THE LEGALIZATION OF RECREATIONAL CANNABIS

A toolkit for Alberta municipalities to address the impacts of the legalization of recreational cannabis through planning and development, business licensing, community standards, and nuisance regulation.

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A. Legislative Framework

Executive Summary

In April of 2017, the Federal Government followed through on its promise to legalize and regulate recreational cannabis in Canada with the introduction of the *Federal Cannabis Act* and supplementary legislation. Medical cannabis has been a reality in Canada for a number of years; however, the decriminalization of cannabis for non-medicinal purposes has the potential for broad reaching impacts on the day to day lives of Canadians.

Like a waterfall, the decriminalization of cannabis at the federal level necessitates provincial governments and then local authorities to play their part in contributing to a comprehensive regulatory framework, which effectively and efficiently addresses production, distribution, sale, cultivation, possession, and use of cannabis across Canada. The role of local authorities will depend, in part, on each province's approach to these issues.

In Alberta, Bill 26, *An Act to Control and Regulate Cannabis*, 3rd Sess, 29th Leg, 2017, and the *Gaming and Liquor Amendment Regulation*, AR 13/2018, address the distribution, sale, and use of cannabis, paving the way for municipalities to work within the provincial framework to address impacts at a local level.

1. Access to Cannabis for Medical Purposes (Federal)

The *Controlled Drugs and Substances Act*, SC 1996, c 19 ("*CDSA*"), is the overarching piece of federal legislation governing the punishment, enforcement, disposal, and administration of controlled substances in Canada. Cannabis and its various derivatives are listed as a Schedule II controlled drug in the *CDSA*.

Despite courts agreeing there is no constitutional right to possess cannabis for recreational use, Canadians have had increasing access to medical cannabis over the past two decades (see *R v Malmo-Levine; R v Caine*, 2003 SCC 74). In part, this increased liberalization has been a result of the ongoing dialogue between the courts and parliament about the constitutionality of restricting cannabis for medical purposes. For example, in *R v Parker*, 2011 ONCA 819, the Ontario Court of Appeal found blanket prohibitions on possessing cannabis were unconstitutional because the law did not make an exception for an individual who requires cannabis for medical purposes. More recently, in *R v Smith*, 2015 SCC 34, the Supreme Court of Canada found that "… the prohibition on possession of non-dried forms of medical marihuana limits liberty and security of the person, engaging s. 7 of the *Charter*" (*Smith* at para 21). A violation was found because the exclusion of non-dried forms of cannabis was found to be an arbitrary law (*Smith* at paras 25-28).

The *Access to Cannabis for Medical Purposes Regulations,* SOR/2016-230 ("*ACMP*") carve out an exemption for cannabis for medical purposes under the *CDSA* framework, and were drafted

in response to various constitutional challenges. This regulation is divided into four parts: (1) commercial production; (2) individual production; (3) transitional provisions; and (4) consequential amendments, repeal, application, and coming into force. The commercial and individual production portions of the *ACMP* are primarily of interest.

For commercial production, the *ACMP* created a scheme for licensed producers to possess, produce, sell, provide, ship, deliver, transport, and destroy marijuana or cannabis oil. In addition to those broad provisions, it sets out the licencing scheme, security measures required for the licence, good practices, equivalencies for forms of marijuana, packaging, labelling and shipping requirements, import and export requirements, security clearances, and how and what information the licensed producer was required to provide to police. It is under this framework licensed medical cannabis producers are operating in municipalities across Alberta.

With respect to individual production, the *ACMP* allows registered individuals to produce, store, and transport cannabis for their own medical purposes. The registered individual is responsible for security of the production. Furthermore, the Minister of Health is authorized to provide information about the registered individual to police carrying out an investigation.

2. Cannabis Act (Federal)

Bill C-45, *An Act Respecting Cannabis and to Amend the Controlled Drugs and Substances Act, the Criminal Code, and other Acts*, 1st Sess, 42nd Parl, 2015 ("*Federal Cannabis Act*") is the proposed federal legislation expected to provide legal access to cannabis and to control and regulate its production, distribution and sale, beyond cannabis for medical purposes.

The stated objectives of the *Federal 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 *Federal Cannabis Act* is also intended to reduce the burden on the criminal justice system in relation to cannabis.

Pursuant to s. 69 of the *Federal Cannabis Act*, a person may possess, sell or distribute cannabis if the person is authorized to sell cannabis under a provincial Act. The provincial Act must contain the following elements for a person to be authorized to sell cannabis in the province:

(a) they may sell only cannabis that has been produced by a person that is authorized under this Act to produce cannabis for commercial purposes;

(b) they may not sell cannabis to young persons;

(c) they are required to keep appropriate records respecting their activities in relation to cannabis that they possess for commercial purposes; and

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(d) they are required to take adequate measures to reduce the risk of cannabis that they possess for commercial purposes being diverted to an illicit market or activity.

Importantly, the provincial Act and legislative measures referred to above must be in force for a person to rely upon the exemptions under the *CDSA*.

As of May 11, 2018, the *Federal Cannabis Act* has not been put into force. Consequently this has meant the provincial Acts across Canada, including Alberta, have also not been put into force. In practical terms, this means the Alberta Gaming and Liquor Commission, for example, will not be able to purchase and sell cannabis until the *Federal Cannabis Act* is in force, and the complementary provincial legislation also comes into force.

3. Act to Control and Regulate Cannabis (Bill 26) and Gaming and Liquor Amendment Regulation (Alberta)

The *Federal Cannabis Act* authorizes persons to possess, sell or distribute cannabis if they are authorized to sell cannabis under a provincial Act. In response, the Alberta government passed the *Act to Control and Regulate Cannabis* ("*Alberta Cannabis Act*").

In order to facilitate the *Federal Cannabis Act*'s objectives, the *Alberta Cannabis Act* will amend Alberta's *Gaming and Liquor Act*, RSA 2000, c G-1, to become the *Gaming, Liquor and Cannabis Act* ("*GLCA*"). Pursuant to the *GLCA*, the Alberta Liquor and Gaming Commission will:

(a) have the general authority to import, distribute, purchase, sell, transport, possess and store cannabis;

(b) oversee the issuance of licenses and the conduct of licensees for cannabis, and;

(c) transfer revenues from the sale of cannabis for the use of the Province.

On this basis, the *Alberta Cannabis Act* attempts to conform with the legislative requirements of the *Federal Cannabis Act*. By creating the licencing regime, where the Commission may only sell cannabis that has been produced by a person authorized under the *Federal Cannabis Act*, the Alberta government has established a framework for who may legally sell cannabis, thereby meeting the first requirement of the *Federal Cannabis Act.* The *Alberta Cannabis Act* also establishes that minors cannot be provided cannabis and can be refused entry to a retail store. This achieves the second requirement of the *Federal Cannabis Act* of not allowing the sale of cannabis to minors. By requiring the keeping of records as a condition of the cannabis licence, the reporting requirement of the *Federal Cannabis Act* will likely be met. And finally, by enforcing the provisions of the *Alberta Cannabis Act*, such as the inspection of records, the provincial government will be taking measures to reduce the risk of cannabis entering the black market.

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The *Alberta Cannabis Act* received Royal Assent on December 15, 2017, and will come into force upon proclamation. As above, those dates are dependent on the coming into force of the *Federal Cannabis Act*.

4. Municipal Regulation

a. Possible Areas of Regulation

Municipalities will play an important role in the legislative framework for the legalization of recreational cannabis using the tools provided under the *Alberta Cannabis Act*.

The *Alberta Cannabis Act* amends the *Municipal Government Act*, RSA 2000, c M-26 ("*MGA*"), to require a municipality's Land Use Bylaw to be consistent with the applicable requirements of the *GLCA*:

> **640(7)** A land use bylaw must be consistent with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis license and distances between those premises and other premises.

As discussed later, it would be difficult for a municipality to simply prohibit a cannabis business from establishing itself in a municipality, though municipalities do have the option to place onerous restrictions on the business licensing requirements.

Likewise, development authorities are not given free rein to grant development permits for cannabis businesses in a municipality:

> **(5)** […] a development authority must not issue a development permit if the proposed development does not comply with the applicable requirements of regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises.

In addition, the Alberta Gaming and Liquor Commission will not be able to issue a cannabis store licence in respect of any premises located in a municipality, unless a development permit has been issued under the *MGA* for the proposed use of the premises as described in the application for the cannabis licence:

> **105(2)** The board may not issue a cannabis store licence in respect of any premises located
>
> > (a) in a municipality, unless a development permit has been issued under the *Municipal Government Act* for the proposed use of the premises as described in the application for the cannabis licence,

This creates something of a chicken and egg scenario with the development authority being unable to issue a development permit until the board issues a cannabis store licence, while the board is unable to issue a cannabis store licence until the development permit is issued. This is perhaps resolved by the development authority reviewing the conditions associated with the licence, and then issuing the development permit if the proposed business meets those conditions, and being subject to all other federal and provincial approvals being obtained.

Through its Land Use Bylaw, a municipality will be able to make variations on the prescribed distances between a cannabis licenced premises and other important municipal or provincial facilities. For example, the regulation prescribes that:

> **105(3)** A premises described in a cannabis licence may not have any part of an exterior wall that is located within a 100 metres of
>
> > (a) a provincial health care facility or a boundary of the parcel of land on which the facility is located;
> >
> > (b) a building containing a school or a boundary of a parcel of land on which the building is located; or
> >
> > (c) a boundary of a parcel of land that is designated as school reserve or municipal and school reserve under the Municipal Government Act.

Nevertheless, the municipality has the bylaw making power to modify those distances:

> **105(5)** A municipality may, in a land use bylaw, expressly vary the distance set by subsection (3) and set a different distance that is applicable to one or more of the types of properties referred to in subsection (3)(a) to (c), and where a municipality has done so, subsection (3) does not apply to a premises to the extent the variation in the land use bylaw is applicable to it.

Should those distances not be modified by municipalities through their land use bylaw, upon the application of the municipality, the board will have the ability to grant variances:

> **105(6)** On application by a municipality that has not by bylaw varied a distance set by subsection (3), the board may, in writing, if the board considers it appropriate to do so, vary the distance set by that subsection and set a different distance that is applicable to one or more of the types of properties referred to in subsection (3)(a) to (c) in relation to a specified premises that is the subject of a cannabis licence application.

