

Municipal Cannabis Update

Information to help municipal staff prepare reports for councils

November 21, 2018

Purpose:

This update provides information on the province's regulatory framework, funding and AGCO licensing. This will help municipal staff prepare its report to council on elements for its decision-making on whether to have cannabis retail stores.

Overview

The provincial government has committed to allowing private recreational cannabis retail stores throughout Ontario starting April 1, 2019. As recreational cannabis is a legal, controlled and regulated product, cannabis stores will be considered like any other type of retail and as such, no zoning changes are needed.

In legalizing cannabis for recreational purposes, the federal, provincial and municipal governments share three interrelated goals: protecting youth, public health and safety, and ending illegal sales of cannabis. The provincial government has established a regulatory framework ([O. Reg. 468.18](#)) under the recently passed *Cannabis Licensing Act, 2018* that provides further clarity on how these private businesses will be [licensed and regulated](#) by the Alcohol and Gaming Commission of Ontario (AGCO). These regulations deal with various elements of the retail regime including matters in which municipal governments may have an interest.

Key Points in the Regulations

The regulations speak to how a license to open a cannabis store will be issued. The full details of the AGCO process have not yet been released, however the AGCO will issue [guidance](#) as the regime is finalized. It is offering webinars (November 27 - [10:00 am](#) / [3:00 pm](#)) to prospective retailers and interested parties.

AGCO process will begin with it reviewing and completing due diligence on applications from corporations and individuals seeking to sell recreational cannabis. The licensing regime will have three parts: operator approval; retail site location approval; and store management licensing.

Municipal governments have the one-time opportunity to opt out of allowing retail cannabis stores in their communities. **The decision to opt out must be made by January 22, 2019. Unless a municipal government opts out as per Ontario Regulation 468/18 s. 22, they opt in to recreational cannabis retail sale by default.**

To protect youth, the provincial cannabis retailing regulations include a 150-meter buffer area for cannabis stores to keep them separated from schools. No buffers from any other use has been specified by the regulations.

In our discussions with some members, it has been proposed that a municipal government may consider setting out a policy statement identifying specific and significant locally sensitive considerations or uses, to best represent the expectations of the community in allowing cannabis retail. This statement would provide direction to municipal staff input to the AGCO within its 15-day review period.

The AGCO cannabis licensing process, much like the process for liquor licensing applications, requires that a notice of a proposed cannabis store site be posted for comments from area residents and businesses before a site authorization is made. At this point, the municipal

government will not be provided pre-notification of the application, but can make comments about whether the proposal is in the public interest as described by regulation.

While there is no regulatory requirement for the AGCO to act on municipal input, it is reasonable that a council could choose to set out any locally sensitive uses as part of the decision to allow cannabis retail stores or to opt out. Setting out these sensitive uses would specify the expectations of the community as cannabis retail sites are proposed. However, care needs to be taken so that this statement would not prohibit any cannabis retail store from locating in a municipality. Opting out is the appropriate mechanism for not permitting any stores in a municipality.

The province has just released the funding approach to help municipal governments offset implementation costs. Please see Minister of Finance's [letter](#) of November 20 to AMO President. A similar letter is being sent to all Heads of Council. In addition, a letter from the Deputy Minister of Finance to municipal treasurers with more details will be sent in the coming days. **Please note that while opting out can be reversed after Jan.22, the municipal government will not gain any additional funding from the Ontario Cannabis Legalization Implementation Fund (OCLIF) than it had as of Jan. 22 when it opted out- beyond the minimum second payment of \$5000.**

Store Location Approval Steps

The AGCO will have a 15-day window for public and municipal government comments for each store site proposed by an approved operator. The legislation provides that municipal comments should focus on whether a proposed storefront location is in the public interest, as defined in the [regulation](#). In the regulation, public interest is defined as public health or safety, protecting youth and eliminating the illegal market.

If a municipal council accepts retail stores, AMO suggests that a 'Municipal Cannabis Retail Policy Statement' be adopted by council. Such a policy statement could address what it sees as significant local sensitive uses. This would give municipal staff direction in responding to the 15-day window during the commentary process. For example, a policy statement may identify specific sensitive uses and express some parameters to consider proximity to these sensitive areas, or may set out concerns regarding store concentration¹ in certain areas of their communities.

It is recommended that municipal governments identify a key senior staff lead for proposed cannabis store notices from AGCO and to provide a one-window approach to coordinate municipal input within the 15-day commentary period. This will ensure AGCO has every opportunity to take note of municipal government considerations. This key contact should be able to gather information from various municipal departments as necessary, provide maps and be able to convey council policy.

