



## **PLANNING REPORT for the TOWN OF ERIN**

Prepared by the County of Wellington Planning and Development Department  
in our capacity as planning consultants for the Town

**DATE:** October 3, 2017  
**TO:** Dina Lundy, Clerk  
Town of Erin  
**FROM:** Michelle Innocente, Senior Planner  
County of Wellington  
**SUBJECT:** **Cannabis Production and Dispensing Zoning Options**

### **RECOMMENDATIONS**

THAT Council receive the Report titled "Cannabis Production and Dispensing Zoning Options"; and

THAT Staff be directed to proceed with a preferred option and report back to Council with associated amending documents if necessary.

### **PURPOSE**

The purpose of this report is to provide Council with options to consider for addressing the changing landscape of Cannabis production and distribution within the Town of Erin. A review of existing policy as well as a review of other municipal approaches was undertaken and the results are presented in this report.

### **BACKGROUND**

#### **Cannabis for Medical Purposes**

Canadians have had legal access to dried marijuana for medical purposes since 1999 when it was first granted under the Controlled Drugs and Substances Act (CDSA). In 2001, the Marihuana<sup>1</sup> Medical Access Regulations (MMAR) came into effect which "enabled individuals with the authorization of their health care practitioner to access dried marijuana for medical purposes by producing their own marijuana plants, designating someone to produce for them or purchasing Health Canada supply" (Health Canada, 2016). In 2013, the Government of Canada implemented the Marijuana for Medical Purposes Regulations (MMPR). "The MMPR created conditions for a commercial industry responsible for the production and distribution of marijuana for medical purposes. Under the MMPR, individuals with a medical need could access quality-controlled dried marijuana produced under secure and sanitary conditions" (Health Canada, 2016). As of July 2015, licensed producers were allowed to "produce and sell cannabis oil and fresh marijuana buds and leaves in addition to dried marijuana, and to allow authorized users to possess and alter different forms of cannabis" (Health Canada, 2016). In August 2016, the Access to Cannabis for Medical Purposes Regulations (ACMPR) replaced the Marihuana Medical Access Regulations (MMAR). The ACMPR sets out a framework for "commercial production by licensed producers responsible for the production and distribution of quality-controlled fresh or dried marijuana or cannabis oil or starting

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<sup>1</sup> Both spellings of "Marihuana" and "Marijuana" are used interchangeable throughout federal documents.

materials (i.e., marijuana seeds and plants) in secure and sanitary conditions” (Health Canada, 2016). It also “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” (Health Canada, 2016). There are currently 58 Licensed Producers of Cannabis for Medical Purposes in Canada and 32 of those are located in Ontario. As of May 25, 2017, Health Canada had received 1665 applications for licenses, 265 of which had been refused, 428 applications in progress, 69 withdrawn, and 858 were incomplete and had been returned (Health Canada, 2017).

### **How does a Patient obtain Cannabis for Medical Purposes?**

In order to obtain cannabis for medical purposes the following process must be followed. First, a patient needs to meet with their health care practitioner and determine if cannabis is appropriate to treat symptoms. If it is determined that it is appropriate, then documentation is provided to the patient. Next the patient can register with a licensed producer for their own medical use to obtain a limited amount of product which includes: fresh marijuana, dried marijuana, and cannabis oil. The patient needs to complete a registration form specific to the licensed producer they have selected and provide the original medical documentation (Health Canada, 2017). The medical cannabis product is delivered directly to the patient. Alternatively, the patient can register with Health Canada to produce a limited amount of marijuana for their own medical use, or designate someone else to produce it for them.

### **Legalized Cannabis**

#### *Federal*

Bill C-45, an Act respecting cannabis and to amend the *Controlled Drug and Substances Act*, the *Criminal Code* and other Acts (the “*Cannabis Act*”) was introduced in the House of Commons on April 13, 2017. If the *Cannabis Act* is passed, it would make it legal to produce, use and sell cannabis across Canada. The objectives of the *Cannabis Act*, “are to prevent young persons from accessing cannabis, to protect public health and public safety by establishing strict product safety and product quality requirements and to deter criminal activity by imposing serious criminal penalties for those operating outside the legal framework. The Act is also intended to reduce the burden on the criminal justice system in relation to cannabis” (Government of Canada, 2017). The target date for Bill C-45 becoming law is July 1, 2018. Recreational cannabis will remain illegal while the bill is moving through the legislative process.