Another area where municipalities will be able to exert influence over a cannabis business will be with respect to the hours of operation for a licenced cannabis store:

> **121(1)** Subject to any bylaws referred to in subsection (2) and any conditions affecting the licence, a cannabis licensee may sell cannabis in the licensed premises only during the hours specified in Part 2 of Schedule 3.
>
> **(2)** A municipality may pass bylaws reducing the hours of sale specified in Part 2 of Schedule 3 and where a municipality has done so, the reduced hours apply to all licensed premises in the municipality.

The maximum hours prescribed by the regulation are from 10:00 a.m. to 2:00 a.m.

Municipalities will not be allowed to create conditions that will be so onerous the business would not be viable, but they may choose to set business hours that are more restrictive.

B. Land Use Bylaw Amendments

Executive Summary

Under Part 17 of the *MGA*, Alberta municipalities have a broad statutory authority to regulate planning and development within their boundaries. Balancing the rights of individuals to use and develop their land in accordance with the applicable federal and provincial legislation with the public interest in orderly, economical, and beneficial use and development of lands requires a careful approach to regulation.

Land Use Bylaws divide a municipality into land use districts and identify which uses are permitted uses and discretionary uses within each land use district. Development standards, with the concomitant power to condition development permits or vary development standards, provide further details regarding the planning and development regime in a municipality.

The introduction of legalized retail cannabis sales will require municipalities to turn their minds to where and how retail cannabis sales will be permitted in their municipality. This will mean reviewing existing use classes, creating new use classes, deciding in which land districts retail cannabis sales will be permitted, setting development standards, including separation distances, and identifying the extent to which variances will be permitted. More restrictive approaches, such as direct control, may be considered. In addition to retail sales, municipalities will need to consider whether Land Use Bylaw amendments are required to address the impacts of commercial cultivation and processing, and personal cultivation.

Land Use Bylaw amendments are one area where municipalities may be caught off guard when the federal and provincial legislation comes into effect. Thoroughly reviewing existing use classes to ensure cannabis related uses cannot fit within an existing use class which was not intended to include such a use, and may not address anticipated impacts, is imperative.

1. Anticipated Impacts and Concerns

Part 17 of the *MGA* delegates to municipal corporations, primary responsibility for the regulation of planning and development within their respective municipal boundaries. While commercial cannabis cultivation and processing facilities and retail cannabis premises will be required to comply with both the federal and provincial regulations, much of the day to day impact, which thoughtful planning and development intends to address properly and equitably, will be the responsibility of the municipality to regulate.

In considering how to best plan for and regulate the various iterations of industrial, commercial, and personal cannabis participation at the municipal level, municipalities need to turn their minds towards the anticipated impacts they are attempting to address.

These impacts were first considered by municipalities following the legalization of medical marijuana and the development of medical marijuana cultivation and processing facilities. While variously characterized as agricultural or industrial uses, medical marijuana cultivation and processing facilities were generally anticipated to have greater impacts on neighbouring property owners than other agricultural uses, such as an increased impact on utilities, increased lighting and security requirements, and odour. While some municipalities have treated medical marijuana cultivation and processing facilities the same as any other agricultural operation, or akin to commercial greenhouses, others chose to create a new use class specifically for medical marijuana cultivation and processing facilities to allow greater control on the location, density and development standards applicable.

Examples of medical marijuana cultivation and processing facility use class definitions:

"Medical Marijuana Production Facilities" means secured facilities licensed and regulated by Health Canada for the production and wholesale distribution of medical marijuana.

or

"Medical Marijuana Facility" means a building where medical marijuana is grown, processed, tested, destroyed, stored or loaded for shipping, and for which a licence provided by Health Canada has been issued for all onsite activities. This does not include the retail sales of marijuana for recreational purposes.

While some use class definitions have chosen to distinguish between medical marijuana cultivation (or production) and processing as separate uses, more generally they are lumped together for the purposes of land use regulation. However, if one were to conclude that the impacts were sufficiently distinct, it may be appropriate to create separate use classes. Similarly, Land Use Bylaws could distinguish between different scales of processing, more closely reflecting the federal regime.

The establishment of a recreational cannabis market will inevitably place great pressure on the cultivation and processing end of things, meaning the development of additional cannabis cultivation and processing facilities. Municipalities will need to consider whether the impacts of medical marijuana cultivation and processing facilities are any different than the anticipated recreational cannabis cultivation and processing facilities, and, if so, how those impacts can be addressed through additional regulation. Necessary changes to the use class descriptions are dealt with below.

The anticipated impacts of retail cannabis premises are more speculative. In some ways similar to the sale of tobacco and in other ways similar to the sale of alcohol, the retail sale of cannabis is required by the provincial legislation to be separated from the sale of any products other than cannabis accessories and the retail cannabis premises themselves are required to be separated from certain sensitive uses, such as schools and health care facilities. Anticipated impacts include loitering, impaired patrons, increased crime, increased security requirements, risks related to product disposal, negative impacts on children, and odour.

As discussed below, development standards such as separation distances from certain sensitive uses or other cannabis retail locations, parking requirements, signage requirements, disposal requirements, and hours of operation can all be considered in an attempt to mitigate these anticipated impacts.

2. Municipal Authority and Limitations

Within the four corners of the *MGA*, municipalities have broad authority to enact bylaws for proper municipal purposes. In the context of planning and development, the Land Use Bylaw not only provides a detailed plan for future development but is also the regulatory instrument governing the use and development of all lands within the municipality.

a. *Case Study*

Kozak v. Lacombe County

In Kozak v. Lacombe County, 2017 ABCA 351, the Court of Appeal of Alberta recently confirmed the broad authority granted to municipalities under the Municipal Government Act to enact bylaws for proper municipal purposes. In Kozak, the Court of Appeal overturned a lower court decision that had held a municipality could not force a resident (K) to connect to its communal sanitary sewage collection system.

The municipality had passed a bylaw in 2015 to provide sewage collection services to residences in certain areas. The bylaw arose out of a plan to develop a regional waste water collection and treatment system in order to protect an adjacent lake. The municipality had previously adopted a statutory plan under the MGA requiring all new

residences, but not older ones, such as K's residence, to connect to the municipal sewage lines. In addition to providing for connection to, and provision of, municipal sewage services, the bylaw included provisions regulating the use of private sewage collection and disposal systems, and provided that if a landowner refused to connect to the system, the municipality could enter private lands to construct the service connection at the owner's cost.

K had installed a private sewage collection system in 2013, at a time when there was no public sewage system available, in which the waste went from his home by pipe into a tank from which it was periodically hauled away. From July 2014, the municipality wrote to K advising him of its intention to install the municipal sewage system, that he would need to connect to it, and that he would be responsible for the costs of constructing the part of the service connection from the main line to the boundary of the road, plus other costs. In April 2015, K agreed to pay for a partial connection to the municipal system; however, he was unwilling to pay for an expensive grinder pump required to complete the connection. K challenged the bylaw as being beyond the municipality's powers, and the lower court agreed.

On appeal, the court reviewed the need to interpret the MGA broadly and purposively, and in a way that authorizes the bylaw where possible to do so. The court also reviewed well-settled law that municipalities no longer need to rely on specific authorization in the MGA to pass bylaws in relation to specific subject matters. The court found that initiating the communal sewage system in order to protect the water quality of the lake and to maintain a safe and viable community adjacent to the lake were purposes within the powers provided in s. 3 of the MGA. The court further explained that s. 7 of the MGA provided the municipality with the authority to pass bylaws in relation to various general subject matters, including "public utilities". The court found that s. 33 of the MGA contemplates municipalities having the power to monopolize the provision of a municipal utility service, and that s. 33 does not derogate from the broad municipal powers granted in sections 3, 7, and 8 of the MGA.

The court rejected K's argument that a municipality could only provide a public utility to an owner's land, and charge the owner with the connection costs for it, when the owner had requested the service. Rather, the court concluded a municipality has authority to require an owner to pay the costs as a term of supplying the utility service. The court also rejected K's arguments that other sections of the MGA negated the municipality's general power to compel connection to the municipal sewage system. The court concluded "it would be inimical to viable community infrastructure such as sewage systems if individual homeowners could opt out and follow what they view as their own best interests."

This broad and purposive approach to the interpretation of municipal powers extends to the regulation of planning and development through the adoption and amendment of a Land Use Bylaw. Municipalities are encouraged to come up with creative and novel ways to regulate the use and development of lands within their municipality in order to achieve the dual purposes of Part 17:

> **617** The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted
>
> (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and
>
> (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,
>
> without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

Some of the drafting tools available to municipalities to regulate new, unique, or unpopular uses in their Land Use Bylaw include:

- Drafting appropriate use classes, giving consideration to the advantages and disadvantages of broad or narrow use classes;
- Drafting appropriate land use districts, giving consideration to the purpose of the use class and the existing and future uses;
- Recognizing and appreciating the fundamental differences between permitted uses and discretionary uses in a land use district;
- Considering the advantages and disadvantages of using direct control districts;
- Drafting clear and enforceable development standards to address the anticipated impacts of a particular use;
- Considering the application of variance powers on development standards and their potential impact on certainty in the land use context; and
- Considering appropriate conditioning of development permits to further regulate the use.

b. Can a Municipality Prohibit Cannabis Related Uses?

In Alberta, municipalities cannot prohibit or opt out of cannabis retail within their boundaries without risking a challenge. Municipalities can regulate the location and standards applicable to

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retail cannabis use for proper planning reasons, and can further regulate retail cannabis operations through business licensing bylaws and cannabis use through nuisance bylaws, but municipalities cannot outright prohibit cannabis retail in their Land Use Bylaw or prohibit cannabis use in their municipalities.

An absolute prohibition would most likely be met with a successful court challenge based on the argument there is no evidence to support the view that cannabis retail will have such a deleterious impact on the use and enjoyment of neighbouring properties to warrant total prohibition, no matter where located. An outright ban would likely lead a court to conclude the municipality is seeking to prohibit the activity because of the moral undertones and not because of legitimate land uses considerations. Other grounds of challenge might be the municipality is moving into the criminal law jurisdiction exclusive to the Federal government, is impairing *Charter* rights, or is engaging in discrimination without statutory authority.

