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Briefing: Municipal Governments in the Ontario Recreational Cannabis Framework

What Ontario Municipal Governments Need to Know About What Has and Has Not Changed

Introduction

In 14 days, it will be legal in Canada to possess or use cannabis subject to certain limits. The federal government amended the Criminal Code to enable Canadians to buy, sell and consume cannabis and cannabis products. Under federal legislation, Health Canada administers the licensing regime for recreational cannabis growers. These licensed producers serve as the sole source of legal recreational cannabis in Canada. The federal framework includes rules regulating grow operations as well as the advertisement and promotion of cannabis, which is strictly controlled to protect youth.

Under federal legislation, provinces are responsible for establishing wholesale and retail distribution systems. Jurisdiction over rules regarding where individuals can consume cannabis also resides with the provinces. ■

Ontario's Approach:

The key proposed amendments in Bill 36 are:

- i) to allow private sector retail stores where a municipal government has not opted out of retail sales;
- ii) establish the Alcohol and Gaming Commission of Ontario (ACGO) as the retail store licensing body and
- iii) align cannabis consumption rules with tobacco places of use under the *Smoke Free Ontario Act*.

For a breakdown of changes proposed by the legislation, [click here](#). ■



Retail Distribution on 17.10.18:

Ontario residents will be able to order cannabis legally from the Ontario Cannabis Retail Corporation (OCRC) starting October 17, 2018. The OCRC will be the only legal distributor for wholesale cannabis to retailers and the on-line retailer to the public. Delivery is conditional on the person ordering and receiving the cannabis product being an Ontario resident and 19 years of age or over. Identification is required. Packages cannot be left unattended in a building or home. ■

Places of Use:

If Bill 36, as proposed, becomes law on October 17, smoking recreational cannabis will be legal where tobacco consumption is permitted under the *Smoke Free Ontario Act*. It is illegal to smoke tobacco in enclosed workplaces, restaurants, bars and patios, schools, near playgrounds and publicly owned sports facilities and other locations. Municipal governments can also enact stricter by-laws on places to smoke in their communities. This allows municipal governments to reflect community preferences for the safety of residents and to balance public enjoyment of the community. However, in considering stricter requirements, municipal governments should also consider the cost of enacting locally determined rules and how they will be enforced. ■

Take Away:

The proposed rules governing where it is legal to smoke cannabis are changing. Public Health Units enforce the SFOA smoking rules. Municipal governments can pass stricter smoking by-laws but will need to consider cost and enforceability.

Provincial Licensing of Retail Stores:

The new legislation authorizes the Alcohol and Gaming Commission of Ontario (AGCO) to license and regulate private cannabis retail in the province.

The AGCO will establish processes for Retail Operator Licensing and Retail Store Authorization for retail cannabis stores in communities where municipal governments have not opted out. The AGCO and police will also be responsible for inspections and enforcement of the Act. Municipal official plans, zoning approvals and licensing by-laws will not apply. The AGCO has three licensing functions:

- The AGCO will be responsible for licensing cannabis Retail Store Operators. Licensing will be subject to criminal and financial eligibility checks. The AGCO is aiming to open the application process for store operator licenses in December 2018.
- Once a specific cannabis retail site has been proposed, the AGCO will be responsible for determining and granting Retail Store Authorization.
- The AGCO will also license Cannabis Store Retail Managers employed in senior positions at retail locations.

The AGCO will charge fees to cover the cost of administering of the licensing and retail store authorization processes.

The AGCO will provide municipal governments and the public with a 15-day notification period of a proposed store site to receive public input and hear concerns from the local community. Under the proposed law, the AGCO will consider comments from both the lower and upper tier municipality. The public notification of a proposed cannabis retail site will also be posted on the building and on the AGCO's website.

Further details as to how the public notification process will work are not yet available. In providing comments, the Bill says municipal governments must have regard to the needs and wishes of residents. AMO is seeking clarity on what this means since cannabis retail siting is exempt from typical land use planning processes.

Store locations will need to observe a minimum distance from schools. This distance will be specified in regulation. AMO is seeking clarity on how other local sensitive uses will be considered by the AGCO in its decision-making process.

There is no cap on the number of storefronts, leaving it to market demand to decide locations and the number of stores. However, there is regulatory flexibility in the Act to set concentration limits to ensure one or a few operators do not dominate the retail market.

It is unclear if a cannabis retail store would need to be located within a municipal commercial zone where retail is a permitted use or in any zone where retail is permitted.