#### *Ontario*

On September 8, 2017, the Government of Ontario announced their plan to regulate legalized cannabis. The province intends to, “ensure that cannabis remains a carefully controlled substance subject to strict rules on both the lawful use and retail of the product” (Ministry of the Attorney General, 2017). Key elements include:

- The proposed minimum age to use, purchase and possess recreational cannabis in Ontario will be 19. The use of recreational cannabis will be prohibited in public places and workplaces.
- The LCBO will oversee the legal retail of cannabis in Ontario through new stand-alone cannabis stores and an online order service. This approach will ensure that there will be only one legal retail distributor for cannabis in Ontario and alcohol and cannabis are not sold alongside each other.
- Approximately 150 standalone stores will be opened by 2020, including 80 by July 1, 2019, servicing regions of the province. Online distribution will be available across the province from July 2018 onward.

- Illicit cannabis dispensaries are not and will not be legal retailers. The province will pursue a coordinated and proactive enforcement strategy, working with municipalities, local police services, the OPP and the federal government to help shut down these illegal operations.
- Ontario will prohibit individuals under the age of 19 from possessing or consuming recreational cannabis, which will allow police to confiscate small amounts of cannabis from young people. The province's approach to protecting youth will focus on prevention, diversion, and harm reduction without unnecessarily bringing them into contact with the justice system.

According to the province, the retail stores will be overseen by the LCBO through a subsidiary corporation. Dedicated stores will only sell cannabis and the stores will operate with the same socially-responsible retailing standards that apply to alcohol, as well as additional federal requirements (Ministry of Finance, 2017):

- Ontario will comply with federal requirements that restrict advertising, do not permit products to be visible to youth and require a behind-the-counter type of retail environment similar to how tobacco is now sold.
- All sales will be assisted via counter service, and there will be no self-service. Retail staff will follow strict requirements for age verification.
- There will be mandatory training for retail staff. Staff will have knowledge of the individual products and public health information about how to use cannabis responsibly.
- Product types and formats will need to meet the federal government's requirements, including forthcoming federal regulations on packaging and labelling information.
- Ontario would work closely with municipalities to consider community priorities when choosing store locations (e.g. proximity to schools).

In addition to in store sales, cannabis will also be available online subject to the same delivery safeguards that exist for online alcohol sales, similar to the way medical cannabis is delivered today.

## **EXISTING POLICY**

### **Rural Areas – Official Plan**

According to the County of Wellington Official Plan, for lands designated "Prime Agricultural", the following uses are permitted: "agricultural uses, secondary uses including home businesses and farm businesses, agriculture-related uses" among others. For lands designated "Secondary Agricultural", the following uses are permitted: "all uses allowed in the Prime Agricultural Area, small scale commercial, industrial and institutional uses" among others. Although a Cannabis Production Facility is not specifically listed as a permitted use (nor defined) within the Official Plan, agricultural uses do include, "the growing of crops, including nursery and horticultural crops". It is our opinion that a Cannabis Production Facility within a greenhouse is a permitted use within both the Prime and Secondary Agricultural designations subject to federal and provincial rules and regulations.

### **Urban Areas – Official Plan**

According the Town of Erin Official Plan and Town of Erin Official Plan, "The lands designated Industrial on Schedule A of the Plan may be used for a variety of industrial uses including, but not limited to, manufacturing, processing, fabricating, assembly, warehousing and repair establishments". The Plan further states that "The Zoning By-law may prohibit certain industrial uses which, by their nature, would have detrimental impact on the community". It is our opinion that Cannabis Production Facilities are

permitted within the Industrial designation of the Town of Erin Official Plan subject to federal and provincial rules and regulations.

### **Town of Erin Zoning By-law**

Section 5 of the Town of Erin Zoning By-law provides regulations for lands zoned Agricultural (A). Specifically, Section 5.1.1 details uses that are permitted within the Agricultural Zone which includes agricultural uses among other uses. The Zoning By-law defines an Agricultural Use as follows, “shall mean land, buildings or structures used for the purpose of growing or raising of field crops, market gardening crops, aquaculture, orchards, vineyards, livestock, poultry, nurseries, greenhouses, apiaries, mushrooms, horticulture, agro-forestry or other farming uses. Agricultural uses include secondary uses creating value-added agricultural products from farming operation.” It is our opinion that should a Cannabis Production Facility be within a greenhouse on land zoned Agricultural, it would be a permitted use subject to federal and provincial rules and regulations.

Section 9 of the Town of Erin Zoning By-law provides regulations for lands zoned Industrial (M1, M2, M3, M4). Specifically, Table 8 details uses that are permitted within the Industrial Zones. For lands zoned M1 and M2, “industrial” uses are permitted. The Zoning By-law defines an Industrial Use as follows, “shall mean the manufacturing, processing, production, fabrication, packaging, assembly, stamping, treating, finishing, testing or warehousing of goods or raw materials.” Cannabis Production Facilities involve most if not all of these activities and accordingly it is our opinion that they are permitted within the M1 and M2 Zones. The M3 zone permits agricultural uses, therefore it is our opinion that if a Cannabis Production Facility is proposed to be within a greenhouse on lands zoned M3, it would also be a permitted use within the M3 zone subject to federal and provincial rules and regulations.