This interpretation is supported by the *Gaming and Liquor Act* regarding retail liquor sales, which effectively permits municipalities to opt out of selling liquor when supported by a plebiscite. A similar provision has not been included in the *Alberta Cannabis Act* for the retail sale of cannabis. Alberta's legislation can also be contrasted with the provincial legislation in other provinces, such as Saskatchewan and Quebec, which do specifically contemplate that municipalities within their respective jurisdictions will be permitted to opt out of cannabis retail sales.

Municipalities can heavily regulate the sale of cannabis by making it a permitted use in only some land use districts or in no land use districts, by making it only a discretionary use in certain land use districts, or even by making it a direct control use. Municipalities can make it hard or inconvenient to get to a cannabis retail store; municipalities can also impose significant development standards like separation distances, provided the regulation is not an indirect attempt to prohibit (or effectively results in prohibition) and can be supported by proper planning considerations.

3. The Importance of Timing

a. Preventing Lawful Non-Conforming Uses

Municipalities have expressed concern that existing cannabis accessory retailers or existing illegal cannabis retail establishments will have a leg up on first time applicants for a cannabis retail establishments. Will the legal non-conforming use provisions in the *MGA*, repeated verbatim in many Land Use Bylaws, thwart a considered approach to regulating cannabis retail establishments?

What is a legal non-conforming use again?

Section 643 of the *MGA* effectively codifies the concept of grandfathering in the context of land use planning, striking a balance between the immediate achievement of desired planning and objectives and the protection of vested rights.

> **643(1)** If a development permit has been issued on or before the day on which a land use bylaw or a land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw.
>
> **(2)** A non-conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.
>
> **(3)** A non-conforming use of part of a building may be extended throughout the building but the building, whether or not it is a non-conforming building, may not be enlarged or added to and no structural alterations may be made to it or in it.
>
> **(4)** A non-conforming use of part of a lot may not be extended or transferred in whole or in part to any other part of the lot and no additional buildings may be constructed on the lot while the non-conforming use continues.
>
> **(5)** A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except
>
> (a) to make it a conforming building,
>
> (b) for routine maintenance of the building, if the development authority considers it necessary, or
>
> (c) in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.
>
> **(6)** If a non-conforming building is damaged or destroyed to the extent of more than 75% of the value of the building above its foundation, the building may not be repaired or rebuilt except in accordance with the land use bylaw.
>
> **(7)** The land use or the use of a building is not affected by a change of ownership or tenancy of the land or building.

Section 643 protects property rights by permitting a once lawful, existing use to continue, or a once lawfully constructed building to stand, even though it does not comply with the current rules. Where a person is the subject of enforcement proceedings (for example, a s. 645 Stop

Order) for carrying on a use or having a building that is in breach of the current land use bylaw, but which was lawful prior to the current rules coming into force, demonstrating the continuation of the use or building is authorized by s. 643 can be a successful defence. The onus of proof is on the municipality to show a use or building contravenes the existing rules. Once a breach of the current rules is established, the burden shifts to the alleged violator to produce evidence showing that this is a non-conforming use or building within the protection afforded by s. 643.

In order to prove a use or building is a non-conforming use or building within the protection afforded by s. 643, the following conditions must be met:

- A development permit was issued (or was not required) before the bylaw came into force which would make the use or building non-conforming;
- The protection is lost if the use is discontinued for period of 6 months or more;
- A non-conforming use can be extended throughout the building but the building cannot be enlarged, added to or structurally altered;
- A non-conforming use cannot be extended to another part of the lot and no additional buildings can be constructed;
- Work to the building can be undertaken to make it conforming or for routine maintenance;
- If the building is damaged to a degree equivalent to more than 75% of the value of the building, the owner may only repair or rebuild in accordance with the current Land Use Bylaw;
- A non-conforming use is not affected by a change in ownership.

The legal non-conforming use exemption should not give existing cannabis related operations an advantage once the retail sale of recreational cannabis is legalized. An existing business selling cannabis accessories not only will need to obtain a provincial licence to sell recreational cannabis, but will also be required to change its use, from the sale of cannabis accessories to the sale of recreational cannabis and cannabis accessories. This is a different use, with different potential impacts, and, therefore, requires a new development permit.

Similarly, an existing retail location which is illegally selling cannabis (even if the municipality has been turning a blind eye and choosing not to devote scarce resources to enforcement) will be changing its use and will require a development permit. Moreover, as the sale of cannabis was not legal, these operations will not fit within the protection afforded by s. 643 as they did not have a development permit for the use prior to the amendment of the Land Use Bylaw.

However, if applicants for a cannabis retail location apply for a development permit for a cannabis retail location and the Land Use Bylaw does not specifically provide for cannabis retail as a use class, separate and apart from the general retail use class, and general retail use class is a permitted use, there is a risk that the applicant would be entitled to a development permit. Furthermore, subsequent amendments to the Land Use Bylaw could not be used to somehow undo or invalidate their development permit.

A more detailed discussion on the importance of regulating cannabis-related operations in advance of the legalization of recreational cannabis follows.

b. Regulating in Advance of Legalization

Land use planning is one area where municipalities risk being caught off guard, and potentially ending up with unintended uses and development in unintended areas, if they do not at least review their Land Use Bylaw prior to the legalization of recreational cannabis sales.

For example, if a Land Use Bylaw contains a very generic use class description for "Retail Store", *e.g. "Retail Store" means a building where merchandise is offered for retail sale and is stored only in reasonably sufficient quantities to supply normal retail needs*, and there is no more specific use class within which cannabis retail sales would fit, an applicant would be able to apply for a development permit for a Retail Store for the retail sale of cannabis. This may or may not be a problem in the eyes of the public and the municipality. But it does mean everywhere "Retail Store" is a permitted use, the applicant is entitled to a development permit *as of right* and there are likely very few, if any, development standards in place to address the potential impacts of cannabis retail.

4. Use Classes

Under the *MGA*, a development permit can be issued in a conventional district for either a permitted use or a discretionary use. An application for a use that does not fit within either the permitted use or discretionary use category is not allowed and must be refused. For this reason, great care must be taken in listing and defining the uses that are allowed in a particular land use district. Drafters will want to avoid use class definitions which are either over-inclusive or under-inclusive.

Uses can be described in broad, generic terms or very specific language. A broad use class will include a wide range of uses, which may be attractive to applicants for the flexibility it offers; but, from the point of view of sound planning, may be over-inclusive. On the other hand, a very specific use class may be overly restrictive, excluding a particular iteration of the use which may be perfectly acceptable from a planning perspective.

When it comes to drafting use classes in relation to the production and processing of cannabis and cannabis retail, a more prescriptive approach to drafting is likely preferable. Since the

impacts of cannabis related uses are anticipated to be different or greater than other uses, it is important to create a use class specific to the production and processing of cannabis or cannabis retail, and to ensure the cannabis related use is excluded from other more generic use classes.

When considering an application for a development permit for a particular use, the development authority must determine which use class best fits the proposed use or development. For this reason, best practice supports not only creating a new, specific use class for, say, Cannabis Retail, but also ensuring all other Retail use classes (which Cannabis Retail may otherwise fit within) unambiguously exclude Cannabis Retail.

a. Cannabis Production and Processing

Many municipalities will have gone through the process of reviewing their Land Use Bylaw to determine if it was acceptable from a planning perspective to have medical marijuana processing facilities fit within an existing use class or if a new class was required. The same will need to be done with recreational cannabis production and processing.

Is the use class definition for medical marijuana processing facilities broad enough to include recreational cannabis production and processing as well? If you have been permitting medical marijuana processing facilities as a generic agricultural operation or commercial greenhouse, is that acceptable for recreational cannabis production and processing as well? Do you want to create two separate use classes, one for medical marijuana production and processing facilities and one for recreational cannabis production and processing? Is that even necessary or are the impacts expected to be the same?

i. Sample Wording

“Cannabis Production Facility” means a premise used for growing, producing, testing, destroying, storing, or distribution of Cannabis authorized by a licence issued by the federal Minister of Health.

or

“Cannabis Facility” means a business where the primary use includes the growing, processing, testing, destroying, storing, or distribution of Cannabis. Recreational and medical production can occur on the same site.

or

“Cannabis Production Facility” means a Development licensed by Health Canada located in a stand-alone Building where Cannabis is grown, processed, packaged, tested, destroyed, stored,

distributed or loaded for shipping whether for medical or recreational use. Cannabis Production Facilities shall not include Cannabis Sales or Retail Sales as an Accessory Use.

or

"Cannabis Production Facility" means a facility, comprised of one or more buildings or structures, used for the purpose of growing, producing, cultivating, testing, processing, researching, destroying, storing, packaging or shipping of Cannabis by a federal government licensed commercial producer in accordance with federal legislation. This does not include the growing or processing of plants that are considered by federal legislation to be industrial hemp.

b. Cannabis Retail

When drafting the use class definition for cannabis retail, drafters will want to ensure the definition is specific to the retail sale of recreational cannabis (recall, medical cannabis will continue to be distributed by the federal government) and cannabis accessories - nothing else. In this way, the drafting is similar to drafting the use class definition for liquor stores. In addition, municipalities will want to carefully review and amend all of their existing retail use classes to specifically exclude cannabis retail.

Cannabis lounges, though not yet legal as they contemplate on-site consumption, may also be added at this stage as a unique use class. Once legalized, the use class can then be added as either a permitted or discretionary use to various land use districts.

i. Sample Wording

"Cannabis Retail Sales" means development used for the retail sale of Cannabis that is authorized by provincial or federal legislation. This Use does not include Cannabis Production and Distribution.

Accompanied by the following:

"General Retail Stores" means development used for the retail or consignment sale of new goods or merchandise within an enclosed building, not including the sale of gasoline, heavy agricultural and industrial equipment, alcoholic beverages, or goods sold wholesale. Accessory Uses may include the assembly or repair of products sold on Site, or minor public services such as postal services or pharmacies. This Use does not include Aircraft Sales/Rentals, Automotive and Minor Recreation Vehicle Sales/Rentals, Cannabis Retail Sales, Flea Market, Gas Bars, Greenhouses, Plant Nurseries and Garden Centres, Pawn Stores, Major Alcohol Sales, Minor Alcohol Sales, Major Service Stations, Minor Service Stations, Secondhand Stores, and Warehouse Sales.

