

Cannabis Legalization Primer

August 2017

How Municipalities Can Get Ready

This is the first of two reference documents developed by FCM to help municipalities address cannabis legalization locally. It provides general information and steps for consideration for municipalities looking to introduce by-laws, zoning and business practices, among other things.

The second phase of this project, set to be released in the coming months, is a more comprehensive resource to provide guidance in by-law development and highlight promising practices related to cannabis legalization at the local level.



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1. Federal Legislative Overview

On April 13, 2017, the federal government tabled two bills to legalize and regulate cannabis in Canada:

- **Bill C-45, *The Cannabis Act***, addresses the regulation, sale and cultivation of recreational cannabis.
- **Bill C-46, *An Act to amend the Criminal Code*** (offences relating to conveyances, focuses on strengthening impaired-driving measures).

This new legislation flows from the work of the federal Task Force on the Legalization and Regulation of Cannabis. FCM brought the municipal perspective to that process, grounding our advocacy in four broad principles:

- **Consultation and communication** with municipalities during the development and implementation of a cannabis legalization framework.
- **Respect for municipal authority** in the development of local implementation plans for production, distribution and consumption within their boundaries.
- **Coordinated implementation and enforcement** of the cannabis legalization framework across all orders of government.
- **Fair distribution of new revenue streams**, set in partnership among orders of government.

2. Timelines

The federal government intends to enact both pieces of legislation by July 2018. This means that all orders of government must begin their internal process immediately to ensure that regulations, laws and by-laws are in place by the time the federal cannabis legislation comes into force.

For implementation to be safe, timely and effective, clear coordination between all orders of government is essential. FCM and the municipal sector are taking a proactive approach toward cannabis implementation, as much as feasible, to help ensure that the municipal sector is well prepared for the July 2018 legalization.

3. Jurisdictional Responsibilities

Federal:

The federal government will be responsible for regulating the production of cannabis, as well as setting the rules and parameters around possession limits, trafficking, advertising, the tracking of seed to sale, establishing minimum age limits, personal cultivation and the continued oversight of the medical cannabis regime.

Provincial/territorial:

Provinces and territories will likely govern many aspects of the legalization framework, including wholesale and retail distribution, the selection of a retail distribution model and workplace safety. Provinces will also have discretion to set higher age limits or more restrictive possession limits.

Municipal:

Municipal regulations stem from the frameworks set out by provinces and territories. Bills C-45 and C-46 provide latitude to provinces and territories to develop their own rules and regulations around the distribution and consumption of fresh or dried cannabis, cannabis oil, plants and seeds.

For municipalities, this means that local jurisdiction could vary in a number of ways. Still, there are common elements across the country for which municipalities are responsible. Based on the pan-Canadian analysis conducted to date, municipalities are likely to be most active in the areas of zoning, business licensing, building code, municipal workplace safety and enforcement of regulations around public consumption and impaired driving.

Please consult your own provincial or territorial government for a more precise outline of responsibilities in your jurisdiction.

Shared areas of responsibility:

What is much less clear is the role municipalities will play in areas of shared responsibility. Depending on how the legislation and regulations are shaped in the coming months, there could be shared jurisdictional responsibility in areas such as public consumption, rules for retail locations, home cultivation, taxation from cannabis sales, public education, public health and law enforcement. The extent to which municipalities will have access to federally regulated production facilities also remains unclear.

4. Where to Begin

Cannabis legalization will have specific impacts for municipalities, and the timelines are short. Below is a list of considerations and actions that your municipal councils and staff may wish to start considering now to be better prepared for July 2018.



Assemble a municipal working group on cannabis legalization

that includes members of relevant municipal divisions (police, fire services, building code, city planning, municipal licensing and standards, public health, social services, communications, law etc.) to discuss municipal considerations and identify gaps. This will be particularly important as more federal, provincial and territorial information on the issue becomes available. Recognizing the wide-ranging impact cannabis legalization will have on departments and services, many municipal jurisdictions have assembled an interdepartmental working group as a first step on the road toward legalization. In very small municipalities, there may not be the human resource capacity to bring such a group together. In this case, information sharing in collaboration with your provincial or territorial association or bringing the issue forward at your local government association meetings could be alternative options.



