
HALDIMAND COUNTY

Report PDD-02-2019 Recreational Cannabis Retail Stores in Haldimand County



For Consideration by Council in Committee on January 15, 2019

OBJECTIVE:

To provide Council with additional information regarding recreational cannabis retail stores within Haldimand County in order to assist Council in its opt-in/opt-out decision making. This report is to provide answers to questions raised by Council, to outline results of public engagement, to detail staff's recommendation on the matter, and to update Council on additional changes to Cannabis legislation.

RECOMMENDATIONS:

1. THAT Report PDD-02-2019 Recreational Cannabis Retail Stores in Haldimand County be received;
2. THAT Haldimand County elects to opt-in to permit cannabis retail stores being located in the municipality;
3. AND THAT staff be directed to bring forward a report on the desirability and implications of prohibiting smoking on public property.

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EXECUTIVE SUMMARY:

This report provides supplemental details relating to the opt-in or opt-out decision for recreational cannabis retail stores for Council's consideration. A subsequent report will address production facilities. This report provides an update on outstanding questions, as identified in the previous information report (PD-40-2018) which was received by Council-In-Committee of December 11th, 2018, and also outlines new information that has been made available by the Province, the steps taken by staff to obtain public input regarding whether or not Council should permit or prohibit, and staff's recommendation on whether or not to opt-in or opt-out of cannabis retail stores. Staff have received comments from the Medical Officer of Health for Haldimand County and solicited comments from the community on this issue with this public engagement concluding that a majority of Haldimand County residents support opting-in and permitting cannabis retail stores. Council has also directed that a public meeting be held January 21st to obtain community and stakeholder comments relative to this decision. Upon Council arriving at a decision, that decision will be provided (by the Clerk) to the Province (Alcohol & Gaming Commission of Ontario).

BACKGROUND:

At the December 11th, 2018 Council-in-Committee meeting, staff brought forward a two part information report (PD-40-2018) regarding: (i) recreational cannabis retail stores, and (ii) cannabis production facilities. This subject report addresses only the first item – recreational cannabis retail stores. The December 11th report laid out the pros and cons of hosting a retail store and the requirement for Council to make a decision relative to opt-in/opt-out by January 22nd. As part of that report, and the discussion that ensued on the retail store matter, a number of key matters were identified for further examination and action. This report is also intended to address those key matters to the extent possible as follows:

1. Follow up on several outstanding questions raised in the December 11th report/meeting;
2. Provide summary of additional information released by the Province of Ontario since December 11th; and
3. Provide a detailed summary of the public engagement and municipal scan completed.

This report is provided for discussion at the January 15, 2019 meeting with the understanding that consideration of the recommendation be deferred to the January 21, 2019 Council meeting, as was directed through Report PD-40-2018.

ANALYSIS:

1. Outstanding Questions/Clarification:

The December 11th staff report set out a number of unresolved matters that are critical to Council's decision making. These matters were unresolved due to the vague and incomplete nature of information that was released by the Province. In response, staff reached out directly (several times, through several channels) to the Alcohol & Gaming Commission of Ontario (AGCO) in an effort to obtain final and clear direction. However, the information was not provided by the AGCO at the time of writing this report. Given this gap, staff conducted additional research and consulted with other municipalities to assess their understanding of directions. Below is a summary of the key issues and staff's conclusions:

a) Location and Appearance

As noted in the December 11th report, staff were uncertain if a cannabis retail store would need to be located within a municipal commercial zone where retail is a permitted use or in any zone where retail is permitted. The only clear component of the Province's regulation (to date) is that a 150 metres setback will be required from schools. Given nothing definitive has been issued by the Province, staff has conducted additional research and consulted with other municipalities (some of which have in-house legal counsel reviewing the regulations) and consensus is that the intent of the Province's regulation is to only permit the stores where municipal zoning presently permits retail commercial operations. In the County's context that would mean this use would primarily be established in the 'General Commercial (CG)' Zone and/or the 'Downtown Commercial (CD)' Zone as these zones permit, as of right, 'retail stores' and 'retail establishments'. The aforementioned zones are typically applicable to the historical commercial core/downtown business areas of the County's urban centres. This would result in these retail uses being directed to areas of the municipality where retail use, as a whole, is permitted which is consistent with how the LCBO and Beer Stores are addressed.