(This is an example of carving out a particular use from a more generic use class definition.)

or

"Storefront Cannabis Retail" means a retail business where cannabis is sold or marketed to a person who attends the premises.

or

"Cannabis Store" means a cannabis store business that displays, sells, or offers for sale cannabis and which must have a provincial retail cannabis licence.

or

"Cannabis Sales" means a Principal Use being a business where Cannabis is sold in accordance with the following provisions:

a. Cannabis sold is for consumption Off Site and Cannabis shall not be consumed On Site;

b. no other goods are sold on the premises other than Cannabis Accessories;

c. all Cannabis offered for sale or sold must be from a federally approved and licensed facility;

d. the business must be licensed by the Alberta Government; and,

e. the Use premises, including the associated Loading Space, are located at least 300.0 m to the closest point of another Cannabis Sales Use.

(This is an example of including certain development standards (e.g. a separation distance) within the use class definition, in order to shield these particular development standards from the variance power, both before the development authority and the SDAB. Recall, variances can only be granted to vary development regulations, not to vary the use.)

or

"Cannabis Retail Store" means a retail establishment licensed under provincial authority for the sale of any cannabis for consumption off-premises. Full walls must physically separate the premises from any other business.

Accompanied by the following:

“Retail Store” means the use of a building or portion thereof where goods, wares, merchandise substances, articles or things are stored, offered or kept for sale or rent and includes storage within the premises of quantities sufficient only to service such store but does not include any other retail outlet specifically listed or defined in this Bylaw. e.g. “retail food store”, “convenience store”, “warehouse store”, “cannabis retail store”.

Some other definitions that may be helpful:

“Cannabis Accessory” means a thing that is commonly used in the consumption or production of cannabis. A Cannabis Accessory includes, but is not limited to, rolling papers or wraps, holders, pipes, water pipes, bongs and vaporizers.

“Cannabis Lounges” means development where the primary purpose of the facility is the sale of Cannabis to the public, for the consumption within the premises that is authorized by provincial or federal legislation. This Use does not include Cannabis Production and Distribution

“Cannabis Counselling Business”: Cannabis counselling businesses provide counselling on cannabis use by persons who are not medical professionals. Cannabis cannot be sold or consumed as part of a Cannabis Counselling land use. It may include a small amount of sale or rental of cannabis-related merchandise.

c. Accessory Use (Personal Cultivation)

Under the *Federal Cannabis Act*, individuals are permitted to cultivate up to four cannabis plants for personal use in their residence. To date, no federal regulations have been released to identify any rules surrounding the personal cultivation of cannabis. Various sources have expressed concern about the negative impacts associated with having even four cannabis plants in a residential setting. Concerns about the impacts of increased humidity on health and safety, access by children and pets, as well as concerns surrounding the smell produced by the plants at the flowering stage may cause a municipality to consider regulating the personal cultivation of cannabis.

While legalized at the federal level, municipalities retain the authority to regulate the personal cultivation of cannabis from the perspective of improving the quality of the physical environment and nuisances. Regulation of nuisances is dealt with in Part D, but the regulation of the personal cultivation of cannabis can also be achieved through planning and development regulation.

Creating an accessory use for the personal cultivation of cannabis would allow municipalities to regulate where and how personal cultivation occurs. Generally speaking, an accessory use is a

use customarily incidental and subordinate to the main use and located on the same parcel of land as the main use. Some accessory uses do not require a development permit; others do.

Having residents grow up to four cannabis plants in their front yard simply may not be acceptable to many municipalities. By making personal cultivation of cannabis a use accessory to certain residential uses, not only would the municipality create a record of where personal cultivation is occurring within its boundaries, potentially assisting with enforcement, it could also regulate the use itself, imposing appropriate development standards to address the anticipated impacts, such as separation distances, locations within a parcel, ventilation and/or humidity requirements, and security requirements.

5. Permitted or Discretionary

Once use class definitions have been drafted and added to a Land Use Bylaw, Council must decide whether the use will be a permitted use or a discretionary use and in which land use districts it will be listed. Of course, a use may be a permitted use in one land use district, a discretionary use in another land use district, and not listed at all in a third land use district.

Permitted uses are the uses for which an applicant is entitled to a permit as of right, provided the proposed use or development adheres to the applicable development standards. Permitted uses are uses that are so clearly appropriate for the district they require no special consideration. By listing a use as a permitted use, Council is effectively stating the use is always appropriate, provided the development standards are adhered to.

Discretionary uses, on the other hand, are uses which are generally appropriate in a particular land use district, depending on their compatibility with neighbouring uses. Discretionary uses are dependent on the exercise of the discretion of the development authority.

Which land use districts cannabis production facilities and cannabis retail will be listed in will depend greatly by municipality, depending not only on the land use districts, and the existing and permitted uses in each, but also the anticipated impacts.

For example, the City of Edmonton's approach is to make cannabis retail sales permitted in certain commercial mixed use districts and industrial business zones, but not included in neighbourhood convenience commercial districts. The City's expressed desire is to provide more certainty for applicants, the development authority and the general public about where cannabis stores will be allowed, recognizing separation distances will limit the possible locations of cannabis stores, and ensure compatibility with neighbouring uses.

Other municipalities have concluded cannabis retail should only be considered in Commercial Districts, where sensitive uses, such as childcare facilities and schools, are not permitted. And, another more unique approach, in more tourist-driven markets, is to recognize the draw of recreational cannabis to tourists, siting cannabis retail only in tourist commercial districts.

Adding uses to a land use district, particularly permitted uses, may also mean amending the statutory plans which precede the Land Use Bylaw in the hierarchy of planning instruments. Consistency between statutory plans and the Land Use Bylaw is not only statutorily mandated, it also provides certainty to developers and the general public and ensures consistent decision-making by development authorities.

6. Direct Control

Where the Council of a municipality wants to exert particular control over the use and development of a particular parcel of land or buildings within an area of the municipality, and has adopted a Municipal Development Plan, Council may in its Land Use Bylaw designate the area as direct control. If an area is designated as direct control, Council directly regulates and controls the use or development of land or buildings in the district in any manner considers necessary (s. 641 of the *MGA*).

Direct control districts generally take one of two forms. Under pure direct control, very few if any land use rules or development standards are set down for the district and development permit applications come directly to Council, which renders a decision on the application based on the specific facts of the application having regard to an operative statutory plan. There is no appeal of Council's decision to the Subdivision and Development Appeal Board from Council decisions in pure direct control districts.

Under delegated direct control, the application decision-making power is delegated to the development authority and the development standards for the district are those set out in the Land Use Bylaw and/or the applicable statutory plans. A delegated direct control district is very similar to a conventional land use district, except that the uses and development standards are tailor-made for the district, with the development authority exercising the discretion delegated by Council.

How can direct control districts be used to regulate cannabis-related operations? A Council may decide the unique anticipated impacts justify only permitting such uses in direct control districts. So, applicants would need to apply for redistricting to a direct control district for which their particular cannabis-related operation was allowed. The advantage of this approach is that it allows Council to effectively consider each application on its merits and regulate in a site-specific manner. The disadvantage of this approach is every time an application is made to redistrict to a direct control district for a cannabis-related operation, Council must hold a public hearing, as an amendment to the Land Use Bylaw is required, and revisit all of the public input on cannabis related uses.

7. Development Standards

The *MGA* authorizes a municipal Council to include rules and regulations in its Land Use Bylaws, generally referred to as development standards. Development standards govern the manner in which development is to be effected and can either be of general application, applying to most of all of the various land use districts created by the Land Use Bylaw, or specific to a particular use class or land use district.

The traditional development standards contemplated by the *MGA* and found in most Land Use Bylaws govern lot size, yard space, lot coverage, building size and height, densities, parking and loading, fences and screen, signs, and aesthetics. For cannabis retail establishments, drafters will need to consider what their preferred retail cannabis location looks like; is it stand-alone, in a mall, street level, or on a second floor like a doctor's office?

Variance powers add flexibility to development standards enshrined in Land Use Bylaws, allowing the development authority to waive the provisions of the Land Use Bylaw. The variance power is restricted to development standards where the development would not unduly interfere with the neighbourhood amenities or materially interfere with the use, enjoyment or value of neighbouring parcels of land. Land Use Bylaws will vary on the extent of the variance powers conferred on the development authority.

Under the *Alberta Cannabis Act*, a retail cannabis licence will not be issued if the premises is located within 100 meters of a provincial health care facility, or a boundary of the parcel of land on which the facility is located, a building containing a school or a boundary of the parcel of land which the facility is located, or a boundary of a parcel of land that is designated as a school reserve or municipal and school reserve under the *MGA.*

However, municipalities have the power, in their Land Use Bylaw, to vary these separation distances (to increase or decrease) or add additional separation distances. Separation distances will likely be one of the most challenging areas for creating development standards, and will be highly dependent on the results of public consultation. Municipalities will need to consider from what uses separation is necessary, what distances are appropriate and what variances will be permitted to these distances. It will also be important to draft the separation distances very carefully, including how and from where the distances will be calculated.

Separation distances are not only appropriate from sensitive uses such as schools and health care facilities; they can also be used to prevent clustering of similar types of businesses. Regulations imposing minimum spacing requirements between liquor stores are very common in Alberta and have also been imposed for adult dancing establishments and pawnshops, to avoid creating hubs for these types of uses, which may serve to magnify the negative impacts on neighbouring uses.

Drafters should also remember that when considering separation of cannabis sales from sensitive uses, separation distances are reciprocal. For example, if a cannabis retail use is the first one in the area, and then another use, such as a childcare facility, would like to start operating in that area, then the second use would need to be sited the prescribed distance from the cannabis retail use.

Similarly, municipalities have the power to decrease the hours of operation set by the provincial regulation (10:00 a.m. to 2:00 a.m.). While municipalities have significant discretion when it comes to hours of operation (which may also be dealt with through business licensing), imposing such a short window for hours of operation as to effectively prohibit the use would open up the municipality to potential challenges.

