Minutes – Executive Policy Committee – March 17, 2021

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – March 15, 2021

Item No. 9 Cannabis Cultivation in Residential Areas

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the following to Council:

1. The report of the Winnipeg Public Service dated February 21, 2021 be received as information.

2. That the Winnipeg Public Service be further directed to report back within 180 days with additional details regarding the options included in the report, including but not limited to:

    A. Amendments to the Winnipeg Zoning By-law No. 200/2006, which would:

        i. Prohibit the cultivation of cannabis in residential neighbourhoods and/or properties with a residential zoning designation;

        ii. Limit the cultivation of cannabis in residential neighbourhoods and/or properties with a residential zoning designation based on:

            a. a prescribed number of plants;

            b. a prescribed percentage of the useable area of the residence, or

            c. such other criteria that supports the intent and purpose of this motion.

    B. Options to amend the Neighbourhood Liveability By-law No. 1/2008 or any other City of Winnipeg By-law to regulate or prohibit nuisance odours or any other conditions that pose a health hazard or detriment to the neighbourhood emanating from properties where cannabis cultivation is occurring.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – March 15, 2021

EXECUTIVE POLICY COMMITTEE RECOMMENDATION (continued):

C. Options to create a licensing regime to protect the health and safety of our communities by regulating the cultivation of cannabis for medical purposes on behalf of other registered users.

D. Regulations to various building systems (including, but not limited to HVAC, electrical, lighting and heating systems) for all properties with a residential zoning designation to minimize or eliminate:

i. the exhausting and emission of odours from the property;

ii. the infiltration of moisture, mould and other harmful elements into the building structure; and

iii. any other conditions that pose a health hazard or detriment to the neighbourhood.

3. That the Proper Officers of the City of Winnipeg be authorized to do all things necessary to implement the intent of the foregoing.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – March 15, 2021

DECISION MAKING HISTORY:

Moved by Councillor Gilroy,

That Rule 10(3) of The Procedure By-law No. 50/2007 be suspended in order that the following item, which was received less than four business days preceding the committee meeting, be considered by Committee.

Carried

Moved by Councillor Gilroy,

That the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development be concurred in and forwarded to Council.

Yea:	Bowman, Allard, Browaty, Gillingham, Gilroy, Mayes, Rollins	7
Nay:		0

Carried

STANDING COMMITTEE RECOMMENDATION:

On March 15, 2021, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service, with the following amendments:

- Add the following new Recommendations:

  "2. That the Winnipeg Public Service be further directed to report back within 180 days with additional details regarding the options included in the report, including but not limited to:

     A. Amendments to the Winnipeg Zoning By-law No. 200/2006, which would:

        i. Prohibit the cultivation of cannabis in residential neighbourhoods and/or properties with a residential zoning designation;

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – March 15, 2021

DECISION MAKING HISTORY (continued):

STANDING COMMITTEE RECOMMENDATION (continued):

ii. Limit the cultivation of cannabis in residential neighbourhoods and/or properties with a residential zoning designation based on:

a. a prescribed number of plants;

b. a prescribed percentage of the useable area of the residence, or

c. such other criteria that supports the intent and purpose of this motion.

B. Options to amend the Neighbourhood Liveability By-law No. 1/2008 or any other City of Winnipeg By-law to regulate or prohibit nuisance odours or any other conditions that pose a health hazard or detriment to the neighbourhood emanating from properties where cannabis cultivation is occurring.

C. Options to create a licensing regime to protect the health and safety of our communities by regulating the cultivation of cannabis for medical purposes on behalf of other registered users.

D. Regulations to various building systems (including, but not limited to HVAC, electrical, lighting and heating systems) for all properties with a residential zoning designation to minimize or eliminate:

i. the exhausting and emission of odours from the property;

ii. the infiltration of moisture, mould and other harmful elements into the building structure; and

iii. any other conditions that pose a health hazard or detriment to the neighbourhood.

