

REQUEST FOR DECISION

Subject: Bylaw 420 – Land Use Bylaw Amending Bylaw – Cannabis and Cannabis Related Businesses Definitions



Presented to: Council

Date: November 27th, 2017

Submitted by: Randall McKay
Director, Planning and Development
Dave Michaels, Development Planner

Agenda #: 7.3

RECOMMENDATION

1. That council give first reading to Bylaw 420 - Town of Banff Land Use Bylaw Amending Bylaw – Cannabis and Cannabis Related Businesses Definitions
2. That council schedule a Public Hearing for Monday, January 22, 2018 at 2:00 p.m.

BACKGROUND

Reason for Report

To define Cannabis and Cannabis Related Businesses in the Land Use Bylaw in advance of the Government of Canada adopting the proposed Cannabis Act. A copy of proposed amending Bylaw 420 is attached as Appendix A.

Summary of Issue

In its December 2015 Speech from the Throne, the Federal Government made a commitment to “*legalize, regulate, and restrict access*” to cannabis. On April 13, 2017, the Government of Canada introduced draft legislation to legalize, regulate and restrict access to cannabis. This legislation is expected to come into effect by July 2018. Cannabis is currently a controlled substance under the federal *Controlled Drugs and Substances Act (CDSA)*. The proposed federal legislation would:

- allow adults to possess up to 30 grams of legally-produced cannabis
- allow adults to grow up to four cannabis plants per household
- set the minimum age for purchase and use at 18 years of age, with the option for provinces to increase the age limit
- enable a regulatory regime for the licensed production of cannabis, which would be controlled by the federal government
- enable a regulatory regime for the distribution and sale of cannabis, which would be controlled by the provincial government
- establish new provisions to address drug-impaired driving, as well as making several changes to the overall legal framework to address alcohol impaired driving.

While the Federal Government develops its framework for the legalization and regulation of cannabis, the Province of Alberta has also initiated its own approach to the legalization of cannabis and has prepared a draft framework to shape how the province will adapt to cannabis legalization. Once provincial legislation has been adopted, it would only apply in Banff through an Instrument of Entrustment which requires consent from the Minister of Environment through Parks Canada.

Although it is recognized that legalization is a federal decision, provinces and municipalities have been given areas of responsibility as follows:

Activity	Responsible		
	Federal	Provincial	Municipal
Possession limits **	✓		
Trafficking	✓		
Advertisement & packaging **	✓		
Impaired driving	✓	✓	
Medical cannabis	✓		
Seed-to-sale tracking system	✓		
Production (cultivation and processing)	✓		
Age limit (federal minimum) **	✓		
Public health	✓	✓	
Education	✓	✓	✓
Taxation	✓	✓	✓
Home cultivation (growing plants at home) **	✓		
Workplace safety		✓	
Distribution and wholesaling		✓	
Retail model		✓	
Retail location and rules		✓	✓
Regulatory compliance	✓	✓	
Public consumption		✓	✓
Land use/zoning			✓

** provinces will have the ability to strengthen legislation for these areas under federal jurisdiction

Over the past number of months, Planning and Development has been receiving numerous inquiries from proponents wanting to establish storefront cannabis dispensaries and questions about how the Town of Banff proposes to regulate once the federal legislation is passed. Under the existing provisions of the Land Use Bylaw, all cannabis related businesses would be defined as Retail Store, General land use. Retail Store, General is defined to mean *the retail sale of groceries, beverages, baked goods, household goods, clothing, jewelry, furniture and appliances, hardware, printed matter, confectionery, gifts and souvenirs, tobacco, pharmaceutical and personal care items, automotive parts and accessories, office equipment, stationery and similar goods from within an enclosed building. Minor public services, such as postal services and film processing depots are permitted within general retail stores. General retail stores include convenience retail stores.*

Uses and Regulations

Under the provisions of s.1.5.0 of the Land Use Bylaw, development in each district must be in accordance with the uses listed in the district and all the regulations and guidelines in the Bylaw. In addition, an applicant is responsible for complying with all federal, provincial, or municipal legislation including the Agreement, the Banff National Park Management Plan and applicable statutory plans.

Administration is of the opinion that a series of definitions should be added to the Land Use Bylaw in advance of the federal legislation in order to clarify how uses related to the sale and distribution of cannabis and cannabis related products will be defined and to prevent a run on applications under the auspices of Retail Store, General. In the short term, these uses would not be permitted within the Town of Banff. Specific use definitions will allow council to regulate pending and/or interim applications for cannabis related uses once federal and provincial laws have come into full force and effect. Town of Banff legal counsel has also advised this to be a prudent measure and approach.

Proposed amendments to the Land Use Bylaw include adding the following four definitions to Section 2.0.0 Interpretive Clauses:

- **Cannabis** means cannabis as defined in the Controlled Drugs and Substances Act and includes any products containing cannabis.
- **Storefront Cannabis Retail** means a retail business where cannabis is sold or marketed to a person who attends the premises.
- **Cannabis-Related** means a business where the use of cannabis for medical or any other purposes is advocated or promoted.
- **Cannabis Production Facility** means a premise used for growing, producing, testing, destroying, storing, or distribution of Cannabis authorized by a license issued by the federal Minister of Health.