Imposing conditions on a development permit approval remains one of the most effective ways to regulate a development permit, but which leaves much discretion in the hands of the development authority to address concerns with respect to a specific permit. While the ability to impose conditions on a permitted use permit is limited, as the conditions cannot detract from the permitted use nature of the permit, on a discretionary use permit, the discretion to impose conditions is wide-ranging, limited primarily by the Land Use Bylaw. Conditions can be used to address compatibility of neighbouring uses which may be specific to the proposed development which are not adequately addressed by the relevant development regulations.

i. Sample Wording

Setback and separation distance development standards:

- *200.0 m to the closest point of another Cannabis Retail Use*
- *200.0 m to the closest Site Line of a School or a future School Site as depicted in an adopted Area Structure Plan*
- *200.0 m to the closest point of a municipal Playground or Recreational Establishment, Outdoor*
- *200.0 m to the closest Site Line of a provincial health facility*
- *200.0 m to the closest point of a Child Care Facility Use*
- *200.0 m to the closest point of a Recreational Establishment, Indoor Use that is publicly owned or operated*
- *200.0 m to the closest Site Line of a public library*

Other development standards:

For cannabis processing facilities:

- *Must possess a licence for all activities associated with cannabis growing, processing, packaging, testing, destruction or storage as issued by Health Canada*
- *May have an ancillary building or structure used for security purposes located on the parcel containing the use*
- *Must include equipment designed and intended to remove odours from the air where it is discharged from the facility as part of a ventilation system*
- *The development authority may require, as a condition of a development permit, a Public Utility and Waste Management Plan, completed by a qualified professional, that includes details on:*
    - *the incineration of waste products and air borne emission, including smell;*
    - *the quantity and characteristics of liquid and waste material discharged by the facility; and*
    - *the method and location of collection and disposal of liquid and waste material.*

For cannabis retail:

- *Cannabis Sales shall meet the requirements of the Gaming, Liquor and Cannabis Act.*
- *A copy of the Retail Cannabis Licence issued by the Alberta Gaming and Liquor Commission shall be provided to the City prior to occupancy as a condition of development permit approval.*
- *The maximum operating hours shall be 10:00 a.m. to 10:00 p.m. daily.*

- *Advertising inside the premises shall not be visible from the outside*
- *Only Permanent Signage shall be permitted and Copy shall be restricted to the business name.*
- *The premises must operate separately from other businesses, including providing a separate Loading Space when one is required.*

- *The public entrance and exit to the Use must be direct to the outdoors.*
- *Goods shall not be visible from outside the business premises.*
- *A Development Officer may condition Cannabis Sales in the C1 - City Centre Land Use District to ensure visual interest is maintained on public sidewalks, Streets and walkways.*

8. Step by Step

1. Review Land Use Bylaw to determine if cannabis retail sales would fit within any existing use classes
2. Review Land Use Bylaw to determine if recreational cannabis production would fit within any existing use classes – may be acceptable in which case don't need to create a new use class or make other amendments on the production side
3. Draft new land use class definitions for cannabis retail sales
4. Draft new land use class definitions for recreational cannabis production
5. Exclude cannabis retail sales from any existing use class descriptions it would otherwise fit within
6. Exclude recreational cannabis production from any existing use class descriptions it would otherwise fit within
7. Decide in which land use districts cannabis retail sales will be listed as a permitted use
8. Decide in which land use districts cannabis retail sales will be listed as a discretionary use
9. Decide in which land use districts recreational cannabis production will be listed as a permitted use
10. Decide in which land use districts recreational cannabis production will be listed as a discretionary use
11. Determine and draft development standards applicable to cannabis retail sales:
    - Determine hours of operation
    - Determine sensitive uses

- Determine required setbacks from sensitive uses
- Determine minimum separation distance between cannabis sales uses
- Establish signage regulations
- Other development standards such as access points, visual interest, disposal, security, etc.

12. Determine and draft development standards applicable to recreational cannabis production

Amending Your Land Use Bylaw

Pursuant to s. 692, before giving second reading to an amendment to a Land Use Bylaw or statutory plan, Council must hold a public hearing in accordance with s. 230 of the *MGA*, after giving notice in accordance with s. 606 of the *MGA*. This statutory public hearing is the only statutorily mandated opportunity for affected parties to be heard by Council on the proposed amendments.

Strict compliance with the advertising requirements and the procedural requirements set out in the *MGA* ensure the public has an opportunity to be heard by Council. But in addition to the statutory requirements, Council must also comply with the common law requirements regarding a fair hearing, including the right to be heard by an unbiased decision-maker and the right to know the case to be made and be given an adequate opportunity to respond. While Council may set its own procedures for public hearings, it must be careful not to derogate from the common law rules governing a fair hearing.

C. Business Licensing Bylaws

Executive Summary

Alberta municipalities have a broad statutory authority to pass bylaws for municipal purposes respecting business and business activities, and to provide for a business licensing system. A business licensing bylaw can impose distinct licensing fees and requirements for particular categories of businesses, such as cannabis cultivation, processing, or retail sales, providing that the fees and requirements are imposed for a valid municipal purpose.

The federal and provincial legislation and regulations set out requirements regarding a variety of issues regarding cannabis business operations including background checks, security measures, minimizing off-site impacts, displays and advertising, hours of operation, record keeping, and the protection of minors. Municipalities may impose additional regulations in these

or other areas, provided that it is possible for business operators to comply with both the municipal and the federal and provincial requirements.

Municipalities with business licensing bylaws will need to review their bylaws to determine whether cannabis related businesses are adequately addressed within existing categories of businesses, or whether amendments are required to respond to cannabis specific impacts and concerns. Municipalities without existing business licensing bylaws may want to consider whether the anticipated impacts and concerns warrant the introduction of a business licensing bylaw to deal with those issues.

1. Anticipated Impacts and Concerns

The legalization of recreational cannabis will create a number of new business categories including production and processing facilities, and retail stores. Whereas previously these activities would have occurred unlawfully, they will now be subject to federal, provincial, and municipal regulation.

The impacts and concerns arising from cannabis related businesses will depend on the specific category of business. A municipal council's decision regarding whether to legislate on these issues may depend in part on the applicable federal and/or provincial regulations. Cannabis production and processing operations will be federally regulated in a similar manner to existing medical cannabis facilities. Cannabis retail sales are the subject of extensive licensing and regulatory requirements at the provincial level.

Some common concerns that are raised regarding cannabis related businesses, generally, are the need for security measures, signage and advertising, public health and safety including public education and the protection of minors, and odours and other nuisance arising from operations.

2. Municipal Authority and Limitations

Part 2, Division 1 of the *MGA* gives municipal councils the broad authority to pass bylaws respecting "businesses, business activities and persons engaged in business" for municipal purposes (s. 7(e)). In the context of businesses, under s. 8 of the *MGA*, this includes the ability to:

- Divide business into different classes and deal with each class in different way;
- Require businesses to obtain a licence from the municipality;
- Establish fees for licences including fees "that may be in the nature of a reasonable tax … or for the purpose of raising revenue"

- Set out conditions that must be met for a business licence to be issued;
- Provide for terms and conditions to be imposed on a business licence;
- Provide for the duration of licences and the grounds for suspension or cancellation of a business licence.

Business licensing bylaws are already relied upon by many Alberta municipalities in the context of categories of businesses which are considered to create unique impacts and considerations.

For example, the City of Edmonton's Business Bylaw (Bylaw c13138) imposes additional business licensing requirements for operating a body rub parlour in Edmonton: the Edmonton Fire Rescue and Edmonton Police Service are asked for a recommendation, and Alberta Health Services is notified when an application is submitted for this type of business. As a part of the licensing process, body rub practitioners are required to provide recent police information checks and proof of completion of an information course approved by the Chief Administrative Officer. Additionally, business of this nature must:

- Maintain a list of all employees with their full name, date of birth, any pseudonyms or aliases, telephone number, and body rub practitioner business licence number;
- Produce the list of employees when requested by a Peace Officer;
- Employ only licensed body rub practitioners;
- Advertise using only telephone numbers, names, email addresses, and Internet addresses that have been previously provided to the municipality;
- Display their body rub centre business licence number on any advertisements placed on the Internet, or in any newspaper, magazine, or periodical; and
- Ensure that there are at least two employees working in the business whenever it is open to the public.

Similar restrictions are in place for adult theatres, escort agencies, and exotic entertainment agencies. The driving purpose of these regulations is to create touchpoints between the municipality, community services, and individuals so that these businesses are safer for the public and those employed in those areas. Other municipalities have taken similar approaches. The City of Red Deer requires that escort agencies obtain a licence which requires the consultation of the Chief of Police. If the Chief of Police has reasonable grounds for believing the issuance of a licence would endanger people or property, that licence cannot be granted (City of Red Deer Escort Service Bylaw (Bylaw 3319/2003)).

The City of Calgary's Business Licensing Bylaw (Bylaw 32M98), which extensively regulates pawnbrokers, is another example of how a municipality has used its business licensing bylaw to respond to concerns regarding a particular type of business. The Business Licensing Bylaw requires pawnbrokers to keep detailed records with information including:

- the full name of the employee who accepted the personal property;
- the inventory number of the pledge or pawn;
- the date and time the pledge or pawn was accepted as security;
- the rate of interest which is to be charged on the loan which is made on the security of the pledge or pawn;
- a description of each item of personal property taken as a pledge or pawn including the following:
  - (i) serial numbers and all markings on the property where serial number is defined as a unique number placed on property by the manufacturer;
  - (ii) the make and model placed or marked on the property by the manufacturer or vendor;
  - (iii) all other markings and numbers placed on the property; and
  - (iv) in case of jewellery, the description shall be in a form approved by the Calgary Police Service.
- the information of the person pledging the property, including the following:
  - (i) the first name, middle name and surname of the person pledging the property;
  - (ii) a current address and telephone number of the person pledging the property;
  - (iii) a description of the person pledging the property including height, weight, hair colour and eye colour; and
  - (iv) two pieces of numbered identification, one piece of the identification being issued by a government body and containing a picture of the person tendering the property.

Although not comprehensive, these bylaws provide examples of how a municipal council can use its statutory authority under the *MGA* to address concerns regarding specific categories of business.

a. Case Studies

United Tax Driver's Fellowship & Pasutto Hotels (1984) Ltd.

The municipal jurisdiction regarding business licensing is stated and intended to be interpreted broadly. In a 2004 decision, United Taxi Driver's Fellowship of Southern Alberta v. Calgary (City), 2004 SCC 19, the Supreme Court of Canada considered whether the authority granted to municipal councils by the MGA was broad enough to allow a municipality to limit the total number of taxi license plates available in the municipality. The purpose of the limit was to increase the efficiency and stability of the industry. The Supreme Court of Canada upheld the municipal bylaw, finding that the bylaw was enacted for a valid municipal purpose and within the scope of council's authority.