3. That the Proper Officers of the City of Winnipeg be authorized to do all things necessary to implement the intent of the foregoing."

and submitted the matter to the Executive Policy Committee and Council.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – March 15, 2021

DECISION MAKING HISTORY (continued):

STANDING COMMITTEE RECOMMENDATION (continued):

The following persons submitted communications with respect to the matter:

- Gail Katz submitted a communication dated March 11, 2021
- Laurie Monk submitted a presentation titled "Presentation to the Standing Policy Committee on Property and Development, Heritage and Downtown Development", with respect to the matter
- Carmen Nedohin submitted a presentation titled "Presentation to the Standing Policy Committee on Property and Development, Heritage and Downtown Development (City of Winnipeg) – Monday, March 15, 2021"
- Councillor Eadie, Mynarski Ward, submitted a presentation

COUNCIL DECISION:

On November 26, 2020, Council concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and adopted the following:

1. That the Winnipeg Public Service be directed to report back to Council within 120 days with options legally available to the City to regulate or prohibit the cultivation of cannabis for any purpose, including for medical purposes, in residential neighbourhoods and/or in properties with a residential zoning designation.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

ADMINISTRATIVE REPORT

Title: Report Back Regarding Cannabis Cultivation in Residential Areas

Critical Path: Standing Policy Committee on Property and Development, Heritage and Downtown Development - Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
D. Jopling	J. Kiernan	N/A	M. Ruta, Interim CAO

EXECUTIVE SUMMARY

The Public Service was directed by Council to report back with available options to regulate or prohibit the cultivation of cannabis for any purpose, including for medical purposes, in residential neighbourhoods or in properties with a residential zoning designation.

Under Federal Government regulations, Health Canada is the government agency responsible for regulating cannabis production and cultivation for commercial and personal purposes. While Health Canada can issue licenses and registrations to authorize cannabis production, the *City of Winnipeg Charter* (the "Charter") grants Council the authority to pass bylaws to regulate land use and other activities on private property. Currently, the City has does not have any specific by-law that regulates the production or cultivation of cannabis.

Commercial cannabis production sites (medical and recreational) can be authorized by a Health Canada issued license and these facilities are considered a "Light Industrial" land use under both the Winnipeg Zoning By-law No. 200/2006 and the Downtown Zoning By-law No. 100/2004. The home cultivation of recreational cannabis (up to four-plants per household) is allowed under federal legislation; however, this type of recreational cultivation has been prohibited by the Province of Manitoba under the *Liquor, Gaming and Cannabis Control Act*.

An individual with a medical prescription for cannabis can register with Health Canada to cultivate their own medical cannabis for personal use or they can register with Health Canada and designate someone else to cultivate medical cannabis on their behalf at a different location. These sites operate under a Health Canada issued registration certificate and are not prohibited under the terms of their registration from being established within residential dwellings.

Medical cannabis cultivation sites operating under a Health Canada issued registration certificate may be allowed to produce cannabis for up to four (4) separate prescriptions per address. The only caveat under Health Canada regulations is that the holder of the registration certificate ensure they follow any applicable provincial, and municipal laws and bylaws. These sites may create unique land use issues and have the potential to become a concern from a compatibility and nuisance perspective.

For the purposes of this report, the Public Service has identified by-law amendments as some available options to regulate cannabis cultivation. The cultivation of medical cannabis in residential dwellings may be restricted through an amendment to the Winnipeg Zoning By-law. As a potential secondary tool, an amendment to the Neighbourhood Liveability By-law to deal with the issue of cannabis odour may be another consideration.

The specific approach to regulation including enforcement, and alignment with federal and provincial legislation, would need to be investigated prior to the drafting or enactment of either option. This step would also need to include consultation with relevant stakeholders. Any by-law must also be drafted such that it serves a valid municipal purpose; does not conflict with federal or provincial legislation (or otherwise frustrate their purpose); and recognizes the supremacy of the Canadian Charter of Rights and Freedoms.