AMO had hoped that municipal governments would have greater opportunity to influence store locations to protect other sensitive sites and the density of stores in their communities. This is an ongoing interest of municipal governments and will form part of AMO's continuing work, including engagement on regulatory development.

The first retail stores are to be operational April 1, 2019, after all licenses and authorizations are in place. It is presumed that all store locations will be required to be compliant with the Ontario Building Code and Fire Code. ■

Take Away:

The AGCO will license operators, approve store sites proposed by licensed operators and license cannabis retail managers to work in retail stores. Where municipal governments have not opted out, a 15-day notice period will allow comments from the public and municipal governments.

Regulations will set minimum distances from schools for retail locations. The government may also pass regulations to control market concentration of a single retail operator or corporation.

At this point it is unknown whether local zoning compliance will be needed for site approval.

AMO will continue to seek opportunities for municipal influence over store locations and density.

Municipal Opt Out of Cannabis Retail:

Municipal governments (defined in the Act as a local municipality) have a one-time opportunity to opt out of cannabis retail in their communities. There is no time period for a local municipality to opt back in via resolution. If the opt out is reversed by a municipal government, that decision is final.

To opt out, municipal councils must pass a resolution by January 22, 2019 stating they do not wish to host cannabis retail stores in their communities. The resolution must be sent to the AGCO. The AGCO's receipt of this resolution will automatically cancel any outstanding applications for a storefront in the municipality. The AGCO will keep a public list of communities that have opted out of hosting cannabis retail

stores. Operators will not be able to propose a store location or locations in those communities. The Minister of Finance will track municipal governments who opt out as this may impact the distribution of funding to help with costs. ■

with additional fines per day that the offence continues). These fines are levied under the *Provincial Offences Act* (POA). If successfully prosecuted and collected, the fine is paid to the municipal government. ■

Take Away:

Municipal governments can opt out of hosting recreational cannabis retail storefronts in their communities by January 22, 2019 by sending a resolution to the AGCO. This opt out can be reversed but any decision to opt in is final.

Opting out may affect the portion of cannabis excise tax funds a municipal government is eligible to receive.

Take Away:

The first legal cannabis retail storefronts will open on April 1, 2019. To be eligible to receive an operator license, current illegal dispensaries must close before October 17. Any stores operating in Ontario without AGCO licenses are illegal and subject to police enforcement and prosecution.

POA fines apply.

Illegal Storefronts - Dispensaries:

Recreational cannabis is illegal until October 17, 2018. In Ontario, cannabis retailers MUST have AGCO operator licenses, site authorizations and employ authorized staff. They must also display a seal. To be eligible for AGCO authorizations, current illegal cannabis retailers will need to shut down prior to October 17, 2018. They may then apply for a retail operator license unless charged under federal or provincial cannabis legislation that comes into effect October 17. This may impact the closure of current illegal dispensaries without police intervention.

Unauthorized sales of cannabis are subject to significant POA fines (up to \$250,000 for individuals and \$1,000,000 for corporations, with additional fines per day that the offence continues) and police can issue closure orders to prevent unauthorized retail sites from reopening. Landlords can also be charged for permitting their property to be used in contravention of the Act (up to \$250,000 for individuals and \$1,000,000 for corporations,

Enforcement:

Police will enforce the federal and provincial cannabis legislation. The federal government has provided funds to police forces for training and the Ontario government has worked with Ontario Provincial Police and municipal police forces to increase the number of officers trained in the Standard Field Sobriety Test and as Drug Recognition Experts.

The AGCO will enforce licensing, renewals and adherence to any conditions. This will include inspections of store operations, the financial practices of the operators, ensuring licensed personnel are working in stores as required and discharging their duties appropriately, ensuring rules regarding sales are followed, etc. Contravention of provincial and federal requirements and laws can result in the revocation of operator licenses.

Public Health Units enforce the SFOA currently and deal with places of use for tobacco. Cannabis use enforcement will be added to these duties since the locations will be the same as now, unless municipal governments pass stricter smoking by-laws. Passing and enforcing stricter local smoking by-laws may increase local public health unit budgets for municipal governments.

Bill 36 includes provisions for municipal government councils to request that the Minister authorize in writing for local by-law enforcement officers to enforce the Act. This may be a preferred option longer term for new councils to consider after learning more about the transition impact of legalization.