In a 2006 decision, Passutto Hotels (1984) Ltd. v. Red Deer (City of), 2006 ABQB 641, the Alberta Court of Queen's Bench considered the validity of a municipal bylaw which imposed higher business licensing fees on larger drinking establishments, based on their size. The purpose of the fee was to allow the municipality to respond to impacts and concerns arising from the operations of larger drinking establishments in the community, disorderly conduct, breaches of traffic and parking regulations, vandalism, littering and noise. The Alberta Court of Queen's Bench found that the higher business licence fee for large drinking establishments was within council's authority, and upheld the bylaw.

Although United Taxi and Passutto Hotel confirm the broad authority given to municipalities in the business licensing context, the authority is not unlimited. As with all municipal bylaws, councils must enact business licensing requirements in good faith and for a valid municipal purpose in order to be valid. If a municipality wishes to impose a higher business licensing fee for cannabis businesses, council will need to consider what legitimate purpose is served by the higher fee and ensure that the fee is not so high as to be effectively prohibitive in terms of rendering it financially uneconomical to operate a cannabis business in the municipality.

3. Business Licensing Regulations

Sample Business Licensing Provisions

Sample Definitions

"Cannabis" has the meaning given to that term in the Cannabis Act, as amended from time to time.

"Cannabis Production or Processing Facility" means the business of growing, producing, processing, destroying, testing, storing or distributing cannabis.

"Cannabis Retail Store" means the business of displaying, selling or offering for sale cannabis. Cannabis Retail does not include the growing, producing, processing, testing, destroying, storing or distribution of cannabis.

Sample Regulations

* Note: For the purposes of these sample regulations, it is assumed the Chief Administrative Officer decides upon applications for business licences.

a. Cultivation and Processing Facilities

Application Requirements:

1. *In addition to any other requirements of this bylaw, before the issuance or renewal of a business licence for a Cannabis Production or Processing Facility an applicant must submit a proposed security plan for the licensed premises to the Chief Administrative Officer in a form and with supporting documentation acceptable to the Chief Administrative Officer.*
2. *Applications for the issuance or renewal of a business licence for a Cannabis Production or Processing Facility shall be circulated to [include agencies or departments] for referral and consultation.*

Licence Conditions

1. *It is a condition of every business licence for a Cannabis Production or Processing Facility that the licensee must:*

    a. *Maintain and keep on the licensed premises:*
        i. *Proof of a valid and subsisting license issued under the Cannabis Act, Controlled Drugs and Substances Act, or other applicable federal legislation, as amended from time to time;*
        ii. *A list of all persons employed in the Cannabis Production or Processing Facility including proof of each employee's compliance with any qualifications, conditions, or training requirements set out in the Cannabis Act, Controlled Drugs and Substances Act, or other applicable federal legislation, as amended from time to time;*
    b. *Produce the information set out in subsection (a) when requested to do so by a Bylaw Enforcement Officer;*
    c. *Comply with an approved security plan, and;*

   d. *Comply with all applicable municipal, provincial and federal legislation, regulations, and other requirements, including the terms and conditions of any federal or provincial license, permit or authorization, which apply to the operation of the Cannabis Retail Store.*

b. Retail Sales

<u>Application Requirements:</u>

1. *In addition to any other requirements of this bylaw, before the issuance or renewal of a business license for a Cannabis Retail Store an applicant must submit the following to the Chief Administrative Officer in a form and with supporting documentation acceptable to the Chief Administrative Officer :*
   a. *A proposed security plan for the licensed premises, and;*
   b. *A proposed patron management plan for the licensed premises that provides for matters including:*
      i. *Verifying the age of persons entering the licensed premises, and refusing entry to or removing minors from the licensed premises;*
      ii. *Refusing entry to or removing persons from the licensed premises who appear to be intoxicated or impaired, whose behaviour is or becomes disorderly, threatening, violent, or otherwise detrimental to the health or safety of other persons in the licensed premises, or who is involved or engaged in unlawful activities;*
      iii. *Reporting actual or suspected unlawful activities to the municipality, and;*
      iv. *Any other matter considered necessary by the Chief Administrative Officer.*
2. *Applications for the issuance or renewal of a business license for a Cannabis Retail Store shall be circulated to [include agencies or departments] for referral and consultation.*

<u>Licence Conditions</u>

1. *It is a condition of every business licence for a Cannabis Retail Store that the licensee must:*

   a. *Maintain and keep on the licensed premises:*
      i. *Proof of a valid and subsiding cannabis license pursuant to the Gaming, Liquor and Cannabis Act (Alberta), as amended from time to time;*
      ii. *A list of all persons employed in the Cannabis Retail Store including proof of each employee's compliance with the qualifications, conditions, or training requirements for employees of cannabis licensees set out in the*

Gaming, Liquor and Cannabis Act (Alberta) as amended from time to time.

b. *Produce the information set out in subsection (a) when requested to do so by a Bylaw Enforcement Officer;*
c. *Display the business license number assigned to their business license for a Cannabis Retail Store on any advertisement for the Cannabis Retail Store placed in any newspaper, web page, magazine or periodical, and; not advertise the Cannabis Retail Store unless any name, telephone number, e-mail address, internet address or other contact information used in the advertisement was previously provided to the Chief Administrative Officer;*
d. *Ensure that a minimum of two employees are present on the licensed premises at any time the Cannabis Retail Store is open to the public;*
e. *Display in a prominent location in the Cannabis Retail Store a poster approved by the Chief Administrative Officer identifying conditions of the business license for the Cannabis Retail Store and other information relevant to the operation of a Cannabis Retail Store which may include information regarding the health and safety impacts of cannabis and resources available to users of cannabis;*
f. *Comply with an approved security plan;*
g. *Comply with an approved patron management plan, and;*
h. *Comply with all applicable municipal, provincial and federal legislation, regulations, and other requirements, including the terms and conditions of any federal or provincial license, permit or authorization, which apply to the operation of the Cannabis Retail Store.*

4. Step by Step

1. Review your Existing Business License Bylaw

The first step is for municipalities to review their existing business licensing bylaws and consider whether any amendments are required to respond to specific concerns arising from cannabis businesses, or whether the existing provisions are sufficient. It is important to note that although a municipality may decide to proceed past this first step and amend its business licensing bylaw to deal with cannabis businesses, it is not required to do so.

During this review, municipalities will want to consider:

- Are there additional application or information requirements that should apply to cannabis businesses?

- Do cannabis business licenses need to be limited to one physical location and/or are they non-transferable?

- Are there additional terms or conditions that should be imposed on cannabis business licenses to address security, public health and safety, nuisance or other concerns?
- Are separate or increased business licensing fees required for cannabis businesses to account for additional resources required to process applications for and inspect for compliance with business licenses of this nature?

A municipality may find, when considering these issues, that it does not have enough information to answer these questions. Public consultation, which is discussed in further detail in Part F of this Handbook, will play an important role in determining your community's concerns and anticipated issues and impacts.

Some municipalities may decide to take a "wait and see" approach; to deal with cannabis business licences under their existing business licence bylaw and see if concerns or issues arise which warrant specific amendments. If a municipality takes this approach, it is important to consider what the duration of a business licence issued under the existing bylaw would be and specifically whether and when licensees would be required to apply for a new or renewed business licence.

2. Create Cannabis Business Categories

If a municipality determines cannabis businesses should be treated differently than other businesses, its business licensing bylaw should clearly identify each specific distinct category of cannabis business. This resource provides sample definitions for cannabis retail stores and cannabis production or processing facilities, however, this is not a comprehensive list of all possible cannabis related businesses.

Questions to consider at this stage are whether production or processing facilities should be treated differently depending on whether the product is for medical or recreational purposes, and whether a specific category needs to be created for businesses, which provide counselling or medical information regarding cannabis, or whether those businesses are adequately addressed under an existing general category.

3. Draft Regulations for Cannabis Businesses

Taking into account the applicable federal and provincial requirements, a municipality may conclude it is satisfied those requirements address the concerns that might otherwise be dealt with in a business licensing bylaw. In this case, the municipality should consider including wording in its business licensing bylaw which requires applicants to provide proof of compliance with the applicable federal and provincial requirements both at the time of application and upon demand, and a specific requirement for cannabis businesses to, at all times, comply with the applicable federal and provincial requirements.

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Municipalities that decide to regulate more extensively may want to consider the following issues:

- Whether or not a limit on the total number of a particular category of cannabis business is desirable;
- Whether applications for cannabis businesses need to be circulated or referred to certain departments or agencies such as fire departments and law enforcement;
- Hours of operation;
- Crime prevention measures;
- Security;
- Signage and advertising, and;
- Employee qualifications and training.

Many of these considerations are already the subject of federal or provincial regulation; however, it is open to municipalities to impose additional or more stringent requirements.

4. Set Licensing Fees for Cannabis Businesses

If a municipality has created specific categories for cannabis businesses, and imposed additional or enhanced application requirements or licensing conditions, it may want to consider whether a higher business licensing fee for cannabis businesses is appropriate.

A higher business licensing fee should only be imposed for a valid municipal purpose, and not in an attempt to discourage or prohibit cannabis businesses in the municipality. Valid purposes for imposing a higher business licensing fee could include increased administrative costs associated with processing and circulating applications or increased costs related to inspecting for compliance with the requirements of the business licensing bylaw.

5. Create Appropriate Offence and Penalties Provisions

Most business licensing bylaws will contain offence and penalties provisions which are sufficiently broad to include all categories of businesses. However, if there are particular requirements or provisions with respect to cannabis businesses, which a municipality considers warrant enhanced specified penalties or fines then those will need to be provided for.

D. Nuisance Bylaws

Executive Summary

Alberta municipalities have a broad statutory authority to pass bylaws for municipal purposes, including with respect to the safety, health and welfare of people, the protection of people and property, and nuisances. This statutory authority is often exercised in the form of nuisance bylaws, which impose restrictions on what the owners and occupants of lands are permitted to do on those lands with the objective of preventing or minimizing interference with neighbouring landowners' use and enjoyment of their property.