Other options to regulate cultivation could involve lobbying upper levels of government to address the issue through amendments to the *Cannabis Act* and/or to *the Liquor, Gaming and Cannabis Control Act*. A partnership approach involving all levels of government is likely the most comprehensive way to address the issue.

RECOMMENDATIONS

1. That this report be received as information.

REASON FOR THE REPORT

On November 16, 2020, Council concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and adopted the following:

> *That the Winnipeg Public Service be directed to report back to Council within 120 days with options legally available to the City to regulate or prohibit the cultivation of cannabis for any purpose, including for medical purposes, in residential neighbourhoods and/or in properties with a residential zoning designation.*

IMPLICATIONS OF THE RECOMMENDATIONS

There are no implications as the report is to be received as information.

HISTORY/DISCUSSION

The coming into force of the *Cannabis Act* and supporting regulations in 2018 legalized the cultivation, processing, sale, and consumption of cannabis. In accordance with federal regulations, cannabis can be produced in the following ways:

- Health Canada can issue a license authorizing the commercial production of recreational or medical cannabis. Under the licensing regime, there are several class and sub-classes of licenses available for commercial facilities.
- An individual with a medical prescription for cannabis can register with Health Canada to cultivate their own medical cannabis for personal use.

- An individual with a medical prescription for cannabis can choose to designate someone through Health Canada to produce a limited amount of cannabis on their behalf at a different location apart from their own place of residence.
- Federal regulations allow an adult who is at least 19 years of age to grow up to a maximum of four (4) cannabis plants at their household (not per person) for personal recreational purposes. However, this type of home cultivation has been prohibited in the Province of Manitoba under the *Liquor, Gaming and Cannabis Control Act*.

Licensed Commercial Cannabis Production Sites:

- Licensed commercial production sites (recreational or medical) providing product to licensed retail outlets are required to comply with strict regulations including notifying local authorities, tracking and reporting on cannabis production, inventory and sales, physical security and monitoring, air treatment control, and good production practices.
- The federal licensing regime does not permit any of the commercial licence holders to sell directly to the public as a retailer on its own. The provincial retail licensing regime governs retail cannabis stores separately.
- In Winnipeg, licensed commercial cannabis production facilities are considered a “Light Industrial” land use under both the *City of Winnipeg Zoning By-law No. 200/2006* and the Downtown Zoning By-law No. 100/204 are limited to properties with a Manufacturing zoning designation.
- Under both Winnipeg Zoning By-laws, Cannabis retail stores are considered a “Retail Sales Use” and are generally limited to establish in properties zoned Commercial.

Registered Medical Cannabis Production Sites:

- Individuals with authorization from a health care practitioner may register with Health Canada to cultivate cannabis for their own medical purposes; or may designate a person to grow it for them.
- These sites have significantly fewer federal requirements to comply with when compared to licensed facilities. However, under the terms of their registration certificate, they are expected to obey all federal, provincial, and municipal laws and bylaws.
- Unlike a licensed production site, registered sites are not required to provide notice to the local authorities of their intent to cultivate medical cannabis at a specific property.
- While the number of plants is based on the prescription and a set of formulas in the regulations, federal legislation allows for cannabis to be cultivated on a residential property under up to four (4) registrations per address. In addition, Health Canada regulations allow registered sites to cultivate 5 plants indoors per each gram of medical cannabis authorized by the health care practitioner. This can sometimes result in the cultivation of hundreds of medical cannabis plants at one address.
- Registered sites are not required under the terms of the Health Canada issued registration certificate to contain any form of air treatment control. This creates the potential for excess moisture and humidity, which may lead to mold building-up on plants or in the building.
- Odour emanating from registered medical cannabis cultivation sites has the potential to become a nuisance to surrounding properties and the neighbourhood in general.

