

Cannabis Legalization in Your Community

A Primer for BC Local Governments¹

Updated November 6, 2018

Introduction

The legalization of non-medical cannabis is set to occur on October 17, 2018, three days prior to British Columbia's local government elections. This represents a major shift in public policy, which will greatly impact local governments in areas including but not limited to enforcement, land use management and administration/licensing. The following guide is intended to examine local areas of responsibility, as well as other aspects of the legalized cannabis regime that will impact local governments.

Federal and Provincial Legislation

The federal government, in April 2017, introduced cannabis legalization and enforcement legislation, Bills [C-45](#) (the *Cannabis Act*) and [C-46](#) (amends the *Criminal Code*). Legislation places the federal government in charge of production, health and safety standards, and criminal prohibitions, as well as establishing minimum conditions that provincial legislation must meet to ensure consistency. The *Cannabis Act* comes into force on October 17, 2018.

The Province of British Columbia has enacted its own legislation for the legalization and regulation of non-medical cannabis, in the form of two new bills and key [amendments to the Motor Vehicle Act](#). The [Cannabis Distribution Act](#) establishes the Province's exclusive jurisdiction over the wholesale distribution of non-medical cannabis, and provides authority for public retail and online sales. The [Cannabis Control and Licensing Act](#) (CCLA) establishes provincial control over the sale, supply and possession of non-medical cannabis, and establishes licensing of private retailers. The CCLA also outlines restrictions over the possession, personal cultivation and public consumption of cannabis. A Community Safety Unit will have the authority to deal with illegal sales outside the legalized framework. Under the CCLA, the Community Safety Unit will have the authority to enter illegal cannabis premises without a warrant, seize illegal product and records, and impose monetary fines.

Changes to the *Motor Vehicle Act* will allow for a 90-day Administrative Driving Prohibition to be placed on drug-affected drivers, as well as impose a zero tolerance policy for the presence of THC for drivers in the Graduated Licensing Program.

Local Government Consultation / Input

In British Columbia, local governments have provided input into the regulatory system for non-medical cannabis primarily through the Joint Provincial-Local Government Committee

¹ The information contained in this document is for reference only, and should not be construed as legal advice.

on Cannabis Regulation (JCCR). The JCCR is a forum for local governments to share knowledge and bring forward matters of concern to the Province’s Cannabis Legalization and Regulation Secretariat. The Committee has been meeting on a regular basis since October 2017 to discuss key policy decisions, and respond to questions posed by the Province. More information on the JCCR, including its submissions to the provincial government, can be found at www.ubcm.ca/JCCR.

Areas of Responsibility

Federal and provincial legislation and regulations identify the areas of responsibility for all orders of government, including but not limited to:

Issue	Federal Government	BC Government	Local Government
Commercial Production / Supply	✓		
Distribution Model		✓	
Drug-Impaired Driving	✓	✓	
Enforcement Activities ²	✓	✓	✓
Land Use Management / Zoning			✓
Medical Cannabis	✓		
Minimum Age*	✓	✓	
Personal Cultivation*	✓	✓	✓
Personal Possession*	✓	✓	
Provincial Retail Model		✓	
Public Consumption		✓	✓
Public Education & Awareness	✓	✓	✓
Public Health	✓	✓	
Retail Licensing		✓	✓
Taxation	✓	✓	
Workplace Safety		✓	

* Areas whereby provinces and territories have the ability to impose additional regulations as long as they meet minimum conditions set out in federal legislation.

Key Provincial Government Decisions

Based in part on [input](#) received from local government members of the JCCR, the Province of BC has made a number of key [decisions](#) regarding non-medical cannabis³:

Distribution Model

The Province will act as the sole wholesale distributor of non-medical cannabis in British Columbia, using a model similar to that used for liquor wholesale distribution.

² The RCMP and independent police agencies will enforce federal and provincial rules, with the Community Safety Unit working to address illegal sales outside the provincial regulatory framework. Local bylaw officers will be primarily concerned with enforcing local bylaws. Local governments will also be financially affected by increased policing costs.

³ Regulations related to medical cannabis fall under federal jurisdiction and are not addressed in this document.

Drug-Impaired Driving

In addition to legislative changes (see page 1), the Province will increase training for law enforcement in order to address drug-impaired driving.

Minimum Age

Adults 19 years and older will be permitted to purchase, possess, grow and consume non-medical cannabis.

Personal Cultivation

Adults 19 years and older will be permitted to grow a maximum of four non-medical cannabis plants per household. Plants must not be visible from public spaces. Personal cultivation will not be permitted in dwellings operating as licenced daycares. Landlord and strata councils will be permitted to restrict or prohibit cultivation of non-medical cannabis at tenanted and strata properties.

Personal Possession

Adults 19 years and older will be permitted to possess up to 30 grams of non-medical dried cannabis (or its equivalent) in public. It will be illegal for individuals under 19 years to possess any amount of non-medical cannabis.