Response Options

Council may consider any of the following response options:

1. Give first reading to amending Bylaw 420 as presented;
2. Defer first reading to amending Bylaw 420 until additional information is received;
3. Not proceed with first reading to amending Bylaw 420 and take no further action

IMPLICATIONS OF DECISION

Budget

There are no budgetary implications with the proposed amending bylaw.

Internal Resources

Planning and Development staff would administer the development permit application review process under the provisions of the Land Use Bylaw following the adoption of the proposed amending bylaw.

Communications

A copy of the draft amending bylaw has been circulated to all departments (including the RCMP and Parks Canada) for their review and comment. Feedback will be provided at the public hearing. A draft of the proposed amending bylaw will also be posted on banff.ca along with an appropriate feedback mechanism.

Legislation/Policy

In accordance with the requirements of the *Municipal Government Act*, every proposed bylaw must have three separate and distinct readings. Council is also required to hold a public hearing before second reading of the bylaw during a regular or special meeting of council. Pursuant to the Incorporation Agreement, the minister responsible for Parks Canada or their designate must give final approval to an amending bylaw prior to coming into effect.

Bylaw Services and Planning and Development will continued to enforce the land use planning and business licence laws currently in place. Until cannabis laws change and strict regulations are put in effect, the RCMP will also continue to address illegal cannabis possession and sales.

Cannabis (marihuana) remains a Schedule II drug under the *Controlled Drug and Substances Act*, and, unless otherwise regulated for production and distribution for medical purposes, is subject to offences under that Act. Possessing and selling cannabis for non-medical purposes is still illegal everywhere in Canada.

Storefront operations selling cannabis, commonly known as “dispensaries” and “compassion clubs” are not licensed by Health Canada under the current law and are illegal. They are supplied by unauthorized growers and sell untested, unregulated products.

Banff Community Plan

Commercial development goals

- Banff will remain competitive with other worldwide visitor destinations.
- Provide an appropriate mix of commercial services that meet the long-term needs of visitors and residents.
- Ensure commercial development reflects and respects the Town’s role as a visitor centre as well as the values of the national park.
- Commercial development will occur within the legislated commercial growth cap.

Other

The consumption of marijuana and cannabis oils for medicinal purposes has been exempt from the *Controlled Drugs and Substances Act* through various regulations since 2001. To legally access medical marijuana and cannabis oils, individuals authorized by a health care professional can access mail-

order products from producers licensed by Health Canada, register with Health Canada to produce a limited amount for themselves or designate someone to produce it for them.

ATTACHMENTS

Appendix A - Proposed amending Bylaw 420

Link: <https://www.banff.ca/landusebylaw>

Submitted By: On original 2017.11.22
Randall McKay
Director, Planning and Development

Reviewed By: On original - Kelly Gibson for (2017.11.22)
Robert Earl, Town Manager

TOWN OF BANFF

BYLAW 420

Land Use Bylaw Amending Bylaw –Cannabis and Cannabis Related Businesses Definitions

A BYLAW TO AMEND THE LAND USE BYLAW TO THE ESTABLISH DEFINITIONS FOR CANNABIS
AND CANNABIS RELATED BUSINESSES.

The Council of the Town of Banff, in the Province of Alberta, duly assembled, ENACTS AS
FOLLOWS:

1.0 CITATION

- 1.1 This bylaw may be cited as “Land Use Bylaw Amending Bylaw – Cannabis Definitions”.

2.0 PROVISIONS

- 2.1 Town of Banff Land Use Bylaw, as amended, is hereby amended by adding the following definitions to Section 2.0.0 Interpretive Clauses:
- **Cannabis** means cannabis as defined in the Controlled Drugs and Substances Act and includes any products containing cannabis.
 - **Storefront Cannabis Retail** means a retail business where cannabis is sold or marketed to a person who attends the premises.
 - **Cannabis-Related** means a business where the use of cannabis for medical or any other purposes is advocated or promoted.
 - **Cannabis Production Facility** means a premise used for growing, producing, testing, destroying, storing, or distribution of Cannabis authorized by a license issued by the federal Minister of Health.

3.0 SEVERABILITY

- 3.1 If any clause in this bylaw is found to be invalid, it shall be severed from the remainder of the bylaw and shall not invalidate the whole bylaw.

4.0 ENACTMENT

4.1 This bylaw comes into force after the date of final passing, upon approval and execution by the Superintendent, Banff National Park, for the Minister of the Environment.

4.2 The Town Manager is authorized to consolidate Town of Banff Land Use Bylaw, as amended.

READ A FIRST TIME this xx day of month, 20xx.

Pursuant to the Municipal Government Act (Alberta), a PUBLIC HEARING was held this xx day of month, 20xx.

READ A SECOND TIME this xx day of month, 20xx.

READ A THIRD TIME this xx day of month, 20xx.

SIGNED AND PASSED this _____ day of _____, 20xx.

Karen Sorensen
Mayor

Robert Earl
Town Manager

APPROVED by the Minister of the Environment, by his delegate this ____ day of _____, 20xx:

Minister of the Environment/Delegate