



## REQUEST FOR DECISION

Report Date: October 1, 2018  
Agenda Item Number:  
Meeting Date: October 3, 2018  
Report Author: Werner Fischer

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**TO: COUNCIL**

**FROM: INFRASTRUCTURE, OPERATIONS & DEVELOPMENT SERVICES**

**SUBJECT: LAND USE BYLAW AMENDMENT CONCERNING SEPARATION DISTANCES BETWEEN CANNABIS STORES AND SCHOOLS IF SEPARATED BY HIGHWAY 1**

### **RECOMMENDATION:**

**THAT Council give first reading to Bylaw No. 18-09 to amend the Land Use Bylaw.  
THAT Council hold a public hearing in respect to Bylaw No. 18-09 on November 7, 2018.**

### **REPORT SUMMARY**

The Land Use Bylaw (LUB) requires a separation distance of 50m between a Cannabis Store and the Storefront School at 116 Third Avenue in the downtown. Elsewhere, the separation distance between a school and a Cannabis Store is 125m measured from property line of the school to the external wall of the Cannabis Store. This amendment to the LUB

- more closely aligns the separation distance between Cannabis Store and a school with the separation distance between a Liquor Store and a school; and
- eliminates the separation distance between a Cannabis Store and a school if the school site and the Cannabis Store are on opposite sides of Highway 1.

### **COUNCIL AUTHORITY/PREVIOUS DECISIONS**

A report, Municipal Management of Cannabis: Prospective Amendments to the Land Use Bylaw was considered by Council's Committee of the Whole in April and an Open House was held in May.

Bylaw No. 18-08 to amend the LUB was given first reading by Council on July 4, 2018 and given 2<sup>nd</sup> and 3<sup>rd</sup> reading on September 19, subsequent to the public hearing.

### **CHIEF ADMINISTRATIVE OFFICER'S COMMENTS**

## BACKGROUND/CONTEXT/DISCUSSION

There have been some recent amendments to the *Municipal Government Act* (MGA) and the *Gaming, Liquor and Cannabis Regulation* (GLC Regulation) which affect how municipalities may regulate Cannabis Stores. These amendments do not affect the LUB as it is currently written, but they complicate or frustrate the full alignment of the way Cannabis Stores and Liquor Stores are regulated in a LUB. Full alignment would likely require fewer restrictions on Cannabis Stores and potentially more restrictions on Liquor Stores.

The following are some considerations in adjusting the separation distances for Cannabis Stores and schools:

1. There are no provincial regulations or requirements that require a municipality to address liquor stores in a LUB. But any facility licensed by the Alberta Gaming and Liquor Commission requires either a development permit or evidence of municipal authorization.
2. Separation distances between a Cannabis Store and a provincial health care facility, a school, and the boundary of a parcel designated as school reserve or municipal and school reserve are set out in Section 105(3) of the GLC Regulation.<sup>1</sup> Section 105(5) of that Regulation allows a LUB to “expressly vary” the separation distances prescribed by the Regulation.
3. Sections 640(7), 642(5) and 687(3) have been added to the MGA. The first states, in effect, that a LUB must be consistent with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting separation distances. Staff believe that the Town’s Bylaw is in compliance with this provision of the MGA since the GLC Regulation (as noted) allows a LUB to “expressly vary” the distances set out in the Regulation. It is notable that Section 642(5) of the MGA states that a development authority must not issue a development permit if the proposed development does not comply with the applicable requirements of the GLC Regulation respecting separation distances. If these requirements are set out in a LUB, they become the applicable requirements under the GLC Regulation. This new Section 642(5) effectively requires municipalities to treat Cannabis Stores as a separate use in the LUB<sup>2</sup> and it limits the variance powers granted to a development authority by a LUB. This new Section is supported and is consistent with another new Section [i.e. 687(3)(a.4)] that guides or limits the Subdivision and Appeal Board’s discretion in rendering a decision. This Section states the following:

*“683(3) In determining an appeal, the subdivision and development appeal board*

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<sup>1</sup> These separation distances are measured from the exterior wall of a Cannabis Store to either the school building or the health care facility, or to property line of the parcel containing the school or the facility.

<sup>2</sup> The MGA compels a development authority to issue a development permit for a “Permitted Use” if it complies with the LUB. Some Bylaws may not distinguish a “Retail Store” from a liquor or a cannabis store. Since Retail Stores are a Permitted Use in almost all commercial districts, this provision effectively places restrictions on a Cannabis Store regardless of how they are defined in a LUB.