Below, AMO has provided a draft Municipal Cannabis Retail Policy Statement template that may help municipal governments that choose to create such a policy. The template helps municipal government officials begin to think about the issues and criteria they may wish to note when considering a proposed cannabis retail site. Notes for consideration of what we understand to be

¹ Note that store concentration will ultimately be determined by the market demand, however municipal governments may wish to set out any criteria through which they may consider this in future.

an effective municipal policy statement are provided in the shaded boxes and would not form part of the policy statement.

For alignment between the regulations and AGCO mandate, municipal comments in the process, whether through a municipal cannabis policy statement or not, must focus on the three provincial public interest objectives: public health and safety, protecting youth and ending illegal sales of cannabis.

Municipal staff are encouraged to read the regulations and AGCO [guidelines](#) as they are developed and made available to understand eligibility requirements for operators how cannabis retail businesses are expected to operate. AMO will continue to provide information and analysis on this and other matters as it becomes available.

Draft Municipal Policy Statement Template:

The template can be used by a municipality that has chosen to allow retail sales of recreational cannabis.

Purpose & Vision

The purpose of this policy statement is to provide a format for municipal government input to the Alcohol and Gaming Commission of Ontario (AGCO) as well as help prospective recreational cannabis retailers in their consideration of location of cannabis retail stores in (name of municipality).

The AGCO is the provincial authority that licences cannabis retail operators, authorizes cannabis retail locations and licenses senior store staff. Municipal governments have no licensing authority.

The AGCO regulates and reviews all aspects of the retail operation including municipal and public input, that the proposed store location is consistent with the public interest as defined in the regulations.

The Municipality ofhas chosen to allow retail sales of recreational cannabis. The following provides municipal staff with guidance on commenting to AGCO when notice on a specific proposed cannabis retail store site is provided on the site location.

Principles for Cannabis Retail Store Locations:

Relationship to Other Applicable Law:

- **Land Use Planning:** The provincial licensing process does not remove the requirement to comply with the zoning by-law and other municipal planning documents. The definitions within the municipality's Official Plan and Zoning By-law are applicable to all retail, including cannabis retail stores. Retail sale of cannabis from a provincially licensed store is legal and is a permitted use in the retail zones.
- **Municipal Building Inspections:** while the licencing of the store operation is the responsibility of the AGCO, the Building Code applies to cannabis retail store locations. Therefore, where a building permit is required, the building inspector will undertake duties as usual. Fire Code compliance is also mandatory.

For the purposes of this policy statement, a cannabis retail store shall mean a store licenced by the AGCO.

1. Cannabis Retail Stores and Sensitive activities:

In order to help ensure public health and safety, protect youth and reduce illegal sales, retail cannabis stores are discouraged where nearby properties are designed to serve youth including

The policy can address types of activities where youth or the potential for illegal sales or health risk exist. Please note that Ontario Regulation restricts a cannabis retail store from being located within a distance of 150 meters of a public school or most private schools. The municipality cannot adopt a greater distance. The distance buffer would be measured from the property line, if the school is the primary or only occupant of a building; or the boundary of any space occupied by the school within the building, if the school shares space, like in a mall. This distance buffer would not apply to private schools that hold classes online only, or to First Nation schools located on reserve.

The municipal government may want to suggest other youth facilities such as libraries and community centres if appropriate, or other sensitive facilities that serve persons with mental health or addiction challenges.

The policies cannot be so restrictive that it is impossible to locate a store. Nor can the policy state a specific number of stores permitted.

It is recommended that should the municipal government choose a separation distance from a sensitive use that it be a number, not a range and that a rationale for this distance be provided.

Municipal governments should note that municipal density restrictions on cannabis retail stores are not permitted under the legislation or regulations. However, it is possible that the number of cannabis retail stores in one area could in the future be considered under the public interest criteria in the regulations and merit comment from the municipal government and community.

2. Cannabis retail stores should not be permitted in:

Any prohibitive statements must be considered through the lens of eliminating illegal activity, public health and safety or protecting youth and the regulatory definition of the public interest.

Retail locations, if retail is allowed in a zone other than a commercial zone, such concerns may be noted.

How does this prohibition help youth, create a safer environment or limit illegal activity? A municipal government may choose not to have any prohibitions.

3. Attached is a map showing the retail/commercial zones of the municipality and the activities identified in Section 1 above.

A map showing where retail is permitted and the locations of the activities identified in the first section will be very helpful to the AGCO. Municipal governments may choose to provide some sample separation distances as concentric rings around the activities such as addiction treatment facilities etc. to provide sample set backs. The Ministry of Education is working to identify all schools however; municipalities could also provide this information.