Provincial Retail Model

Non-medical cannabis will be available for purchase through government-operated stores and online, and private stores.⁴ Licenced retail operators are permitted to sell dried cannabis, oils, seeds, and cannabis accessories. Only adults 19 years and older will be allowed to enter stores. Co-location of non-medical cannabis retail with alcohol, tobacco, food, gas and other products will not be permitted, although there may be future consideration for a rural retail licence similar to the provincial Rural Agency Store model used for liquor.

Public Consumption

Adults 19 years and older will be permitted to consume non-medical cannabis in public spaces where tobacco smoking and vaping are allowed. Exceptions to this rule include a ban on smoking and vaping in the following areas:

- Outdoor public skating rinks, sports fields, skate parks and swimming, wading or spray pools (including the deck, seating and viewing areas);
- Provincial parks, except areas where tobacco smoking is permitted;
- Regional parks, except for designated campsites;
- Municipal or community parks, except in designated campsites;
- Public patios.

⁴ Licenced retail operators will not be permitted to sell cannabis through self-service counters, dispensing devices (e.g. vending machines), and will not be permitted to deliver products. Online sales will only be permitted through the provincial government online retail system.

The consumption of cannabis is banned in the following areas:

- Vehicles or boats;
- All licenced non-medical cannabis retail stores (government and private);
- All sidewalks, boulevards and similar components between school property and public roads.

Tenancy agreements entered into prior to October 17, 2018 that include a ban on smoking or vaping are deemed to include a prohibition on smoking cannabis. Tenancy agreements entered into on or after this date will require landlords and tenants to negotiate whether smoking or vaping of cannabis will be permitted. Strata council bylaws may restrict or prohibit cannabis consumption on strata properties.

The Province will not allow dedicated places of use (e.g. consumption lounges) at this time. Similar to tobacco use, additional restrictions will be at the discretion of local governments.

Cannabis Production in the Agricultural Land Reserve

In July 2018, the Province [amended the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*](#) in order to designate the specific means of lawful cannabis production that are considered farm use within the ALR. In section 2(2.5), the amendment identifies cannabis production as a designated farm use only in the cases that production is:

- Outside in a field;
- In a structure with a base made entirely of soil;
- In a pre-existing structure, or a structure that is under construction, provided that the structure was, or is being, constructed for growing crops inside.

As local governments cannot prohibit activities identified as a designated farm use (except under section 552 of the *Local Government Act*), the amendment allows for the types of cannabis production identified in section 2(2.5) to proceed anywhere in the ALR without application to the Agricultural Land Commission (ALC).

However, the amendment also has the effect of identifying all forms of cannabis production that may be prohibited by local governments (i.e. new construction of cement-based buildings).

Local Government Responsibilities

This section briefly addresses the primary responsibilities BC local governments will assume as part of a legalized framework for non-medical cannabis.

Enforcement Activities

Local governments will pay for enforcement through new and increased policing costs (e.g. training, detection device procurement, staffing, etc.).⁵ Bylaw officers, who will be tasked with enforcing local bylaws, are encouraged to work with local police departments/detachments to ensure all new regulations (e.g. smoking/vaping, health and nuisance bylaws, and provincial regulations) are understood and enforced.

Land Use Management / Zoning / Licensing / Other Regulations

In addition to typical land use management responsibilities (e.g. zoning for non-medical cannabis retail operations), local governments have the option to exercise the following authority over non-medical cannabis retail operations:⁶⁷

- Advertising (e.g. signage) requirements beyond those listed in the federal *Cannabis Act* and *BC's Cannabis Control and Licensing Act*;
- Distance requirements (e.g. distance between cannabis retail outlets and schools/daycares);⁸
- Odour and noise regulations (e.g. through business licence or nuisance bylaws);⁹
- Hours of operation for retailers (within the 9 a.m. – 11 p.m. provincial restriction);
- Type of permitted retail operations (public, private, both or neither);
- Setting a maximum on the number of provincially approved retail outlets permitted to operate within a local jurisdiction;
- Security measures beyond the minimum security requirements listed in the [Cannabis Retail Store Licence Terms and Conditions Handbook](#);
- Application fee to cover costs associated with assessing a retail application, in order to provide comments and recommendations on the application.

In addition to having the ability to charge an application fee to cover costs associated with assessing a retail application, local governments may also charge a licence fee to private and public retail operators, pursuant to s. 194 of the *Community Charter* (municipalities) and s. 397 of the *Local Government Act* (regional districts).¹⁰

Regulations may also be established for federally licenced cannabis production and processing facilities (beyond federally imposed regulations).

⁵ The federal government has provided funding to train officers in Standard Field Sobriety Testing and as Drug Recognition Experts, as well as procure oral fluid drug screening devices. The financial impact this will have on the cost of policing is still undetermined.

⁶ Under Part 14 Planning and Land Use Management of the *Local Government Act*, regional districts have the same zoning authority as municipalities, with some limitations (e.g. zoning must establish a “use”).

⁷ Some local governments (e.g. City of Vancouver) have been very distinct with the wording in their zoning bylaw amendments, to ensure that only non-medical cannabis retailers are permitted, preventing medical cannabis dispensaries from becoming legal non-conforming uses after legalization and to prevent non-medical cannabis retailers from operating in all of the City’s retail zones.

⁸ The Province will not be imposing any minimum distance requirements.

