

Request for Decision



To: Regular Meeting
From: **Corporate Administration/Planning**
Date: February 25, 2019
Subject: Temporary Use Permit Information - Cannabis
Recommendation: **THAT Council directs Staff to create a Temporary Use Permit (TUP) application form in a one-year increment with options for extension containing a disclaimer that applicants are applying at their own risk of Provincial cannabis retail license denial or legal closure, intended for proponents who are entrepreneurs of the sale of medicinal use Cannabis products and bring back to Council for review.**

THAT Council determines not to issue Temporary Use Permits to proponents who are applicants for the sale of recreational (non-medicinal) Cannabis products applying to the Provincial Cannabis approval process, as recreational Cannabis retail stores cannot be legally operating prior to the Province issuing those licenses, as the issuance of a Temporary Use Permit may hinder the Provincial Cannabis Licensing Approval.

Background

At the February 11th, 2019, Committee of the Whole, Council discussed possibilities for an interim approval process regarding medical and non-medical cannabis businesses to potentially operate in the City while the legislative Provincial and City processes advance and in addition, to on-going court cases as it pertained to medicinal operations.

Staff received a legal opinion during the creation of this report and the opinion was:

- Regarding medicinal use, the risk of the municipality to grant a Temporary Use Permit indicated minimal risk to the municipality other than that of a Political Risk where constituents could question Council's decision to allow a Temporary Use Permit (TUP) to an illegal operation. The medicinal use situation is currently in the court system and no timeframe to any decision is yet to be determined. The major jeopardy is on the proponents with the risk of police involvement.
- Regarding non-medicinal (recreational use) Cannabis Sales currently applying for a Provincial License: the legal advice on this was not to issue Temporary Use Permits as an interim vehicle, as this could potentially place the applicants at great risk of being denied a license from the Province. "They simply can't be operating prior to the Provincial inspection and the issuing of the license." Again,

as with the medicinal example, the risk to the municipality is nominal as it relates to a Temporary Use permit; it is a greater risk for the proponent.

The challenge as a municipality in reviewing this advice and suggested recommendations is that:

- It is currently viewed by the legal world and police that it is an illegal offence to operate a retail cannabis store without a provincial license
- The intent of these stores is to provide a service to the community who are either in medical need or for a recreational market
- There is an economic objective where the municipality seeks to encourage enterprise and new businesses to thrive and grow within the community
- Staff is recommending that no new business licenses should be issued until the Province cannabis license approval has been granted to the applicants.
- The fairness piece – the struggle in the resolutions to suggest that the medicinal retail that is currently “on hold” in the court system, may be granted a temporary use permit; whereas recreational retail stores who are applying through the Province would have to wait for the process to complete. Are these businesses willing to risk having a Temporary Use Permit to operate sooner only to risk losing the Provincial License?

Staff researched a cross section of available information from three other municipalities. Council to note that there are different Temporary Use Permits as sited in the Local Government Act. Section 493(2)(a) is a Temporary Use Permit to allow a use not permitted by Zoning Bylaw, as shown in the first couple of examples. As this is a permitted use in our Zoning Bylaw, the provision for a TUP for Grand Forks would be Section 493(2)(b) to specify conditions under which the temporary use may be carried on.

- Town of Gibsons – They have issued TUP's for cannabis use medicinal and non-medicinal retail; they have no local government cannabis provisions in their zoning bylaw. Recent newspaper shows an article where the town asked for legal advice after the granting of a TUP where a quote from a lawyer was, “It's illegal to operate a retail store without a provincial license so it doesn't matter what the municipality does.”
- District of Tofino – They do not have cannabis provisions in their zoning bylaw and have just approved (on February 12, 2019), the use of Temporary Use Permits to allow for a cannabis retail operation at selected locations for a period of three years. While their preamble makes mention to the recent legalization of recreational cannabis, their TUP application doesn't specify recreation cannabis only. Tofino is indicated an “intake period” for applications where proponents may apply within a time window and it appears that only three applications will be considered through Council.
- City of Nelson – There were existing business licenses issued to several medical cannabis operations, and in October, 2018, Council voted to have them remain in

effect until expiry of December last year; since that date no further extensions have been granted. The City of Nelson does have provisions for cannabis stores defined in their Zoning Bylaw.

Information from their planning department suggested to our staff that applicants could be approved for a TUP on the condition that they are moving through the provincial process and meet all provincial guidelines, and once they move through the provincial process and Council is satisfied with the operation of the dispensary, they can recommend to the Province that they receive a provincial license at which time a business license must be purchased. However, this was not a legal opinion.

The City of Nelson recently advised Council of four applications for Cannabis Retail stores that have applied to the Province for their license and are currently going through their municipal process; there was no mention of Temporary Use Permits in this report.

Benefits or Impacts

General

To provide support for the cannabis market as the province, municipalities and businesses move through the new processes

Strategic Impact



Community Engagement

- A Temporary Use Permit process requires consultation from the public



Community Livability

- As it pertains to medicinal needs or for recreation



Economic Growth

- Support of businesses within the cannabis industry

Policy/Legislation

Local governments have the ability to provide Temporary Use Permits under the criteria of the Local Government Act. Local governments play a pertinent role through the process of Provincial Licensing of Recreational Cannabis

Attachments

Nil

Recommendation

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Options

1. THAT Council accepts the report.
2. THAT Council does not accept the report.
3. THAT Council determines to direct staff to create a Temporary Use Permit application form in a one-year increment containing a disclaimer that applicants are applying at their own risk of Provincial cannabis license denial or legal closure, to address both medicinal and recreational retail Cannabis operations and to bring back to Council for review.