

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 9, 2014

Item 10, Report No. 36, of the Committee the Whole, which was adopted, as amended, by the Council of the City of Vaughan on September 9, 2014, as follows:

By approving the recommendation contained in the report of the Commissioner of Planning and the Commissioner of Legal and Administrative Services, dated September 2, 2014.

**10 THE FEDERAL MARIJUANA FOR MEDICAL PURPOSES REGULATION (MMPR)
AMENDMENTS TO THE VAUGHAN OFFICIAL PLAN 2010 AND ZONING BY-LAW 1-88
DIRECTION TO PROCEED WITH A LAND USE STUDY
FILE # 15.119**

The Committee of the Whole recommends that consideration of this matter be deferred to the Council meeting of September 9, 2014.

Recommendation

The Commissioner of Planning and the Commissioner of Legal and Administrative Services recommend:

1. THAT Policy Planning staff undertake a Land Use Study for the purposes of updating the Vaughan Official Plan – 2010 and Zoning By-law 1-88 to establish where and how commercial medical marijuana facilities may be permitted in the City, along with other pertinent regulations;
2. THAT upon completion of the study, a Public Hearing be scheduled to consider any recommended changes to the Vaughan Official Plan – 2010 and Zoning By-law 1-88.

Contribution to Sustainability

Not applicable.

Economic Impact

There is no new economic impact associated with the approval of this report as the proposed study will be undertaken without external resources.

Communications Plan

The Planning Act requires that any amendments to the Official Plan and Zoning By-law must receive a public hearing, in order to allow the public to provide input into the preparation of the amending documents. The statutory requirements of the Planning Act for notifying the public will be followed. Comment received at the future public hearing will be addressed in the subsequent Comprehensive Technical Report. This may result in additional public consultation.

Purpose

This report has the following purposes:

- To provide Council with an update on recent developments in federal policy – the Marijuana for Medical Purposes Regulation, which allow for the commercial production and distribution of medical marijuana across Canada;
- To obtain direction to proceed with a Land Use Planning study for the purposes of updating the Vaughan Official Plan – 2010 and Zoning By-law 1-88 to establish where and how commercial medical marijuana facilities may be permitted in the City along with other pertinent regulations; and

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- To obtain direction to hold a Statutory Public Hearing under the Planning Act to consider any proposed amendments to the Official Plan and Zoning By-law recommended by the study.

Background - Analysis and Options

Background

On June 11, 2013 the Commissioner of Legal & Administrative Services/City Solicitor, in consultation with the Commissioner of Planning, brought forward a report to Committee of the Whole entitled “Federal Medical Marijuana Access Regulation Amendments”. The purpose of the report was to advise Council of new amendments to the federal Medical Marijuana Access Regulations whereby commercial producers of marijuana will be licensed by the federal government as the sole producers of marijuana for medical use in Canada and to seek Council direction to examine the regulatory tools available to the City to minimize any negative impacts from operations physically located in the municipality.

Council at its meeting on June 25, 2013 approved the following recommendation of Committee of the Whole:

- 1) That Council direct staff to review the regulatory tools and options available to deal with commercial producers of marijuana who physically situate in the municipality, and to report back to Council in September to seek further direction.”

This report will update the current status of the federal legislation and identify the next steps in establishing the appropriate policy regime.

The Previous Regime for Regulating Medical Marijuana – Production in Dwelling Units Permitted

The federal government regulates the possession and trafficking of marijuana pursuant to the Controlled Drugs and Substances Act. This Act prohibits the possession and trafficking of marijuana, but also permits the Minister of Health and the Governor General in Council to issue exemptions for medical and scientific reasons, or for any other reason in the public interest. Pursuant to this authority, the Minister of Health passed the Medical Marijuana Access Regulations (MMAR) in 2001, which provided the regulatory framework to permit the possession and cultivation of marijuana for those with a demonstrated medical need. Under this process, qualified individuals were issued licenses to grow and use marijuana in their own dwelling unit, or buy marijuana from Health Canada for medical use.

A number of concerns were identified with this approach by law enforcement, fire officials and municipalities. These included:

- The potential for diversion to illegal uses;
- The risk of home invasion due to the presence of marijuana;
- Public safety risks, including electrical and fire hazards, stemming from the cultivation of marijuana in homes;
- Public health risks due to the presence of excess mould and poor air quality associated with the cultivation of marijuana.