⁹ Permitted under s. 64 of the *Community Charter* and s. 325 of the *Local Government Act*.

¹⁰ As of October 1, 2018, only one regional district (RD) in British Columbia has business licensing authority. The Ministry of Municipal Affairs and Housing is currently exploring options for enabling business licensing for other RDs.

Personal Cultivation

Legislative changes have not impacted a local government's authority to enact bylaws with respect to properties. As such, local governments have the ability to further restrict personal cultivation of non-medical cannabis, and/or establish a personal cultivation registry.

Public Consumption

Local governments have the ability to further restrict consumption of non-medical cannabis in public beyond provincial regulations (e.g. through smoking/vaping and health bylaws).¹¹

Public Education & Awareness

In addition to education and awareness campaigns launched by the federal government and Province of BC, local governments have the option to provide additional education and awareness to citizens.

Retail Licensing

The [Local Governments' Role in Licensing Non-Medical Cannabis Retail Stores](#) document explains the local government role in providing comments and recommendations regarding non-medical cannabis retail applications. The process can be summarized as follows:

1. The Liquor and Cannabis Regulation Branch (LCRB) receives an application, and subsequently notifies the local government.
2. The local government has the option to make a recommendation:
 - a. The local government may choose not to make a recommendation, in which case the licence will not be approved by the LCRB.
 - b. If the local government chooses to make a recommendation, it must gather the views of residents through written comment, public hearing, referendum or other appropriate method.
 - i. If the local government ultimately recommends denying the application, LCRB will not approve the licence.
 - ii. If the local government recommends approving the application, LCRB will have the discretion to approve or deny the licence based on consideration of whether or not the applicant meets the required criteria, but must consider the local government's input/recommendation.

The recommendation provided by the local government must be in writing; show that consideration was given to the proposed store location; outline the views of the local government on potential impacts to the community; include the views of residents (if they were gathered by the local government) and how they were gathered; and, provide a local government recommendation and reasons for this decision. During the time the local government is considering an application, the Province will be conducting a financial integrity assessment and security check on the applicant.

¹¹ Local governments should ensure their regulations appropriately accommodate medical cannabis patients/users.

Ultimately a retail licence will not be issued without a positive recommendation from a local government. There is no time limit for local governments to provide a recommendation. Authority to provide comments and a recommendation can be delegated to staff. A local review will occur concurrently with the LCRB's own licence review; the LCRB intends to be in constant communication with the local government during this time.

Outstanding Issues

Cannabis Excise Tax Revenue Sharing

On September 13, 2018, the UBCM membership endorsed [Special Resolution 1 \(SR1\)](#): Cannabis Excise Tax Revenue Sharing with Local Governments. Admitted for debate by the UBCM Executive, this resolution seeks to advance a [short- and long-term strategy](#) to guide the negotiation of a provincial-local government cannabis excise tax revenue sharing agreement. As of October 1, 2018, an agreement has not been reached between the Ministry of Finance and UBCM. The Province of British Columbia expects to receive \$125 million in cannabis excise tax revenue over the first two years of legalization.

Consumption Lounges

The regulation of consumption lounges is the responsibility of the provincial government, which has indicated that it will not be permitting these establishments at the onset of legalization. This decision may be re-evaluated at a later date.

Edibles

The federal regulatory regime does not authorize the sale of edibles (i.e. foods infused with cannabis), although there is a legislated requirement for the federal government to regulate these items within one year of legalization.

Rural Retail

As of October 1, 2018, the Province is not considering a separate rural retail licence. The need for a separate rural retail licence will be evaluated at a later date.

Resources for Local Governments

BC Get Cannabis Clarity (Government of BC)

<http://www.getcannabisclarity.ca>

Bill C-45 / Cannabis Act (Government of Canada)

<https://laws-lois.justice.gc.ca/eng/acts/C-24.5/FullText.html>

Bill C-46 / Amends the Criminal Code (Government of Canada)

<http://www.parl.ca/DocumentViewer/en/42-1/bill/C-46/royal-assent>

Cannabis Control and Licensing Act (Government of BC)
<http://www.bclaws.ca/civix/document/id/complete/statreg/18029>

Cannabis Control Regulation (Government of BC)
http://www.bclaws.ca/civix/document/id/oic/oic_cur/0542_2018

Cannabis Licensing Regulation (Government of BC)
http://www.bclaws.ca/civix/document/id/oic/oic_cur/0528_2018

Cannabis Retail Store Terms and Conditions Handbook (Government of BC)
<https://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/liquor-regulation-licensing/guides-and-manuals/cannabis-retail-store-licence-handbook.pdf>

Local Governments' Role in Licensing Non-Medical Cannabis Retail Stores (Government of BC)
https://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/liquor-regulation-licensing/documents/local_government_role_in_licensing_cannabis_retail_stores.pdf

Municipal Guide to Cannabis Legalization (Federation of Canadian Municipalities)
<https://fcm.ca/Documents/issues/Cannabis-Guide-EN.pdf>

UBCM's Cannabis Legalization Webpage
<https://www.ubcm.ca/EN/main/resolutions/policy-areas/community-safety/marijuana-regulation.html>

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