What remains unclear is whether municipal site plan control would apply to any new builds. Site plan control gives the County the authority to regulate things such as massing of buildings, grading/drainage, storm water management, parking, lighting, etc. This is a critical development review tool for new commercial construction. However, given the main focus of stores would likely be in existing downtowns (in terms of location permissions) where buildings are established/ready for use, this is not expected to be a significant issue for the County. Further, the Province has

indicated (post-December 11th report) that it intends to develop parameters for the appearance of stores after further public consultation. It is expected that these parameters will ensure a consistent and appropriate 'look' will result (similar to that of the LCBO stores) and that site design matters would be addressed.

Lastly, it is important to clarify that if the County opts-in, cannabis retail stores will be permitted at production sites (e.g. rural greenhouse growing operations). While municipalities have the authority to regulate production facilities through zoning controls, the Province has not made it clear if municipalities have the authority to regulate these stores as 'accessory uses to production' or if they will be exempt similar to the downtown/commercial area retail operations.

b) Enforcement

At the time of the writing of the December 11th report, a number of questions remained as it relates to enforcement roles and potential for downloading of responsibilities to the County. The following summary provides the clarifications necessary:

- Police (in the County context is the Ontario Provincial Police (OPP)) will enforce the federal and provincial cannabis legislation. This includes enforcement of road safety and illegal storefronts. The federal government has provided funds to police forces for training and the Ontario government has worked with the OPP and municipal police forces to increase the number of officers trained in the Standard Field Sobriety Test and as Drug Recognition Experts;
- The AGCO will enforce licensing, renewals and adherence to any conditions. This will include inspections of store operations, the financial practices of the operators, ensuring licensed personnel are working in stores as required and discharging their duties appropriately, ensuring rules regarding sales are followed, etc. Contravention of provincial and federal requirements and laws can result in the revocation of operator licenses.
- Public Health Units enforce the *Smoke Free Ontario Act* (SFOA) currently and deal with places of use for tobacco. Cannabis use enforcement will be added to these duties since the locations will be the same as now, unless municipal governments pass stricter smoking by-laws. Passing and enforcing stricter local smoking by-laws may increase local public health unit budgets for municipal governments. The SFOA restricts use around playgrounds, sports fields and entranceways.

In terms of any potential for additional costs to the municipality, given the above, this does not appear to be a major concern. All enforcement relative to retail stores will rest with the OPP and AGCO. It is important to note that the responsibilities of the SFOA will fall to County staff via the Health Unit regardless of the opt-in/opt-out decision as they are a product of the legalization of cannabis use. The Province will provide the County with \$51,941.00 (for the first payment) in part to address potential municipal costs for enforcement purposes.

Staff also notes that several attempts were made to obtain commentary from the OPP at the time of writing this report to include in this section of the report; however, formal comments have not yet been provided to Planning staff.

c) Funding

Staff have now obtained the necessary clarification regarding the funding potential/implications of the decisions of opting-in and opting-out. This additional information comes in the form of two Minister of Finance letters, one dated November 20th, 2018 and the 2nd letter dated November 26th, 2018. These letters can be found in Attachment 3 and 4. The Ministry of Finance also issued a first payment allocation notice for Haldimand County, which can be found in Attachment 5. Based on these three pieces of correspondence, the funding is clarified as set out in the paragraphs below:

All municipalities in Ontario will receive two payments from the Ontario Cannabis Legalization Implementation Fund (OCLIF), and this will be regardless of whether or not the decision is to opt-in or opt-out. It is the intent that the funds be specifically used to cover the costs of enforcement (i.e. smoking by-laws, etc.), public education and other matters related to the legalization of cannabis.

