a public hearing are also recommended.

**GUIDING PRINCIPLES**

Trust and Integrity: We will have a reputation for acting with integrity and will earn the trust of our stakeholders by working to develop positive relationships.

Governance: We will strive to make decisions that reflect the needs and desires of our community by encouraging a wide range of agencies and citizens to take a meaningful role in decision-making.

**STRATEGIC PRIORITIES**  
N/A

**IMPLEMENTATION/COMMUNICATION**

Should Council give first and second readings to Zoning Amendment (18-01) Bylaw No. 4370, 2018, the advertising will be published in the local newspaper in accordance with the *Community Charter* and included on the City’s website. A public consultation meeting will be held prior to the next Council meeting and the bylaw will be included on the regular agenda for consideration of third reading and adoption.
RECOMMENDATION
That Report No. 18-022 from the Development Services Manager re: Zoning Amendment (18-01) Bylaw No. 4370, 2018 be received; further, that Bylaw No. 4370, 2018 be given first and second readings; and further, that staff be directed to publish the required notice for a formal public hearing.

Respectfully submitted,

ORIGINAL SIGNED BY

Alex Wallace,
Development Services Manager

AW/sw

Attachment:
• Bylaw No. 4370, 2018

References:
• Draft federal Cannabis Act (Bill C-45): http://www.parl.ca/LegisInfo/BillDetails.aspx?billId=8886269
• Marihuana and Municipal Bylaws – LIBOA Zone 8 Meeting Bulletin
• LIDSTONE & COMPANY Barristers and Solicitors - Local Government To Do List to Prepare for Cannabis Sales
• LIDSTONE & COMPANY Barristers and Solicitors - Retail Licencing for Non-Medical Cannabis Update