Engage with your province or territory early through your provincial or territorial municipal association. Ensure that there is an open line of communication and that you are on the same page about areas of shared jurisdictional responsibility. This could include impaired driving, public education, taxation, business licensing, public consumption, and land use/zoning.

Having a good understanding of the provincial, territorial and federal rules as they become law will help provide municipalities with clear direction on where you will and will not have jurisdiction.

Most provinces and territories have already begun to consult with municipalities and the public about the impact of the upcoming cannabis legalization. Your municipality or your PTA can engage in this process, raise municipal concerns and communicate back important information to your council and staff.

 **Seek legal advice.** Given the complicated multi-jurisdictional nature of cannabis legalization, your municipality may want to seek legal advice. FCM will also be developing more detailed guidelines. But this tool will be designed to complement, not replace, legal advice that is tailored to the needs of your community.

 **Seek appropriate municipal approvals.** Think about your municipality's approval processes and how they will align with provincial/territorial processes. Start planning now.

 **Establish a timeline and work plan.** Take a look at your municipal agenda and develop a work plan that takes the need for public consultation into account. Align this with your province or territory's timeline for implementation.

 **Engage the public and other key stakeholders, including industry.** There is a lot of public concern about cannabis legalization. People are going to have questions. Ways to engage the public in this process will vary, but could include:

- A formal public consultation process
- Conducting a public hearing of Council
- Using online surveys, public meetings and targeted stakeholder consultations
- Social media

Make sure to keep public engagement focused on issues that fall under specific municipal jurisdiction.



Assess which by-laws and other municipal programs require adjustment or creation.

Cannabis legalization may require amendments to existing municipal by-laws, such as those around land-use. It may also mean new by-laws will have to be enacted, which could include those for business licensing. Here are the most common areas of by-law amendment/creation for consideration, as identified by municipalities that have been highly engaged with federal and provincial governments throughout the legalization process:

- **Land use planning/zoning.** This clear area of municipal jurisdiction could be used to regulate where licensed recreational cannabis dispensaries can operate. Land use planning by-laws can limit dispensaries' proximity to schools and playgrounds. They can also define and classify cannabis retail and lounge facilities (if these are allowed in your province/territory) distinctly from other zoning categories such as general retail where alcohol sale is permitted. Municipalities will also have to work with the federal government on zoning/land use planning for production facilities. The government has also signalled it will work on regulations for cannabis edibles once the regime is established for fresh/dried cannabis, seeds and oils. How edibles will be managed under municipal zoning by-laws and regulated by your province or territory may be an issue to discuss when reviewing potential local impact.
- **Public consumption.** Direction as to where people can consume cannabis will come through provincial and territorial legislation. This is much like laws across the country that place restrictions on smoking cigarettes and drinking alcohol in public places. We encourage you to engage with your respective province or territory regarding the parameters of public consumption of recreational cannabis, including edibles, and then develop corresponding by-laws.
- **Business licensing.** Through business licences, municipal authorities can set individual requirements for businesses. Business licensing can also correspond to related by-laws such as those for nuisance or zoning. For example, only a properly zoned building could obtain the required municipal business licence authorizing the sale of federally regulated cannabis. While density requirements are generally addressed through zoning, setting the maximum number of locations of cannabis retail stores could be a business licensing issue, as is sometimes the case with adult entertainment stores in many municipalities.
- **Human resources policies.** You will need to ensure that workplace drug and alcohol policies for municipal staff will comply with provincial or territorial changes with regard to cannabis.
- **Enforcement and policing.** Municipally-delivered police and by-law services will have to make the necessary adjustments to respond to new federal and provincial laws, as well as municipal by-laws. This could range from issues such as developing protocols and parameters around issuing tickets related to cannabis consumption, to the new training and enforcement of new impaired driving rules.

- **Public education.** Municipalities developed anti-smoking campaigns for tobacco use as part of local efforts to improve public health. It is likely that the municipal sector will want to focus their education efforts on areas of municipal jurisdiction. This would include where people can and can't consume cannabis at public events and on municipally-owned property such as parks and recreation facilities. Coordination with other orders of government on the development of public education campaigns could help streamline efforts, capitalize on external funding or expertise where it exists, and ensure consistent messaging.
- **Public health.** Depending on the size of your municipality, local public health officials will want to consider how cannabis legalization will change and impact the public health mandate.