There are two aspects to the legalization of recreational cannabis, in particular, which could create nuisance concerns: personal cultivation, and the consumption of cannabis on private property. Municipalities have the ability to regulate personal cultivation (either in a land use bylaw or a nuisance bylaw) by restricting where and on what conditions personal cultivation may occur. Municipalities can also impose restrictions on the consumption on private property to address nuisance.

Municipalities will have to determine whether they intend to impose restrictions on personal cultivation in addition to those set out in the federal legislation and regulations, and whether it is necessary to amend their nuisance bylaws to specifically address the impacts of cannabis cultivation and consumption on private property. Enforcement will be a key consideration as restrictions of this nature can be difficult to enforce and the primary off-site impact of cannabis cultivation and use – odour – is challenging to quantify.

1. Anticipated Impacts and Concerns

The *Federal Cannabis Act* allows individuals to cultivate up to four cannabis plants per residence for personal use. Neither the federal nor the provincial legislation imposes any restrictions on the size or location (indoor/outdoor) of plants cultivated for personal use. Concerns that have been identified with respect to personal cultivation include off-site odour and security issues such as the potential for criminal activity (theft) and the safety of children and pets.

Personal cultivation is discussed in further detail in Part B, Land Use Bylaw Amendments. However, it could also be the subject of regulation in a nuisance bylaw.

In addition, municipalities may receive nuisance complaints as a result of the consumption, and specifically the smoking or vaping, of cannabis on private property. Although dried cannabis is similar in some regards to tobacco products, it is distinct in that it has what many people consider to be an unusually strong odour and an impairing effect.

2. Municipal Authority and Limitations

Section 7 of the *MGA* gives municipal councils a broad authority to pass bylaws for municipal purposes respecting:

- The safety, health and welfare of people and the protection of people and property (subsection (a)), and;
- Nuisances (subsection (c)).

These provisions form the basis for what are commonly referred to as nuisance bylaws. As with any other municipal bylaw, a nuisance bylaw must be enacted for a valid municipal purpose. For example, a municipal council could not validly prohibit the cultivation and consumption of cannabis on private property on the basis it disagreed with the federal government's policy decision to legalize recreational cannabis.

Nuisance bylaws are unique in that they involve a municipality legislating on what was historically a private civil matter between neighbouring landowners, for the municipal purposes of providing good government and creating and maintaining safe and viable communities. The distinct nature of nuisance bylaws can create policy and enforcement challenges.

Many nuisance bylaws contain provisions which are sufficiently broad to respond to some of the concerns arising from the personal cultivation and consumption of cannabis on private property. For example, the City of Calgary's Community Standards Bylaw (Bylaw Number 5M2004) contains the following prohibition:

> A Person shall not engage in any activity that is likely to allow smoke, dust or other airborne matter that may disturb any other Person to escape the Premises without taking reasonable precautions to ensure that the smoke, dust or other airborne matter does not escape the Premises.

Another example is the Regional Municipality of Wood Buffalo's Nuisance and Unsightly Premises Bylaw (Bylaw No. 00/78) which prohibits nuisance, defining "nuisance" as:

> … any use of or activity upon any property which is offensive to any person, or has or may have a detrimental impact upon any person or other property in the neighbourhood…

and specifically includes the "failure to control any offensive odour" (s. 2.11(m)).

An issue which frequently arises in the context of nuisance bylaws is that they are often framed in subjective language such as "reasonable precautions" or "offensive". Although this language

provides helpful flexibility in responding to unanticipated issues, the lack of objective standards can create difficulties with enforcement.

3. Nuisance Regulations

i. Sample Wording

No person shall cause or permit the consumption of cannabis on property they own or occupy if the consumption is likely to disturb the peace of any other individual. In considering whether the consumption is likely to disturb the peace of any other individual, the following criteria may be determined:

(a) The form of cannabis being consumed;
(b) The time of day and duration of consumption;
(c) Proximity of the consumption to adjacent or affected properties;
(d) Impact of the consumption on the health or well-being of others;
(e) Nature and intended use of surrounding areas, and;
(f) Steps taken by the owner or occupier of the property to reduce or mitigate the impacts to other individuals.

4. Step by Step

1. Review your Existing Nuisance Bylaw

The first step is for municipalities to review their existing nuisance bylaws and consider whether any amendments are required to respond to specific concerns arising from the personal cultivation and consumption of cannabis on private property. As with other bylaws, it is important to note that while a municipality may decide to amend its existing bylaw, it is not required to do so.

During this review, municipalities will want to consider whether the existing definition of and prohibition against nuisance is sufficiently broad to include impacts arising from the smoking or vaping of cannabis on private property, and if not, whether it should be amended accordingly. Also, as with other bylaws, municipalities may decide to take a “wait and see approach” for a period of time to assess the quantity and nature of complaints received during a period of time and then determine whether amendments or additional regulations are required.

2. Cannabis Specific Amendments

If a municipality determines that amendments to its nuisance bylaw are necessary, it will need to consider what restrictions it wants to impose and how the restrictions will be enforced.

Although more objective criteria and standards are preferable in terms of enforcement, the reality is that most municipalities will likely not have the resources to invest in odour testing technology. Municipalities can consider other more specific restrictions, such as prohibiting smoking or vaping within a specified distance of property lines or during certain hours. However, these more specific restrictions will still be difficult to enforce in terms of prosecuting the offenses, and this approach may have the effect of involving the municipality in what are predominantly private disputes between neighbours.

The alternative is to rely upon broader and more general definitions and prohibitions. This approach can create difficulty from an enforcement perspective, however, it does provide municipalities with a degree of flexibility and some ability to investigate and respond to complaints.

3. Create Appropriate Offence and Penalties Provisions

Most nuisance bylaws will contain offence and penalties provisions which are sufficiently broad. However, if there are particular requirements or provisions with respect to cannabis consumption on private property which a municipality considers warrant enhanced specified penalties or fines then those will need to be provided for.

E. Community Standards and Other Bylaws

Executive Summary

Alberta municipalities have a broad statutory authority to pass bylaws for municipal purposes, including with respect to the safety, health and welfare of people, the protection of people and property, and public places. This authority is the basis for a number of types of bylaws municipalities could use to restrict or regulate the consumption of cannabis in or near public places, including community standards bylaws, public places bylaws, and smoking bylaws.

The provincial legislation places extensive restrictions on where cannabis can be smoked or vaped in public; the smoking or vaping of c

Cannabis is prohibited in a number of specific locations (such as hospital, school and child care facility properties) in addition to any location where smoking tobacco is prohibited under existing provincial legislation or municipal bylaws.

However, the provincial legislation does not impact municipalities' powers to make bylaws prohibiting, restricting, or regulating smoking and vaping. Municipalities continue to have the authority to prescribe additional areas where the smoking or vaping of cannabis is restricted or prohibited. As with nuisance bylaws, the practicalities of enforcing these restrictions and prohibitions will require consideration.

1. Anticipated Impacts and Concerns

While events depicted in the various Cheech & Chong films will not be the norm for most communities, municipalities can expect that their constituents will require the municipality to address numerous issues through bylaws. These issues will include setting out areas where individuals will be able to purchase and consume cannabis. In part, there may be moral objections to where cannabis might be consumed, which may tie into more practical health concerns about allowing cannabis consumption around areas frequented by children. There may also be concerns about the smell of smoked cannabis. Regardless of the concern, it is important the municipality ensure it has the legislative authority to address those concerns.

2. Municipal Authority and Limitations

Municipalities will play a key role in determining where people may smoke or vape cannabis. Section 7 of the *MGA* authorizes a municipal council to pass bylaws for municipal purposes respecting: the safety, health and welfare of people and the protection of people and property; people, activities and things in, on or near a public place or place that is open to the public, and; respecting the enforcement of bylaws made under the *MGA*. This statutory authority has been relied upon by Alberta municipalities to enact what are often referred to as “community standards” or “public places” bylaws.

One example is the City of Edmonton’s *Public Places Bylaw*, Bylaw 14614. The *Public Places Bylaw* prohibits smoking in the following places:

- inside a building;
- on a patio;
- inside a public vehicle;
- within five metres from a doorway, window or air intake of a building or patio;
- within ten metres of a playground, seasonal skating rink, skate park, sports field, or water spray park; or
- within an area designated as a “no smoking area” by the Chief Administrative Officer.

The *Public Places Bylaw* also requires owners or occupiers of places where smoking is prohibited not to permit anyone to smoke in that place.

If a municipal council chooses to enact a bylaw prohibiting or restricting the smoking and vaping of cannabis in certain places, those prohibitions and restrictions will be in addition to (but will not replace) the provincial legislation in this regard.

The tobacco smoking restrictions put in place by the City of Grande Prairie serve as a good example of how a smoking bylaw might mirror the provincial legislation. Under Bylaw C-1278, the City of Grande Prairie prohibits smoking within 10m of any playground equipment or athletic field; or of a doorway, window or air intake of a recreation facility. These restrictions act in addition to the provisions in the *Tobacco and Smoking Reduction Act*, SA 2005, c T-3.8, and are very similar to the restrictions set out in the proposed *GLCA*. A potential upside to this approach is that it gives the municipality tools, such as fines, to deal with consumption concerns.

In contrast, the Town of Hinton took a different approach to tobacco smoking restrictions. After reviewing the bylaws of other municipalities, the Town of Hinton chose not to implement any tobacco smoking bylaws, and instead left the regulation to the provincial *Tobacco and Smoking Reduction Act*. As with tobacco, municipalities may choose to leave those policy decisions to the provincial framework, as long as their constituents feel that it adequately addresses their concerns.

It is important to remember that upon the coming into force of the federal and provincial cannabis acts, consumption of cannabis will be legal. So, despite the broad authority of municipalities to regulate with respect to the above powers, municipalities will not have the power to effectively make it impossible to consume cannabis anywhere in their communities. The broad interpretation given to municipal powers to regulate should permit municipalities to prohibit the consumption of cannabis on public property – with the exception of medical marijuana, which would otherwise open the bylaw up to a potential constitutional challenge. However, an outright ban on the consumption of cannabis may lead to practical issues such as illegal use and enforcement issues, increased cannabis related nuisance complaints emanating from private property.