The New Regime for Medical Marijuana – Production by Licensed Commercial Producers Only

To address the above concerns, the federal government published the Marijuana for Medical Purposes Regulations (MMPR) on June 19, 2013. The Marijuana for Medical Purposes Regulation created a new commercial medical marijuana production industry in Canada and

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outlines the general roles and responsibilities for municipal governments. In a news release dated December 16, 2012 the Minister of Health stated that, “production will no longer take place in homes and municipal zoning by-laws will need to be respected”. Therefore, it is prudent at this time to consider the parameters of the new regulations and understand the potential approaches

to land-use policies that may be pursued.

The MMPR features a number of changes from the older regulatory regime. The MMPR creates a commercial licensing program that allows for large scale production and distribution of marijuana for medical purposes by licensed producers. Individuals will no longer be permitted to cultivate for themselves or others and production must take place indoors and is prohibited in residential dwellings. Licensed producers will need to follow strict federal regulatory requirements on security, good production practices, packaging and shipping, record keeping, and distribution. Following these requirements is necessary for producers to receive a license. The license is conditional, subject to follow-up Health Canada inspections.

In addition, Health Canada will no longer produce medical marijuana for patients, instead allowing them to choose between commercial producers and different strains. Health Canada will also no longer provide patients with a license to possess marijuana; patients must now receive a prescription from a medical doctor that will then be given to a licensed producer.

The MMPR requires that patients may only receive their marijuana for medical purposes directly from licensed producers, which must be distributed via bonded courier either to the patients' residence or their medical care provider. The MMPR prohibits distribution of medical marijuana through both retail store sales and directly from the place of production.

April 1, 2014 was intended to mark the end of the previous regulatory framework (MMAR). Once the MMAR was repealed, the only way to access medical marijuana would be through a licensed producer under the MMPR. However, on March 21, 2014 the Federal Court of Canada granted an application from medical marijuana patients under the MMAR seeking a temporary injunction to preserve the status quo until their Constitutional challenge is heard. This would allow Medical Marijuana patients to continue to grow marijuana for their own use. The federal government is currently attempting to overturn that injunction through the courts. The final determination of this matter could have major effects on the sustainability of the new program, if patients were to continue to be allowed to grow their own marijuana. This could ultimately affect the viability of current and future commercial growers.

Implications for the City of Vaughan

From the City's perspective, the MMPR is an improvement on the MMAR, which has been replaced.

Previously, Health Canada issued grow licenses to individuals in residential areas without notifying local authorities of their whereabouts. This system made the municipal responsibility of monitoring and enforcing safety standards in residential areas more challenging. Fire and police services across Canada have reported that licensed growers under the MMAR program were not following proper zoning, fire, and safety regulations.

The new MMPR will require all prospective medical marijuana producers to notify local authorities of their application to Health Canada for a license to distribute and/or grow, and again upon issuance of the license. The locations of the sites and activities that will take place are required to be provided to local authorities.

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There is now an opportunity for the City of Vaughan to determine the location and siting of medical marijuana production facilities by way of policy and zoning. Health Canada has stated that facilities must conform to local land-use policies and by-laws. While Health Canada will inspect facilities for compliance with the MMPR, municipalities are responsible for ensuring compliance with their own policy, building standards, and zoning. However, it is important to note that producers will not have their license revoked by Health Canada if they do not conform to local zoning and building standards.

A review of the City of Vaughan Official Plan 2010 and Zoning By-law 1-88 will allow the City to address issues associated with Medical Marijuana Facilities not captured through the current land use planning and building permit processes and will assist in dealing with other public safety issues that may arise.

Vaughan Official Plan 2010

The City of Vaughan Official Plan 2010 does not specifically address Medical Marijuana production as a permitted use. However, this is primarily an agricultural/horticultural use and is not considered to be a permitted use in Employment Areas under VOP 2010. No other land use designations would permit the use.

Two of the Employment Area land use designations, General Employment and Prestige Employment, should be assessed for their capacity to accommodate these facilities. Both designations permit "Industrial uses including, manufacturing, warehousing (but not a retail warehouse), processing and distribution".

However, there are certain environmental issues associated with the growth of medical marijuana which may be incompatible with some employment areas or individual uses. The MMPR requires these facilities to be equipped with an air filtration system to prevent the escape of odours and pollen. Additional measures will need to be taken if plant material is incinerated onsite. If facilities are connected to the municipal water system, there will need to be measures in place to ensure that any pollutants are captured on site before wastewater is returned to the municipal system.

As such, there may also be the need to identify locational and development standards for inclusion into VOP 2010 to ensure that medical marijuana operations do not locate where they may cause land use conflicts.