**Note: Until such time as the *Cannabis Act* becomes law, all Cannabis Production Facilities that are not for Medical production are illegal.**

Section 7 of the Town of Erin Zoning By-law provides regulations for lands zoned Commercial. Specifically, Table 7 details uses that are permitted within the Commercial Zones. For lands zoned Central Commercial (C1) Zone, “retail or grocery store” uses are permitted. The Zoning By-law defines a Retail or Grocery Store as follows, “shall mean a building where goods, wares, merchandise, substances, articles or food, are offered or kept for sale or rental and includes storage on or about the store premises of limited quantities of such goods, wares, merchandise, substances, or articles sufficient only to service such stores”. It is our opinion that a Cannabis Dispensary involves many of these activities and therefore would be a permitted use within the C1 Zone, subject to federal and provincial rules and regulations.

**Note: Until such time as the Cannabis Act becomes law, all Cannabis Dispensaries are illegal whether for recreational or medical use. The only way to obtain Medical Cannabis is by ordering online or on the phone from a Licensed Medical Cannabis Producer and having the order shipped directly to you.**

### **HOW HAVE MUNICIPALITIES APPROACHED CANNABIS PRODUCTION AND DISPENSING?**

A number of municipalities have taken steps to regulate cannabis production facilities and dispensaries. A brief review of various municipal approaches is provided below.

### **Regulations for Medical Cannabis Production Facilities**

In the **County of Brant's** first draft of their comprehensive zoning by-law 5-year review the term **"Medical Marihuana Production Facility"** was introduced. It is defined as, "means premises used for producing, processing, testing, destroying, packaging and shipping of medical marihuana authorized by a license issued by the federal Minister of Health, pursuant to the Marihuana for Medical Purposes Regulations, under the Controlled Drugs and Substances Act, as amended from time to time, or any successors thereto" (County of Brant). In addition to this new term, "the following provisions apply to licensed Medical Marijuana Production Facilities Uses:

- a) No building or structure or portion thereof used for Medical Marijuana Production Facility situated in Light Industrial Zone (M2) and Heavy Industrial Zone (M3) shall be located closer to any Residential Zone, Institutional Zone, or Open Space Zone than 70 metres.
- b) No building or structure or portion thereof used for Medical Marijuana Production Facility situated in the Agricultural Zone (A) shall be located closer to any Residential Zone, Institutional Zone, or Open Space Zone than 150 metres.
- c) The facility operations, including loading spaces and storage, must be located within in a wholly enclosed building.
- d) Outdoor storage is prohibited on the property where the Medical Marijuana Production Facility is located.
- e) Medical Marijuana Production Facility shall only be permitted within zones as explicitly indicated in this Zoning By-law.
- f) All development in relation to the establishment of or expansion to a Medical Marijuana Production Facility shall be subject to Site Plan Control.
- g) A building or structure used for security guard for a Medical Marijuana Production Facility may be located in the front yard, side yard and rear yard building setbacks.
- h) No minor variance for regulations pertaining to the Medical Marijuana Production Facility shall be permitted by Committee of Adjustment and shall only be dealt with a Zoning By-law Amendment.
- i) A Medical Marijuana Production Facility shall only be permitted in the following zones:
  - (i) Agricultural Zone (A)
  - (ii) Agricultural Employment Zone (AE)
  - (iii) Light Industrial Zone (M1)
  - (iv) Heavy Industrial Zone (M2)" (County of Brant).

The **City of Burlington** followed a similar approach to the County of Brant by introducing a definition for **"Medical Marihuana Production Facility"** in the Zoning By-law. It is defined as, "Premises used for the growing, producing, testing, destroying, storing, or distribution of medical marihuana or cannabis authorized by a license issued by the federal Minister of Health, pursuant to section 25 of the Marihuana for Medical Purposes Regulations, SOR/2013-119, under the *Controlled Drugs and Substances Act*, SC 1996, as amended." (City of Burlington). New provisions within the General Employment regulations were also introduced and are as follows: Medical Marijuana Production Facilities

- (i) A medical marijuana production facility must be a wholly enclosed building.
- (ii) Outdoor storage is not permitted with a medical marihuana production facility.
- (iii) Loading spaces for a medical marihuana production facility must be in a wholly enclosed building.
- (iv) A building or structure used for security purposes for a medical marihuana production facility does not have to comply with the required front, side, street side, and rear yards.
- (v) Fencing for security purposes does not have to comply with Part 1, Section 2.4.1(a).