3. Framework for Public Consumption in Alberta

Municipalities need not reinvent the wheel when considering a framework for public consumption of cannabis in their community. The *Alberta Cannabis Act* provides a general framework for municipalities to consider through the *Tobacco and Smoking Reduction Act.* Municipalities may wish to mirror or add to their current smoking bylaws to address health and other concerns in relation to the consumption of cannabis.

4. Community Standards, Public Spaces and Smoking Bylaws

Under the proposed *GLCA,* smoking and vaping of cannabis will be prohibited in the following areas:

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- In any area or place where that person is prohibited from smoking under the *Tobacco and Smoking Reduction Act*, any other Act, or the bylaws of a municipality,
- On any hospital property, school property or child care facility property,
- In or within a prescribed distance from
    i. A playground,
    ii. A sports or playing field
    iii. A skateboard or bicycle park,
    iv. A zoo,
    v. An outdoor theatre
    vi. An outdoor pool or splash pad, or
    vii. Any other area or place prescribed in the Regulations.

The reference in the amended *GLCA* to the *Tobacco and Smoking Reduction Act* is significant; s. 10 of the *Tobacco and Smoking Reduction Act* expressly states that nothing in the *GLCA* affects a municipality's power to make bylaws to regulate, restrict, or prohibit smoking. Where there is a conflict between *Tobacco and Smoking Reduction Act* and a bylaw that regulates, restricts, or prohibits smoking, the more restrictive provision prevails.

As the examples of Edmonton, Grande Prairie, and Hinton illustrated in the previous section with respect to their varied approaches to tobacco consumption, different municipalities will take different approaches to how they wish to regulate the consumption of cannabis in their communities.

5. Step by Step

1. Review your existing community standards bylaws, public places bylaws, and smoking bylaws.

While the potential effects of smoking cannabis and tobacco are different, many of the same concerns will be weighing on the minds of constituents. It would be beneficial for municipal councillors and administrators to review how and why their municipality came to make certain policies or bylaws with respect to the smoking of tobacco. Understanding the how and why will create an effective starting point to assist all of the interested parties identify whether additional restrictions are required from a modified tobacco smoking bylaw.

2. Create a cannabis consumption bylaw, and modify tobacco smoking, public places and community standards bylaws as appropriate.

Once the municipality has reviewed their previous policies on tobacco, it should carry out its standard community consultation processes for any bylaw. There will be diverse opinions on the matter, and members of the community will want to have input into how their municipality will regulate cannabis consumption.

There will be a few important points to remind debating members of the public:

1. While a municipality may ban the consumption of cannabis on public property, there will need to be an exception for medical uses;

2. The municipality has the tools and experience to address public consumption of cannabis through previous consultations on tobacco legislation; and

3. Any penalty must be proportionate to the action that the municipality is trying to deter. Municipalities can deter consumption of cannabis in areas of the municipality, which may warrant a higher fine, but such a fine cannot be grossly disproportionate to the offence committed.

As a drafting measure, municipalities may wish to modify their tobacco smoking bylaws to include provisions for cannabis.

F. Community Consultation

Executive Summary

The purposes of a municipality are to provide good government, foster the well-being of the environment, provide services and facilities desirable for all or part of the municipality, and develop and maintain safe and viable communities. While Council is tasked with the sometimes challenging responsibility of determining what is best for the municipality and regulating accordingly, on topics as polarizing as the legalization of cannabis, in-depth public input is required in order to inform municipal decision-making.

Municipalities need to consider how best to communicate and consult with their residents, obtain useful, comprehensive feedback, balance the myriad of differing opinions and, ultimately, implement a regulatory scheme which respects and incorporates to the appropriate degree the feedback received from the community, all while staying within the legal framework.

1. Why?

Input from residents and ratepayers remains one of the most important sources of information to inform the myriad of alternatives available to Councils and planning and development departments when it comes to regulating cannabis production and processing, cannabis retail, nuisances from cannabis, and cannabis business licensing. While residents and ratepayers do not decide how to regulate, woe be to the Council that underestimates their influence.

a. Statutory Requirements for Land Use Bylaw Amendments

There are very few circumstances under the *MGA* where affected persons are entitled to be heard by Council. Potential amendments to a Land Use Bylaw or statutory plans are one of those situations. Adding new use class definitions, amending existing use class definitions, adding uses to land use districts, creating direct control districts and adding development regulations all require amending the Land Use Bylaw. Ensuring consistency in the hierarchy of planning instruments may also mandate amendments to superior statutory plans.

Pursuant to s. 692, before giving second reading to an amendment to a Land Use Bylaw or statutory plan, Council must hold a public hearing in accordance with s. 230 of the *MGA*, after giving notice in accordance with s. 606 of the *MGA*. This statutory public hearing is the only statutorily mandated opportunity for affected parties to be heard by Council on the proposed amendments.

While some municipalities may conclude a public hearing prior to the amendment of the Land Use Bylaw and statutory plans is sufficient to engage public input, others may decide they need or want more direction from residents and ratepayers from the very beginning of the planning process. Public input during decisions is valuable to a municipality for three important reasons: (1) it leads to greater satisfaction and better relationships with citizens, (2) it reduces complaints and concerns that arise late in the process and cause expensive delays and responses, and (3) it leads to better solutions.

b. Public Involvement Policy

Recent amendments to the *MGA* require every municipality to adopt a public participation policy (s. 216.1 *MGA*). However, a public participation policy will only set out the minimum requirements for consultation and participation. When deciding what and how much consultation is appropriate on a particular topic, municipalities will need to consider how best to involve those most affected, gather the information and then distill it into something useful.

2. When?

Some municipalities may choose to involve the public right from the start. Public feedback can be helpful prior to drafting a proposed land use framework or to regulating public consumption

or nuisances, avoiding the situation where much time and money has been put into a framework which is met with significant public resistance, which can necessitate "going back to the drawing board". The downside to this early involvement can be a lack of focus. For this reason, consultants specializing in the public consultation and engagement stages can be a very valuable resource and can help keep things on track and on message.

Other municipalities may choose to work behind the scenes and present a draft framework before seeking comment. This can be done at first reading, or even earlier.

3. How?

Examples of ways a municipality may engage with the public and gather feedback include the following: online survey on cannabis legalization; engagement events (by invitation or open house format); workshops hosted with key stakeholders; online surveys on retails locations, public smoking and vaping of cannabis; circulation of the proposed land use framework to stakeholders for feedback; focus groups with interested cannabis store operators regarding business licensing; websites devoted to the cannabis regulations development process.

Examples of the responses that have come forward to municipalities on the topic of cannabis related uses include the following:

- Many participants support the legalization of recreational cannabis but are concerned about the impacts.
- Many participants think public use of cannabis should be the same or more restrictive than provincial liquor laws and the same or more restrictive than existing smoking laws.
- Commercial areas, business districts, downtown, inner city, more densely populated neighbourhoods or industrial areas are preferred for retail sale locations over residential neighbourhoods.
- Many participants think cannabis stores should not be located near where children are located or congregate (Examples: schools, daycares, malls and parks).
- Many participants agreed that if a business fails to comply with bylaws, fines, notices and closure should be considered.
- Some participants are concerned about growing cannabis in rental units and multi-family units due to potential damages and odours.

The legalization of cannabis in Canada is a highly charged and polarizing issue. Public feedback will be varied and passionate, but should not be ignored.

G. The Next Frontier: Edibles and Cannabis Lounges

In the ever-changing landscape of cannabis legalization, municipalities may want to turn their minds to what lies around the corner. Edibles are food products infused with cannabis extract. Edibles come in many forms, including baked goods, candies, gummies, chocolates, lozenges, and beverages, and may be homemade or prepared commercially.

Edible cannabis products are not yet legalized, as they provide significant regulatory challenges. Though edible cannabis products are often considered a safe, discreet, and effective means of attaining the therapeutic and/or intoxicating effects of cannabis without exposure to the potentially harmful risks of cannabis smoking, there is a significant difference between ingestion and inhalation of cannabis extracts because of the delayed onset of impairment associated with ingestion.

While the legalization of edible cannabis products may not have a significant impact on the regulation of cannabis processing facilities or cannabis retail stores, and will likely create less of a nuisance to other members of the public, regulating the public consumption of cannabis in an edible format will be exceptionally challenging. Public consumption of edible cannabis products will likely need to be treated more like public consumption of alcohol, as opposed to smoking, which tends to be addressed at the provincial level more than the municipal level.

Enforcement will be the real challenge. Not only is impairment as a result of edible cannabis consumption likely to increase, the level and onset of impairment will be more difficult to predict. While this may result in additional policing costs for municipalities, significant revisions to municipal bylaws are not expected to be required.

Cannabis lounges will be the other challenge facing municipalities, once legalized. Cannabis lounges will generally require an amendment to the Land Use Bylaw to create a new use class for Cannabis Lounges, distinct from Drinking Establishments, but with similar impacts, as well as the determination of where and how Cannabis Lounges will be permitted. This may also be another area where amendments to a Business Licensing Bylaw are required, to address potential impacts with regulation and, possibly, increased licensing fees.

H. Conclusion

The Federal Government's decision to legalize and regulate recreational cannabis in Canada with the introduction of the *Federal Cannabis Act* and supplementary legislation has required provinces and municipalities to buttress the regulatory system with the provincial legislation, regulations, and municipal bylaws necessary to address the impacts at the local level. While medical cannabis has been a reality in Canada for a number of years, allowing provinces and municipalities to tackle some of the more challenging aspects of cannabis in a relatively limited way, such as cultivation, processing and medical consumption, the decriminalization of

cannabis for non-medicinal purposes has the potential for broad reaching impacts on the day to day lives of Canadians.

Section 7 of the *MGA* gives each municipal Council the general jurisdiction to pass bylaws. This general jurisdiction gives broad authority to municipalities to develop bylaws unique to each municipality. Councils are expected to act in good faith and in the public interest when creating laws and in furtherance of achieving the fundamental purposes of a municipality to provide good government, foster the well-being of the environment, provide services and facilities that, in the opinion of council, are necessary or desirable for the municipality, and develop and maintain safe and viable communities.

The legalization of recreational cannabis is a significant departure for Canadians, provoking strong feelings and positions. Municipalities who can embrace this opportunity to connect with residents and seek out their input are in a prime position to address the production, sale, and consumption of cannabis in a distinctively local manner.

There is no right way to deal with cannabis; there is only the way that best fits the needs and wants of your municipality.