If Haldimand County opts-out, it will still receive two payments from OCLIF – \$51,941 (minimum) in early January, and an additional \$5,000 (approximate) in March. Should the County opt-out, it will not be eligible to receive any of the funds generated from the Province's portion of federal excise duty as noted below.

If Haldimand County opts-in, it will receive two payments from the OCLIF – \$51,941 (minimum) in early January, and an additional \$51,941 (minimum) in March. The \$51,941 amount is based on the County's number of households.

Additionally, the County would receive a share of the Province's portion of the federal excise duty on recreational cannabis should it exceed \$100 million over the first two years of legalization. The Province has committed to splitting this money 50/50 with all municipalities who opt-in.

Staff further notes that the Province will maintain a \$10 million fund to address any unforeseen circumstances experienced by municipalities during the transition. While all municipalities are eligible to apply for funding, those that opt-in will be given preferential treatment and considered ahead of any municipalities that have opted-out.

d) Consumption of Cannabis

At the December 11th Council in Committee meeting, Council members raised a concern and questions about consumption locations – in particular due to the odour issue. While the regulatory framework in terms of where smoking is permitted are separate from the retail stores (opt-in/opt-out decision) that is the subject of this report, the matter requires consideration and response. Where cannabis, for both medical and recreational purposes, can be consumed is dictated by the *Smoke-Free Ontario Act, 2017* (SFOA) unless otherwise stated in a municipal by-law. This ultimately means that any location that a cigarette can be consumed (i.e. a residence, etc.), the same rights apply to the consumption of cannabis. It is further identified that in order to possess, purchase and consume cannabis, an individual must be legally nine-teen (19) years of age.

Under the SFOA the list of places where smoking cannabis is **prohibited** is extensive and includes the following:

- Enclosed (indoor) public places and work places: includes shopping malls, office buildings, and factories;
- Patios: on and within 9 metres of a restaurant or bar patio
 - Exception: Veteran's organizations where an uncovered patio was established prior to November 18, 2013 are permitted to allow smoking of tobacco and vaping of substances other than cannabis or controlled substances;
- Schools: on and within 20 metres of the school property;
- Recreational Facilities: includes the entire property and within 20 metres of the property;
- Recreational Facilities includes any enclosed public place or workplace that is primarily used for sports, children's play programs and fitness programs for children and youth that is a charity or run by a level of government, charity or non-profit. Examples include indoor arenas and indoor pools;
- Playgrounds and sports fields: on and within 20 metres of any playground or any sports field owned or operated by a level of government;
- Hospitals: includes inside of premise as well as entire property;

- Long-Term Care Homes (i.e. non-controlled areas): includes inside as well as within 9 metres of any entrance or exit.

In addition to this, Provincial legislation Haldimand County has a smoking by-law that regulates where smoking is permitted on public land. Of note, Haldimand County's existing by-law goes beyond the SFOA by restricting smoking within 9 metres of entrances and exits of any municipally owned or operated building and also prohibits smoking within municipal buildings (owned, operated or leased) and vehicles. The opt-in/opt-out decision of retail stores will not have any impact on the above permissions/prohibitions relative to consumption.

Municipal governments can enact stricter by-laws on places to smoke in their communities. This allows municipal governments to reflect community preferences for the safety of residents and to balance public enjoyment of the community. However, in considering stricter requirements, municipal governments should also consider the cost of enacting locally determined rules and how they will be enforced. A number of municipalities have implemented prohibitions of smoking of tobacco and cannabis on public property – this includes parks, road allowances and other public space. Some of these municipalities include: Norfolk County, York Region, Kingston, and Windsor-Essex. Given concerns raised about odour, the County could consider amending its Smoking By-law to prohibit the activity on public lands irrespective of whether it opts-in or out.