Zoning By-law 1-88

Currently medical marijuana facilities are not permitted in any zoning category of Zoning By-Law 1-88. Two zoning categories, being the Agricultural and Employment Area zones have been considered by the Building Standards Department as possible categories to accommodate medical marijuana facilities.

Agricultural zones do not currently permit medical marijuana facilities. Federal legislation stipulates that marijuana cultivation must take place indoors, and buildings within Agricultural zones are not permitted to contain more than one use per unit. It is understood that medical marijuana facilities will contain multiple functions in each unit, such as cultivation, processing, and packaging.

The Employment Area Zones provide an explicit list of permitted uses. The cultivation of medical marijuana is not one of the identified uses. There are other considerations that are unique to these facilities: they are horticultural activities, have strict security requirements, significant air ventilation and water purification needs, and fire safety. This speaks to the need for specific guidance as to where such operations may be permitted.

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Building Standards and Planning staff have received multiple inquiries regarding the City's stance on medical marijuana facilities; however no formal applications have yet been submitted. To date, staff has informed interested parties that an Official Plan and zoning amendment would be required for approval.

Initial Options for Regulation

There are a number of options available to further regulate medical marijuana operations in the City. The following were identified in the June 2013 report. These will be considered in the forthcoming study.

- Capping the number of commercial producers, similar to adult entertainment parlours;
- Restricting the location of commercial users to certain zones;
- Limiting the size of the facility used by the commercial producer;
- Requiring a minimum distance between commercial producers;
- Requiring that any facility used for commercial production be a stand-alone building;
- Requiring odour control measures to prevent nuisance to the surrounding properties;
- Placing restrictions on signage (no mention of the word "marijuana" for example);
- Requiring a minimum distance from residential areas, schools, playgrounds, community centres, etc.
- Requiring a building permit for any new construction or conversion of an existing building to ensure that safety measures are in place for such use.

The study will provide guidance on the type of regulations that should be applied and the appropriate means of implementing them. This could include the Planning Act tools (the Official Plan and/or zoning by-law) or regulation under different enabling legislation such as the Municipal Act.

A number of municipalities have already amended or are in the process of amending their planning documents to respond to the medical marijuana initiative. Staff has undertaken a preliminary review of the approaches taken and they are summarized in Attachment 1. Staff will continue to consult with other municipalities to gain an understanding of how medical marijuana facilities are being regulated as well as potential issues that are being experienced. Any lessons learned will assist in the development of the City's regulatory regime.

The Study Outline.

Staff is satisfied that this study can proceed without the assistance of external consulting services. Policy Planning staff will lead the study and work with other City departments to develop the policies and standards required to safely accommodate this use and ensure its compatibility with the surrounding environment. Development Planning, Building Standards, Legal Services, By-law and Compliance and the Vaughan Fire and Rescue Services are expected to play important roles in the policy development process. Consultation with York Region Police is also proposed. A draft study outline is set out below. The projected timeline targets May - June 2015 for a public hearing on the resulting amendments to Vaughan Official Plan 2010 and Zoning By-law 1-88.

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***DRAFT STUDY OUTLINE
(September 2, 2014)***

***REGULATORY RESPONSE TO PERMITTING THE PRODUCTION OF MEDICAL
MARIJUANA IN THE CITY OF VAUGHAN***

PURPOSE

To prepare a background study that will form the basis for a future staff report, which will recommend any necessary amendments to the City of Vaughan Official Plan and Zoning By Law to identify where medical marijuana facilities may be permitted and to establish any necessary standards to ensure compatibility of such use with adjacent land uses.

DELIVERABLES

The Study;
The Covering Staff Report; and
The Draft Official Plan and Zoning By-law Amendments.

THE STUDY CONTENTS

The study will address the following as the basis for establishing recommended Official Plan policies and Zoning standards, which will form the basis for the subsequent approval process under the Planning Act. The study will address the following matters:

INTRODUCTION

- a) Reason for Pursuing the Amendments
- b) The Federal Legislation
- c) The Previous Regulatory Regime Governing Production of Medical Marijuana
- d) The Limits of the City's Regulatory Authority
- e) Contents of the Federal Legislation: The Federal Regulatory Regime
- f) The Provincial Regulatory Regime
- g) Status of the British Columbia Court of Appeal Decision

THE CURRENT STATE OF REGULATION UNDER THE PLANNING ACT IN THE CITY OF VAUGHAN

- a) Conformity with the York Region Official Plan
- b) Conformity with VOP 2010
- c) Conformity with By-law 1-88

COLLATERAL REGULATIONS UNDER OTHER ACTS AND MUNICIPAL BY-LAWS

- a) Potential implications for Licensing and Inspection – Region of York;
- b) Potential implications for Licensing and Inspection – City of Vaughan.