Can you revise or develop municipal by-laws immediately, even if federal or provincial/territorial regulations are not ready yet?

Recognizing the short time municipalities have to prepare for cannabis legalization and the amount of time it takes to develop by-laws, there are a few things your municipality can do to prepare for cannabis legalization now. Some questions to ask:

- What requires clear regulatory direction from the provincial/territory?
- What is being deferred federally until a later time?

Some initial steps that can begin immediately include:

- Passing a motion in council directing municipal staff to prepare options for land-use by-law amendments in anticipation of direction from other orders of government.
- Conducting research on the local impacts of cannabis legalization and implications for municipal governments.
- Engaging with your province or territory through provincial/territorial municipal associations or directly in a PT consultation process.
- Creating a timeline and work plan.
- Scoping out the anticipated municipal roles and responsibilities into phases—by-laws required for Day One of legalization, by-laws required based on further provincial/territorial regulatory direction, and by-laws to be addressed further along in the process (e.g. cannabis edibles).

Edmonton for example, began their work by preparing amendments to their zoning by-law. The definition of a “major home-based business” was changed to clarify that cannabis sales, production and distribution were excluded from this type of business classification.



Establish areas where your municipality cannot proceed without federal or provincial/territorial direction and authority.

There are several areas where municipalities say they cannot advance cannabis legalization until other orders of government provide direction. This may include:

- Decision areas that are solely the jurisdiction of a province or territory such as cannabis distribution, or areas of shared jurisdictional responsibility such as enforcement of impaired driving, or First Nation and municipal boundary overlap.
- The type of distribution model—Crown Corporation or retail model?
- Rules to prevent existing illegal dispensaries from claiming that they deserve to be “grandfathered” into the licensing system.
- Business licences—a new application process and new business licences will be required depending on what provinces/territories decide concerning where cannabis can be purchased and consumed.
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- Home cultivation – it is unclear what the role for municipalities will be in regulating this.
- Cost and scope of impaired driving detection training.
- Type of equipment to detect impaired driving.
- Distribution of tax revenue.
- Support for implementation costs.

In Ontario, municipalities are waiting for the province to decide whether cannabis will be sold through a Crown Corporation or a regulated retail model. In the case of a Crown Corporation, municipalities would not licence cannabis retailers and would have no land use jurisdiction as to where sales or production could be located. However, if the regulated retail model is used, municipalities would be required to regulate the location of retail outlets through existing municipal zoning by-laws.



Calculate cost estimates and make a financial plan. Once we know more about what the municipal role will look like in this process, it will be time to plan for staffing and other costs, including public education, public engagement, staff training, administration and enforcement.



Develop draft by-law amendments. Municipal legal affairs departments or by-law services groups, with the help of outside legal expertise if necessary, can now prepare text amendments to regulate cannabis-related activities. Some of this may begin without authority or direction from other orders of government. Some municipalities in Canada have developed a phased approach to this work, where by-law development occurs in different stages as the guidance and direction from other orders of government becomes available.

It can take time to develop by-laws, conduct public engagement and fit hearings into a busy council schedule. We recommend thinking about these processes early and assessing whether certain aspects of the work can begin immediately. Also consider the time businesses need to gain necessary municipal approvals and licences to be ready to open for when the federal cannabis legislation comes into force.



Presenting amendments to Council and obtaining Council approval. Each by-law that requires amending will need to go before council for approval. Ensuring that your municipal council is well informed and ready to approve the series of amendments regarding cannabis legalization is an obvious, but important step in the process. For this stage, it is important to look ahead in the municipal calendar and establish how by-law amendments are organized and when they will go before council for decision.



Public education, internal training and enforcement. Educating the public and ensuring there is consistent and fair enforcement of the new cannabis rules will be important. Institutional change of this nature will also require internal training in order to properly prepare your own staff for the new federal, provincial/territorial and municipal rules.



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