- Currently, there are no regulations in the Winnipeg Zoning By-law that would preclude a registered medical cannabis cultivation site from establishing in residential property.
- The City also does not have any by-law enacted for the purposes of regulating nuisance odour of any kind. Nuisance odour complaints are currently handled by the Province of Manitoba.

Health Canada Statistics

- While the location of registered cultivation sites and the number of plants authorized for cultivation are protected under the Privacy Act, Health Canada does collect and publish aggregate data on medical cannabis.
- Publicly available data shows that the vast majority of individuals (approximately 92%) with a cannabis prescription obtain quality-controlled medical cannabis that is produced by licensed commercial facilities.
- Although the overall number of individuals with authorization to cultivate medical cannabis under a registration certificate is relatively low, Manitoba has seen a steady increase both in the number of registrations being issued and the average daily amount of medical cannabis being prescribed to individuals associated with these sites.
- Between October 2018 and March 2020, the average number of grams prescribed for consumption per day increased by 21% – from 18.4 to 22.4 grams of medical cannabis per day.
- Between October 2018 and September 2020, the number of registered medical cannabis cultivation sites in Manitoba increased by 115% – from 921 to 1,985 registered medical cannabis cultivation sites.

Options to Regulate Cannabis Cultivation:

- The *City of Winnipeg Charter* grants Council the authority to pass by-laws that regulate land use and activities on private property.
- Specifically, Section 130 grants Council the authority to pass bylaws concerning nuisances, which can include (among other things) nuisance odour. Section 236 grants Council the authority to pass zoning bylaws concerning land use (see Appendix A).
- Based on a cursory review to date, it may be possible to regulate the cultivation of medical cannabis in residential dwellings through an amendment to the Winnipeg Zoning By-law.
- While a zoning by-law may be a consideration for regulating where a future production site may establish, the *Charter* governs how the zoning by-law can be used and provides for non-conforming rights. Thus, regulation through a zoning by-law would not apply retroactively.
- As a potential secondary tool, an amendment to the Neighbourhood Liveability By-law to deal with the issue of cannabis odour may be another consideration.
- The specific approach to regulation including enforcement, and ensuring alignment with federal and provincial legislation, would need to be investigated prior to the drafting or enactment of either tool.
- Any by-law must also be drafted such that it serves a valid municipal purpose; does not conflict with federal or provincial legislation (or otherwise frustrate their purpose); and

recognizes the supremacy of the Canadian Charter of Rights and Freedoms, including respecting the right of individuals to reasonable access to medical cannabis.

- Other options to regulate production could involve lobbying upper levels of government to address the issue through amendments to the *Cannabis Act* and/or to the *Liquor, Gaming and Cannabis Control Act*. A partnership approach involving all levels of government is likely the most comprehensive way to address the issue.

FINANCIAL IMPACT

Financial Impact Statement

Date: February 11, 2021

Project Name:

Report Back Regarding Cannabis Cultivation in Residential Areas

COMMENTS:

As this report is to be received as information only, there are no associated financial implications.

Mike McGinn Feb. 11, 2021

Mike McGinn, CPA, CA
Manager of Finance

CONSULTATION

This Report has been prepared in consultation with:

Zoning & Permits
Legal Services (as to legal issues)

OURWINNIPEG POLICY ALIGNMENT

OurWinnipeg
Context + Opportunities
Subsection 'Living in a Growing Community' states;
'A growing population provides us with the opportunity to think more strategically about ways to accommodate residential, employment, commercial and other kinds of growth.'

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

OurWinnipeg
Context + Opportunities

Subsection 'Living in a Growing Community' states;

'A growing population provides us with the opportunity to think more strategically about ways to accommodate residential, employment, commercial and other kinds of growth.'