*(a.4) must comply with the applicable requirements of the 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.”*

As noted, the applicable requirements are those set out in a LUB. The above Section does not limit entirely the Appeal Board’s authority in considering an appeal, but the wording in the above subsection (a.4) is specific and must be acknowledged.

4. The LUB, under Section 3.23 states the following:

*“1. A Liquor Store shall not be located within 150 m of the property line of a school site.*

*2. A Liquor Store shall be exempt from this requirement if the school site and the proposed Liquor Store site are on opposite sides of Highway 1.”*

Aligning the Cannabis Store requirements with the Liquor Store requirements has the effect of eliminating the separation distance between a Cannabis Store and a school where these are separated by Highway 1.

5. The LUB regulations relating to Cannabis Stores were intended to be clear and easy to administer and not subject to variance by the development authority. The 150m separation distance concerning Liquor Stores is subject to a 25% relaxation by the Development Authority which effectively makes the separation distance 112.5m rather than 150m.

6. Highway 1 is a barrier. This provides a rationale for adjusting the separation distance between a liquor store and a school. The exemption provided by the Bylaw also has the effect of preventing any existing liquor store on the south side of the Highway from becoming a “non-conforming use”. There is notable pedestrian and other traffic between the closest school and the some of the fast food restaurants on the south side of Highway 1. Pedestrian and other traffic will increase over time and the community and Council have indicated a desire for improvements to the pedestrian system.

7. A related issue is how should separation distances be measured? The separation distances proposed by Staff and the provincial regulations are measured in a straight line to the closest point on a property line. In the LUB (as currently adopted) they were envisaged as minimum setbacks. In one community, it is the practice to measure and evaluate the separation based on the expected walking distance between a Cannabis Store and a facility such as a school. This approach is reasonable if there is an extensive pedestrian system and if the separation distances are substantial and in the form of guidelines which are subject to interpretation. But this approach adds a layer of complexity to the approval and review process. And it may not fully acknowledge or address the behaviors of the targeted population. Measuring the walking distance assumes that individuals will cross roadways in a safe manner at designated cross walks and rely entirely on sidewalks or pathways to reach their destination. But this may not always be the case. In the event of an injury or a near miss crossing Highway 1, there is the potential that at least two issues will arise. First, is improving the pedestrian network and second is the issue of why this was placed so close to a school or other facility.

Maintaining the fence along the south side of Highway 1 should be addressed in all development permit applications if the subject property adjoins the Highway.

**OPTIONS/IMPLICATIONS/RELATED ISSUES/RISK (IF APPLICABLE)**

Instead of an outright exemption for any Cannabis Store on the south side of Highway 1, Council could consider a separation distance of less than 125 m from the property line of a school.

**CONCLUSION**

Amending the Bylaw as proposed aligns regulations respecting Cannabis Stores more closely with those for liquor stores.

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**REVIEWED & APPROVED BY R. ROYCROFT**



**OF THE TOWN OF STRATHMORE  
IN THE PROVINCE OF ALBERTA**

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**BYLAW NO. 18-09  
OF THE TOWN OF STRATHMORE  
IN THE PROVINCE OF ALBERTA**

**BEING A BY-LAW OF THE TOWN OF STRATHMORE IN THE PROVINCE OF ALBERTA TO AMEND THE LAND USE BYLAW NO. 14-11.**

**UNDER AUTHORITY** of and pursuant to the provisions of the Municipal Government Act, Revised Statutes of Alberta 2000, and amendments thereto, the Municipal Council of the Town of Strathmore in the Province of Alberta, **HEREBY ENACTS AS FOLLOWS:**

101. Bylaw No. 14-11 is amended by:

101.1 Deleting Subsection 1(b)(i) under Section 3.35 CANNABIS STORES and adding the following:

“1. A Cannabis Store

(b) must be located not less than 125 metres from the boundary of a parcel

(i) containing a School – School Authority or a School-Private subject to Sections 2. and 2.1 below;”

101.2 Adding Subsection 2.1 under Section 3.35 CANNABIS STORES as follows

“2.1 A Cannabis Store located on the south side of Highway 1 may be located any distance from the following and is not subject to any separation distance from the following:

(a) a School – School Authority, or

(b) a School-Private.”

**READ A FIRST TIME** this 3 day of October 2018

**PUBLIC HEARING HELD** this \_\_\_\_ day of \_\_\_\_\_, 2018

**READ A SECOND TIME** this \_\_\_\_ day of \_\_\_\_\_, 2018

**READ A THIRD AND FINAL TIME** this \_\_\_\_ day of \_\_\_\_\_, 2018

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**MAYOR**

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**CHIEF ADMINISTRATIVE OFFICER**