The federal *Cannabis Act* strictly controls the operations of licensed growers as well as the advertising and promotion of cannabis. Growers must adhere to strict security requirements and seed to sale tracking of their products under the terms of Health Canada registration. Rules and regulations regarding

promotion and advertising also have the effect of banning cannabis promotion through mass advertisement channels because of youth access to these mediums. Section 23 of the federal *Cannabis Act* also pertains to the display of advertisements and could impact municipal governments who display third party ads. Fines and penalties can be levied against an entity for disseminating prohibited cannabis promotions. Where municipal governments own advertising vehicles (such as transit ads or street furniture, etc.) they may wish to consider prohibiting advertising related to this activity. ■

Take Away:

Police forces will enforce road safety and illegal storefronts. The province has provided training to police officers and is working to expand Drug Recognition Expert training. Public Health Units will enforce smoke free Ontario rules.

AGCO will inspect, investigate and enforce rules for registered operators and stores, including financial practices and illegal activities, if any.

Federal cannabis advertising rules are strict. Municipalities should ensure that their policies for transit and other municipal advertising channels are in line with these requirements.

Municipal Funding:

The transition to legal recreational cannabis will impact local services and municipal government functions including: policing, public health, bylaw enforcement and potentially paramedic services.

To help manage these municipal impacts, the provincial government has confirmed that it will honour its commitment to provide municipal governments with \$40 million of Ontario's portion of the federal excise tax on cannabis with a 50/50 provincial-municipal split if Ontario's revenues exceed \$100 million in the first two years. The commitment is:

- \$40 million over two years to municipal governments.
- At least \$10,000 for each municipal government with \$5,000 distributed to all municipalities as soon as possible. Another \$5,000 will be distributed in 2019.
- For municipal governments allowing stores, additional funding will be distributed on a per household basis. The province will also maintain a contingency fund to support additional and unanticipated costs.

Clearly, the provincial funding provides an incentive to municipal governments to allow private cannabis retail in their communities. There has been a sense that the federal excise tax amount will not cover provincial or municipal costs. Legal recreational cannabis is new to everyone. Some costs may increase such as nuisance calls, while others, such as police enforcement, may decrease. At this point, we do not know the impact. AMO urges municipal governments to track costs for **additional** work relating to the transition to legal recreational cannabis so data is available to protect local finances and services. ■

Take Away:

All municipal governments will receive at least \$10,000 to help transition to legal recreational cannabis in our communities.

Communities that decide to allow retail storefronts will receive \$10,000, plus per household funding, and will be eligible for a share of 50 per cent of the surplus funding if the province's share of federal excise tax exceeds \$100 million in the first two years.

Municipal governments must track additional expenditures related to legalized recreational cannabis.

Licensed Producers and Medical Cannabis:

Cannabis growing operations are licensed by Health Canada for medical and recreational cannabis products. It is also legal for residents to grow up to four plants per residence for personal use.

Medical cannabis users will continue to access cannabis in the same way as they do now. For some, that means that they order from licensed producers and Canada Post delivers their cannabis. Others grow their own for their personal medical use. Others still designate growers to provide the cannabis they need to manage their medical needs. It is anticipated this will continue, though some current and future patients may elect to get their cannabis from the recreational market if their specific requirements are met. The courts have upheld access to medical cannabis, including through designated growers.

As proposed, Bill 36 will also allow cannabis growers licensed by Health Canada to apply to operate one retail facility at a growing location.

This responds to the desire of cannabis producers to have vertically integrated cannabis operations. AMO understands this may function somewhat like retail operations at Ontario wineries and breweries.

AMO's Board has sought greater control for municipal governments over cannabis growers to ensure community concerns can be acted upon, such as through planning and licensing controls. For municipal governments that may be challenged working with some of these growers, we advise continued engagement and monitoring through the transition period. ■

Take Away:

It is illegal to grow more than four plants per residence.

Medical cannabis users are able to continue accessing cannabis in their currently preferred method(s). In some communities, there may be concerns about conflicts between some growers and their neighbours. The courts have upheld this activity as part of a patient's right to access medicine.

Licensed Producers in Ontario will be able to open one store at one location to retail their products.

Next Steps:

Municipal governments do not need to rush to make an opt-out decision. They have until January 22nd at the latest. Our advice is for new councils (post municipal election) to wait to have a full understanding of the legislative authority (once it is passed), the content of regulations (yet to be tabled) and an understanding of the AGCO's process for dealing with retail store licenses and store authorizations before making a decision to opt out. AMO is preparing to present to the Standing Committee reviewing the legislation on municipal concerns and challenges and seek any amendments deemed necessary. Municipal governments that have suggested amendments are urged to get in touch with AMO ASAP.

AMO is committed to advocating for municipal interests and providing as much assistance to members to facilitate local decision-making. Aspects of this will become more apparent over the coming weeks. AMO encourages municipal officials to bookmark the AMO website to keep up to date, and to reference other information. ■