2. New Information Issued by the Province:

As of December 13th, the Ontario Regulations under the Ontario *Cannabis License Act, 2018* were amended by the Province of Ontario in response to an identified shortage of legal cannabis supply from the federally licensed producers. To address this shortage concern, the intent is to phase the opening of the recreational cannabis stores by limiting the total number of licenses issued in Ontario for retail (in the first phase) to a maximum of twenty-five (25). Staff also notes that the allocation of stores is broken down, per geographic region, and is listed below, with Haldimand County being included in the West Region allocation:

- **East Region:** (Stormont, Dundas and Glengarry, Prescott and Russell, Ottawa, Leeds and Grenville, Lanark, Frontenac, Lennox and Addington, Hastings, Prince Edward, Northumberland, Peterborough, Kawartha Lakes, Simcoe, Muskoka, Haliburton, Renfrew): five (5) stores;
- **GTA Region:** (Durham, York, Peel and Halton): six (6) stores;
- **North Region:** (Nipissing, Parry Sound, Sudbury, Greater Sudbury, Timiskaming, Cochrane, Algoma, Thunder Bay, Rainy River, Kenora): two (2) stores;
- **Toronto Region:** five (5) stores; and,
- **West Region:** (Dufferin-Wellington, Hamilton, Niagara, Haldimand, Norfolk, Brant, Waterloo, Perth, Oxford, Elgin, Chatham-Kent, Essex, Lambton, Middlesex, Huron, Bruce, Grey, Manitoulin): seven (7) stores.

The AGCO will implement a lottery system to determine who will be eligible for retail licenses, with this draw expected to take place on January 11, 2019. The first twenty-five (25) stores must be located in a municipality with a population of 50,000 or more. As such, Haldimand County would not be eligible for a retail store within the first phase should Council decide to opt-in. The shortage of cannabis is being experienced across Canada and is also impacting the Ontario Government's on-line store. It is unknown when the second phase of licenses will be issued as it is dependent on the availability of product from legal production sites; however, the AGCO estimates that first phase will likely last until December 13, 2019 until cannabis production stabilizes and the regulations can be further amended.

3. Public Consultation & Municipal Scan:

a) Public Consultation

As part of the previous information report (PD-40-2018) it was recommended by staff that the decision surrounding opting-in/out should be delayed until the January 21st, 2019 Council meeting to provide an opportunity to engage the public and allow time for staff to investigate answers to some of the outstanding questions. In connection with that recommendation the following was completed:

- A dedicated web page was produced on the County's website detailing the request for comments, including a Frequently Asked Questions section and an updated facts sheet regarding the pros and cons of opting-in or opting-out of retail cannabis stores. The County's website also utilized a rotating banner to direct members of the public to the customized web page;
- A notice for public input was placed in the newspaper identifying there is a information report available for review and requesting public input, including attendance at the January 21st Council meeting;
- A public survey was developed, and posted on the County's website, to obtain input regarding opting-in or out. The survey was advertised in a press-release and ran from December 18th to January 8th;
- A press release was issued on Tuesday, December 18th, which included information regarding the survey; and
- Social media (i.e. Facebook, Twitter) was utilized to make the public aware of the survey and the request for public input on the matter.

Members of the public have been invited to provide written/e-mail comments to the Clerk and to date a total of eleven (11) individuals have provided written submissions. Of the eleven (11), nine (9) expressed opposition and two (2) individuals were in support of cannabis retail stores. In addition to providing comments to the Clerk, the public has been invited to attend the Council meeting on January 21st to provide verbal input. It is anticipated that there will be additional comments for Council to consider at that time.