ENVIRONMENTAL AND COMPATIBILITY ISSUES ASSOCIATED WITH THE GROWTH OF MEDICAL MARIJUANA

- a) Description of a Typical Medical Marijuana Operation as Envisioned by the Federal Legislation
- b) Identification of potential Impacts that may affect compatibility with Adjacent Land Uses

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- Odour
 - Humidity
 - Security
 - Stigma
 - Biohazard
 - Fire
- c) Available Mitigation Measures

RESPONSE TO THE REGULATION OF MEDICAL MARIJUANA PRODUCTION BY GTA MUNICIPALITIES

- a) Status of Responses
- b) The Nature of the Responses: The Regulating Official Plan and Zoning By-law Amendments (To the Point of a Statutory Public Hearing)
 - Brampton
 - Caledon
 - Mississauga
 - Richmond Hill
 - Markham
 - Aurora
 - King
 - Newmarket
 - Lessons Learned

CONCLUSIONS: BASIS FOR THE RECOMMENDED POLICY REGIME

- a) Recommended Amendments to the Official Plan
- b) Recommended Amendments to the Zoning By-law
- c) Other Regulatory Measures

APPENDICES

- A Draft Official Plan Amendment
- B Draft Zoning By-law Amendment

TIMELINE

It is expected that the study will take approximately six months to complete, targeting May - June 2015 for the resulting public hearing report to Committee of the Whole. The final report will follow with timing to be dependent on issues raised at the Public Hearing.

Relationship to Vaughan Vision 2020/Strategic Plan

This report reflects the City's commitment to Organizational Excellence through the Management of Growth & Economic Well-being; and to Service Excellence by Promoting Community Safety, Health & Wellness and Leading & Promoting Environmental Sustainability.

Regional Implications

As part of the study process, the Region of York will be consulted for the purposes of confirming the nature and extent of any regulatory role that it plays in the approval of Medical Marijuana facilities. Resulting amendments to the City's Official Plan – 2010 and Zoning By-law 1-88 will be in conformity with the policies of the Region of York's Official Plan. The Region will be the approval authority for an Official Plan amendment resulting from this process.

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Conclusion

The production of medical marijuana is a federally regulated business operating under the Marijuana for Medical Purposes Regulation. The City will need to update its regulatory regime to accommodate this use in a manner that ensures that such facilities are located to minimize any compatibility issues with adjacent lands. Therefore, a land use study should be undertaken for

the purposes of amending the City's Official Plan and Zoning By-law to establish policies and standards to determine where and how these uses are to be permitted. Therefore it is recommended that the recommendations of this report be approved to direct staff to proceed with the land use study and the scheduling of a public hearing to consider any resulting amendments to the Vaughan Official Plan – 2010 and Zoning By-law 1-88.

Attachments

1. Comparison Chart: Response to MMPR by Ontario Municipalities

Report prepared by:

Kyle Fearon, Planner I, ext. 8776

Roy McQuillin, Acting Director of Policy Planning, ext. 8211

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)

COMMITTEE OF THE WHOLE SEPTEMBER 2, 2014

THE FEDERAL MARIJUANA FOR MEDICAL PURPOSES REGULATION (MMPR) AMENDMENTS TO THE VAUGHAN OFFICIAL PLAN 2010 AND ZONING BY-LAW 1-88 DIRECTION TO PROCEED WITH A LAND USE STUDY FILE # 15.119

Recommendation

The Commissioner of Planning and the Commissioner of Legal and Administrative Services recommend:

1. THAT Policy Planning staff undertake a Land Use Study for the purposes of updating the Vaughan Official Plan – 2010 and Zoning By-law 1-88 to establish where and how commercial medical marijuana facilities may be permitted in the City, along with other pertinent regulations;
2. THAT upon completion of the study, a Public Hearing be scheduled to consider any recommended changes to the Vaughan Official Plan – 2010 and Zoning By-law 1-88.

Contribution to Sustainability

Not applicable.

Economic Impact

There is no new economic impact associated with the approval of this report as the proposed study will be undertaken without external resources.

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Background - Analysis and Options

Background

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A number of concerns were identified with this approach by law enforcement, fire officials and municipalities. These included:

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The Study Outline.