- (vi) A lot that has a medical marihuana production facility must be 70 metres from:
  - a. A residential use or zone category that includes a residential use,
  - b. A public or private school or zone that permits a public or private school,
  - c. Place of worship or zone that permits a place of worship,
  - d. Day nursery or zone that permits day nursery.” (City of Burlington).

### Regulations for Cannabis Dispensaries

Prior to the announcement from the Provincial government regarding the planned public system of dispensing recreational cannabis a number of municipalities took steps to regulate cannabis dispensaries. The **City of Brantford** staff recommended introducing a definition for “Cannabis (Marijuana) Retail Outlet” into their Zoning By-law defined as “shall mean a lot and a building, or structure, or portion thereof, wherein one or any of the following activities occur:

- (i) The storage, dispensing or retail sale of cannabis, including but not limited to cannabis-based edible products, for recreational purposes;
- (ii) Cannabis is consumed recreationally in any form.” (City of Brantford)

The purpose of defining the use was to prohibit the use until such time as the Federal and Provincial government has provided legislation and direction to municipalities. The following definitions were proposed to be modified to include, “This definition shall not include “Cannabis (Marijuana) Retail Outlet”: Commercial use, Department Store, Junior, Department Store, Major, Flea Market, Fresh Produce Outlet, Garden Supply Centre, Grocery Store, Neighbourhood Convenience Store, Nursery Garden Centre, Private Club, Retail Store, Specialty Retail Store, and Supermarket (City of Brantford, 2017). The **County of Brant** followed a similar approach by defining the term “cannabis (Marijuana) Retail Outlet” and subsequently modifying the following use definitions to include the term, “This definition shall not include “Cannabis (Marijuana) Retail Outlet”: Greenhouse, Commercial, Grocery Store/Supermarket, Nursery and Garden Centre, Retail Store, Shopping Centre. The **City of Waterloo** is proposing a slightly different approach, in their proposed new Zoning By-law the term “Cannabis Dispensaries” with the following definition, “means a building or part thereof in which cannabis is offered and kept for sale to the end consumer” (City of Waterloo, 2017). The proposed Zoning By-law does not explicitly prohibit the use in any zone, however it is also does not permit the use in any zone.

### OPTIONS FOR CONSIDERATION

There are three key options to consider with respect to (Medical) Cannabis Production Facilities and Cannabis Dispensaries:

- (A) Amend the Zoning By-law to **define** the terms “Medical Cannabis Production Facility”, “Cannabis Production Facility”, and “Cannabis Dispensary” and prohibit and/or permit the uses;
- (B) Amend the Zoning By-law to **define and regulate** the terms “Medical Cannabis Production Facility”, “Cannabis Production Facility”, and “Cannabis Dispensary” and prohibit and/or permit the uses; or,
- (C) **Make no changes**, acknowledging that the Zoning By-law permits Medical Cannabis Production Facilities in the Agricultural (A) Zone, Industrial (M1) Zone, Industrial (M2) Zone, and Industrial (M3) Zone and that a Cannabis Dispensary is permitted within the Central Commercial (C1) Zone.

## **DISCUSSION**

### **Option A – Define Terms**

Amending the Zoning By-law to define the terms “Medical Cannabis Production Facility”, “Cannabis Production Facility” and “Cannabis Dispensary” provides the opportunity to establish these uses within the Zoning By-law. Once the uses are defined, expressly permitting or prohibiting the uses is possible. This option could be completed as part of the upcoming Housekeeping Amendment to the Zoning By-law that is currently in preparation for Council’s consideration.

### **Option B – Define Terms and Regulate**

Amending the Zoning By-law to define and regulate the terms “Medical Cannabis Production Facility”, “Cannabis Production Facility” and “Cannabis Dispensary” provides the opportunity to accomplish what is noted in Option A in addition to providing detailed regulations of where and how the uses can be permitted or expressly prohibited. This options gives the Town of Erin the opportunity to be prescriptive if permitting the newly defined uses. This option could be completed as a standalone amendment to the Zoning By-law.

### **Option C – Make No Changes**

The final consideration is simply to make no changes to the Zoning By-law with respect to Cannabis Production Facilities and Dispensaries. In our view, as the Zoning By-law is today, Cannabis Production Facilities and Dispensaries would be permitted in a number of zones. By not making changes to the Zoning By-law Council should be aware that building permit applications could be applied for to the Town and may subsequently be issued without Council’s consideration and endorsement.

Respectfully Submitted

County of Wellington Planning and Development Department



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