SUBMITTED BY

Department: Planning, Property and Development
Division: Urban Planning & Design
Prepared by: Rakvinder Hayer, Planner 3
Date: February 11, 2021
File No:

Attachments:

Appendix A – Relevant Sections under the City of Winnipeg Charter
Appendix B – Municipal Approaches to Zoning for Cannabis

Appendix A – Relevant Sections under the City of Winnipeg Charter

PART 5 > DIVISION 1
General authority

129 Council may pass by-laws respecting

a) subject to section 130, activities and things on private property;
b) the naming of streets and buildings, the numbering of buildings and lots and the requirement to post names on public or private property and to affix numbers on buildings;
c) property adjacent to streets, whether the property is publicly or privately owned;
d) the operation of off-road vehicles on public or private property;
e) the sale, display, offering for sale or use of fire balls, crackers and fireworks;
f) the sale, display or offering for sale, possession or transportation of firearms and other guns — other than firearms or guns the sale, possession or transportation of which is controlled or regulated under an Act of Parliament — and the use of firearms and other guns;
g) the sale, display, offering for sale or use of bows and arrows, slings and similar devices; and
h) wild and domesticated animals and birds, and activities in relation to them.

Activities and things on private property

130 A by-law authorized by clause 129(a) (activities on private property) may only contain provisions respecting

a) activities and things that in the opinion of council are or may become a nuisance or a detriment to persons or property, including noise, weeds, and activities and things that may cause fumes, odour or vibrations;
b) unsightly buildings and premises;
c) buildings and premises which, because of their condition or appearance, may substantially depreciate the value of other land and buildings in the vicinity;
d) requirements for providing fences around, and for preventing entry onto or into, vacant property; and
e) the storing of vehicles, including the number and type of vehicles that may be kept or stored and the manner of parking and storing them.

Inspection programs conducted by public notice

182(1) Council may by by-law appoint designated employees who may, at reasonable times, and in accordance with a public notice of an inspection program, enter on and inspect land in the city to determine whether by-laws authorized by the following provisions are being complied with:

a) clause 130(a) (nuisance).

PART 6 > DIVISION 2
Council to pass zoning by-laws

236(1) Council must pass zoning by-laws to control or prohibit the use of real property and development in the city or parts of the city

Content of zoning by-law

236(2) A zoning by-law may provide for any of the following:

a) classifications of uses of land and buildings;
b) permitted and conditional uses of real property;
c) the number and dimensions of dwelling units or non-residential buildings permitted on a lot or other land;
d) the area and dimensions of lots or other units of land;
e) the number, lot coverage, floor area, dimensions and locations of buildings on units of land;
f) the location, height and maintenance of fences and walls;
g) open space around and between buildings and minimum distances between buildings;
h) landscaping and buffers between buildings, units of land, and different uses of real property;
i) establishment and maintenance of parking and loading facilities;
j) the design details of buildings and building sites, including vacant sites, and the establishment of committees or boards to approve designs;
k) the location, dimensions and number of access points from a unit of land to a street;
l) the use and placement of exterior lighting on land and the exterior of buildings;
m) the outdoor storage of goods, including machinery, building materials and waste materials;
n) the removal, deposit or movement of soil, gravel or other material;
o) the cutting and removal of vegetation;
p) the placement of pedestrian walkways;
q) the kind, number, nature, location and dimensions of outdoor signs and displays;
r) the protection of scenic areas, heritage resources and sensitive land;
s) the protection of waterways, including setbacks of buildings from a waterway;
t) the protection of a water or sewage treatment facility, waste disposal facility or any other utility or public work from incompatible uses;
u) (t.1) for new residential developments, the establishment of a specified percentage of the dwelling units within the development that offer affordable housing to low- and moderate-income households;
v) (t.2) modification of the zoning requirements otherwise applicable, including requirements respecting density of dwelling units, if a development provides the public benefits prescribed in the by-law, such as affordable housing;
w) the sequence in which development is undertaken;
x) such other matters as council consider necessary or advisable.

Appendix B – Municipal Approaches to Zoning for Cannabis

In preparing this report, the Public Service conducted a cursory review of cross-jurisdictional approaches to defining and regulating cannabis production and cultivation. This review found that municipalities rarely contemplate regulating registered growers (i.e. personal or designated medical cannabis cultivation sites).