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DRAFT STUDY OUTLINE (September 2, 2014)

REGULATORY RESPONSE TO PERMITTING THE PRODUCTION OF MEDICAL MARIJUANA IN THE CITY OF VAUGHAN

PURPOSE

To prepare a background study that will form the basis for a future staff report, which will recommend any necessary amendments to the City of Vaughan Official Plan and Zoning By Law to identify where medical marijuana facilities may be permitted and to establish any necessary standards to ensure compatibility of such use with adjacent land uses.

DELIVERABLES

The Study;
The Covering Staff Report; and
The Draft Official Plan and Zoning By-law Amendments.

THE STUDY CONTENTS

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- b) The Federal Legislation
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THE CURRENT STATE OF REGULATION UNDER THE PLANNING ACT IN THE CITY OF VAUGHAN

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COLLATERAL REGULATIONS UNDER OTHER ACTS AND MUNICIPAL BY-LAWS

- a) Potential implications for Licensing and Inspection – Region of York;
- b) Potential implications for Licensing and Inspection – City of Vaughan.

ENVIRONMENTAL AND COMPATIBILITY ISSUES ASSOCIATED WITH THE GROWTH OF MEDICAL MARIJUANA

- a) Description of a Typical Medical Marijuana Operation as Envisioned by the Federal Legislation
- b) Identification of potential Impacts that may affect compatibility with Adjacent Land Uses
 - Odour
 - Humidity
 - Security
 - Stigma
 - Biohazard
 - Fire
- c) Available Mitigation Measures

RESPONSE TO THE REGULATION OF MEDICAL MARIJUANA PRODUCTION BY GTA MUNICIPALITIES

- a) Status of Responses

b) The Nature of the Responses: The Regulating Official Plan and Zoning By-law Amendments (To the Point of a Statutory Public Hearing)

- Brampton
- Caledon
- Mississauga
- Richmond Hill
- Markham
- Aurora
- King
- Newmarket
- Lessons Learned

CONCLUSIONS: BASIS FOR THE RECOMMENDED POLICY REGIME

- a) Recommended Amendments to the Official Plan
- b) Recommended Amendments to the Zoning By-law
- c) Other Regulatory Measures

APPENDICES

- A Draft Official Plan Amendment
- B Draft Zoning By-law Amendment

TIMELINE

It is expected that the study will take approximately six months to complete, targeting May - June 2015 for the resulting public hearing report to Committee of the Whole. The final report will follow with timing to be dependent on issues raised at the Public Hearing.

Relationship to Vaughan Vision 2020/Strategic Plan

This report reflects the City's commitment to Organizational Excellence through the Management of Growth & Economic Well-being; and to Service Excellence by Promoting Community Safety, Health & Wellness and Leading & Promoting Environmental Sustainability.

Regional Implications

As part of the study process, the Region of York will be consulted for the purposes of confirming the nature and extent of any regulatory role that it plays in the approval of Medical Marijuana facilities. Resulting amendments to the City's Official Plan – 2010 and Zoning By-law 1-88 will be in conformity with the policies of the Region of York's Official Plan. The Region will be the approval authority for an Official Plan amendment resulting from this process.

Conclusion

The production of medical marijuana is a federally regulated business operating under the Marijuana for Medical Purposes Regulation. The City will need to update its regulatory regime to accommodate this use in a manner that ensures that such facilities are located to minimize any compatibility issues with adjacent lands. Therefore, a land use study should be undertaken for the purposes of amending the City's Official Plan and Zoning By-law to establish policies and standards to determine where and how these uses are to be permitted. Therefore it is recommended that the recommendations of this report be approved to direct staff to proceed with the land use study and the scheduling of a public hearing to consider any resulting amendments to the Vaughan Official Plan – 2010 and Zoning By-law 1-88.

Attachments

1. Comparison Chart: Response to MMPR by Ontario Municipalities

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Respectfully submitted,

Per:

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/lm

Comparison Chart: Response by other municipalities to Marihuana for Medical Purposes Regulations

Municipality	Permitted Areas	Setbacks	Definition	By-law
City of Toronto	Industrial	70m from sensitive zones and uses such as residential, schools, places of worship, day nurseries	Medical Marijuana Production Facility	Adopted recommendations on April 4
City of Ottawa	Industrial	150m from residential and institutional	Medical Marijuana Production Facility	By-law 2014-74 passed February 2014. Under appeal at OMB
City of Windsor	Industrial	N/A		
Markham	Employment	N/A		
Clearview Township	Agricultural/rural areas	N/A		
Fort Erie	Agricultural, industrial, rural, existing open space	70m from residential and sensitive uses	Medical Marijuana Production Facility	By-law 07-2014 passed January 2014
Smith Falls	Industrial	N/A	As-of-right in industrial areas	