Public Input from On-Line Survey: As mentioned previous, a brief public survey was issued from December 18th to January 8th seeking input on the following four (4) options: opt-in, opt-out, maybe (i.e. opt-out with potential to opt-in at later date), and unsure (need more information). At the close of the survey a total of eight hundred and fifty (850) residents participated with the following results:

- 578/850 (68.00%) voted to opt-in
- 205/850 (24.12%) voted to opt-out
- 62/850 (7.29%) voted maybe (opt-out now, possibly opt-in later)
- 5/850 (0.59%) voted unsure (not enough information)

What the on-line survey results show is clear, majority support for opting-in to hosting retail cannabis stores. It should be noted that staff can also confirm that approximately 96% of survey respondents were 'local' – meaning they responded to the survey while they were within the borders of Haldimand County. This was determined based an analysis of the internet IP address used at the time of the survey participation and gives staff a strong degree of confidence that the survey reflects the opinions of County residents.

In addition to the voting, a total of seven hundred and twenty-five (725) comments were provided by survey participants. Staff have reviewed the comments and summarize them into the following key themes:

Opt-in – total number of comments received four hundred and ninety-nine (499):

- It is a legal substance like liquor/beer, no reason to prohibit;
- Allowing retail stores will curb the illegal market, protect youth, and create access to safe cannabis;
- There are economic benefits to the County – i.e. provincial funding, jobs, tax revenue, spinoff uses, tourism, etc.;
- The retail interface creates an accessible, local option to obtain cannabis that is an alternative to on-line sales and keeps purchasers within the County.

Opt-out – total number of comments received one hundred and seventy-one (171):

- General disagreement with legalization of cannabis, view cannabis as a drug, and dislike of cannabis odour;
- Concern regarding safety – i.e. crime increase, protection of youth, impaired driving, policing capabilities;
- There is appropriate access elsewhere already – i.e. on-line and in other communities;
- Concerns of taxpayers having to pay for enforcement, policing, etc.;
- Negative impacts to a small town community character.

Maybe (opt-out now, opt-in later date) – total number of comments received fifty-two (52):

- Too many unknowns/uncertainties at this time to make an informed decision;
- Should observe how other (larger) communities handle the use and see what types of concerns/issues and data arise from these other communities.

Unsure – total number of comments received three (3):

- No common theme.

b) Municipal Scan

The AGCO has established a list of Ontario municipalities that have opted-in and opted-out of permitted cannabis retail stores. To date, fifty-four (54) municipalities have notified the AGCO that they are opting-in and twenty-three (23) municipalities have notified that they are opting-out. The list of the municipalities are identified in Attachment 6.

Staff notes that the AGCO website has not been updated (or notification has not yet been provided) from several other municipalities that have recently rendered a decision to permit or prohibit – i.e. Norfolk County which has opted-in. Staff further notes that the AGCO has not been notified by any Band Councils whether they have opted-in or out, and further notes, that if an opt-out decision is not made by January 22nd 2019, cannabis retail stores will automatically be permitted.

Staff have researched several of different municipalities to help determine the rationale behind each Council's decision to opt-in or opt-out of permitting cannabis retail. These municipalities and their associated rationale is detailed below:

Opt-In Rationale:

- City of Guelph:
 - If retail stores are not supported, illegal dispensaries could open to meet public demand
 - Questioned authority of a municipality to bar legal products
 - *Note* - Engaged public, with a majority in favour of opt-in
- City of London:
 - Negatives to opting-out (i.e. missing out on provincial funding and residents going elsewhere to purchase cannabis)
 - Economic opportunities

- City of Ottawa:
 - Cannabis is a legal product
 - Provincial funding was an incentive
 - Note – Engaged public, with majority of public in support of opt-in
- City of Owen Sound:
 - Cannabis use is already in existence and stores will remove illegal market
 - Cannabis is a legal product

Opt-Out Rationale:

- Township of Centre Wellington:
 - Concerns regarding potential increase taxes that would effect residents
 - Concerned with timing allotted to municipalities by the Province
 - Concerns from the OPP to deal with demands
 - Note – Engaged public via survey, with majority of public supporting opt-in
- City of Mississauga:
 - Decision being rushed by the Province and lack of municipal control or planning
 - Concern regarding distribution model of store
 - Too many unknowns remain and potential unknown impacts to community
 - Note – Engaged public, with majority of public supporting opt-in
- Town of Niagara-on-the-Lake:
 - Lack of municipal control in terms of number of stores and location
 - Not enough time allotted by Province to properly engage the community
 - There is still information being provided and some details remain unknown
- Township of Erin:
 - Concerns with location of stores and lack of control over location selection
 - Note – Engaged public
- Town of Ingersoll:
 - Allow time for other municipalities to allow stores to gauge effects
- Township of West Lincoln:
 - Wanted to allow time for other municipalities to allow stores to gauge effects

Medical Health Officer Comments:

It was further identified by Council at the December 17th Council meeting that commentary be obtained from the County's Medical Health Officer. The Medical Health Officer for Haldimand County—Shanker Nesathurai—has provided the following commentary:

The use and consumption of cannabis has significant adverse medical and public health consequences. These adverse effects are particularly challenging to young people.

The operation of “bricks and mortar” retail stores in Haldimand County is likely to incrementally increase access and availability to cannabis; these stores will also contribute to the normalization consumption. However, contextually, retail stores are likely to be established in adjacent counties. Furthermore, the government of Ontario currently operates a cannabis retail enterprise, which utilizes the postal service to deliver cannabis to purchasers. In addition, cannabis continues to be available from unofficial and illicit sources. As such, it is likely that the operation or prohibition of retail stores in Haldimand County will have a small net effect related to ability of consumers to obtain cannabis.

The Public Health Unit will focus on minimizing the harm associated with cannabis use; there will be a particular focus of reducing use among young people. This approach is consistent with policy of harm reduction with the use of potentially intoxicating products.

Conclusions:

Based upon the information available at the time of writing this report, and recognizing that Council will consider further input on January 21st in terms of this key decision and how it aligns with the character and values of Haldimand, staff are recommending that Council opt-in. The rationale for this is as follows:

1. The use is a legal use in Canada and it will be regulated, inspected and enforced by Provincial authorities – similar to the LCBO and Beer Store;
2. Opting-out would require Haldimand residents to either travel to a jurisdiction that allows the use or to continue to procure cannabis from the black market which is inconsistent with the intent of the legalization of the substance;
3. Opting-out further limits and/or restricts the communities opportunity to obtain safe, direct and local access to a legal product;
4. The County would be ineligible for additional revenue in the future while it will incur costs for enforcing the *Smoke Free Ontario Act* and municipal smoking by-law;
5. Since the use will be directed to areas that permit retail use the County would potentially be eliminating opportunities for economic development in its core areas. Opting-out would effectively drive potential purchasers to other communities, including driving Haldimand County residents to spend in other communities; and
6. It has been identified, via public engagement, that a majority of Haldimand County residents (i.e. 68% of those surveyed) support opting-in and allow retail cannabis stores.

FINANCIAL/LEGAL IMPLICATIONS:

Opt-In: There appears to be a significant amount of financial gain if the County is to opt-in and permit recreational cannabis retail stores. This is highlighted in more detail in above section regarding Funding.

STAKEHOLDER IMPACTS:

As noted within the 'Public Consultation & Municipal Scan' section above, Planning staff have taken several different approaches to inform the public about partaking in and providing their feedback on whether the County should permit or prohibit recreational cannabis retail stores. Through the on-line survey it was identified that a total of eight-hundred and fifty (850) partook in the survey with five hundred and seventy-eight (578) in support of opting-in. The Clerk also received eleven (11) written comments, with nine (9) residents in opposition and two (2) in support of cannabis retail.

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Facts Sheet (Updated Opt-in/Opt-out Chart).
2. Frequently Asked Questions.
3. Minister of Finance Letter – November 20th, 2018.
4. Minister of Finance Letter – November 26th 2018.
5. Ontario Cannabis Legalization Implementation Fund – 2018-2019 First Payment – Allocation Notice.
6. List of Municipalities – Confirmed Decisions.