At the time of writing this report, the Winnipeg Public Service has not contacted any of the municipalities mentioned below to discuss whether the jurisdictional specific approaches are working, or if any issues have been encountered since the relevant by-laws were enacted. As part of a future land use study, such cross-jurisdictional consultation may be warranted.

Kelowna:

The Kelowna Zoning By-law contains the following definition:

- ***Cannabis Production Facility*** *means a facility for the producing, processing, setting, providing, shipping, delivering and/or destroying of cannabis and can include analytical testing in permitted industrial zones and must be licensed by Health Canada. This use does not include the retail sale or dispensing of cannabis.*

This is generally consistent with how most Canadian municipalities define cannabis production facilities, in that, they will explicitly state in that their intent is regulate licensed facilities only.

Ottawa:

Some jurisdictions have ambiguous definitions in their zoning bylaws and do not explicitly state if they are applicable to licensed or registered facilities. The Ottawa Zoning By-law contains the following definition:

- ***Cannabis Production Facility*** *means a facility used for the cultivation, production, processing, testing, destruction, packaging, and/or shipping of cannabis and cannabis-based products. (installation de production de cannabis).*

While this definition is ambiguous, it does appear to be meant only to apply to licensed facilities because the related Public Service report notes that the intention of this definition was to replace an existing zoning by-law definition for “medical marihuana production facility”, which were federally-licensed production facilities that existing prior to the *Cannabis Act*. The report to Ottawa’s Council only contemplates licensed facilities and does not mention registered medical cannabis cultivation sites.

Hamilton:

Hamilton’s Zoning By-law includes a definition that refers to both licensed and registered facilities. The definition is as follows:

- ***Cannabis Growing and Harvesting Facility*** *shall mean a wholly enclosed building or structure used for growing, harvesting, testing, destroying, packaging and shipping of cannabis, for a facility where a licence, permit or authorization has been issued under applicable federal law.*

Georgina:

Georgina is a town in south-central Ontario, and the northernmost municipality in the Regional Municipality of York. The cross-jurisdictional review found that Georgina has the most explicit Zoning By-law regulation that very clearly is applicable to registered medical cannabis cultivation sites. The Town's *Cannabis Production Facilities Zoning By-law Amendment* came into force and effect on November 18, 2020. The Zoning By-law amendment distinguishes between three (3) types of cannabis production facilities as follows:

- ***Cannabis Production Facility, Designated -*** *means the use of land, buildings or structures for cultivating, propagating, harvesting, drying, storing, packaging and distribution of cannabis which is authorized by a valid registration certificate and document for designated person issued by the Federal Minister of Health, pursuant to the Cannabis Regulations, SOR/2018-144, as amended, under the Cannabis Act, S.C. 2018, c. 16, as amended, or its successor.*
- ***Cannabis Production Facility, Licensed*** *- means the use of land, buildings or structures for cultivating, propagating, harvesting, drying, storing, processing, research, analytical testing, destroying, packaging, sale, and distribution of cannabis which is authorized by a valid license issued by the Federal Minister of Health, pursuant to the Cannabis Regulations, SOR/2018-144, as amended, under the Cannabis Act, S.C. 2018, c. 16, as amended, or its successor.*
- ***Registered Person -*** *means an individual who is authorized to cultivate, propagate and harvest cannabis in accordance with a registration certificate issued by the Federal Minister of Health, pursuant to the Cannabis Regulations, SOR/2018-144, as amended, under the Cannabis Act, S.C. 2018, c. 16, as amended, or its successor.*

Notably, Georgina's bylaws do not apply to registered persons as the Town determined that regulating an individual growing for their own personal medical purposes would be contrary to federal legislation and Charter Rights. The By-law amendment includes additional standards to regulate the above noted land uses, for example parking requirements.