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**Date:** May 23, 2017  
**To:** Mayor and Council  
**Author:** Jennifer Astrologo, Director of Corporate Services  
**RE:** Medical Marihuana  
**Report No.:** CS-2017-013

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## **AIM**

The purpose of this report is to provide Council with information regarding the *Access to Cannabis for Medical Purposes Regulations* ("ACMPR").

## **BACKGROUND**

During the March 27, 2017 Regular Meeting of Council, the following motion was carried:

279-2017 Moved by Councillor Patterson, seconded by Deputy May Queen

That Administration provide a report setting out the rights of medical marihuana growers and the rights of the neighbouring property owners to include responses to the following items: what kind of waste material is produced from growing the plants and how is it disposed of; what is the municipality's role for allowing medical marihuana to be grown in a residential area; does the municipality have guidelines on the exhaust of the fumes; does Health Canada have guidelines for mandatory filter installations to deal with the odour and does Health Canada have distance requirements between the place of growth and neighbouring properties; and FURTHER, that the Kingsville Police Services Board be circulated with this motion.

The authority to regulate medical marihuana production is within the jurisdiction of the Federal Government.

In 1999 the Federal Government originally provided for access to medical marihuana through an exemption provision of the *Controlled Drugs and Substances Act* (the "CDSA"). This subsequently led to the implementation of the *Marihuana Medical Access Regulations*

("MMAR") in 2001. As a result of various court decisions, the Federal Government sought changes to the *MMAR* and in June of 2013, the *MMAR* was repealed and the *Marihuana for Medical Purposes Regulations* were implemented.

Under the *MMPR* only licensed producers were permitted to sell medical marihuana products. Therefore, individuals with medical needs could only obtain these products from licensed producers. The constitutionality of this framework was challenged and in February 2016, the Supreme Court of Canada<sup>1</sup> held that requiring individuals to obtain medical marihuana products only from licensed producers was a *Charter* violation. In response to that decision the Federal Government enacted the *ACMPR* and the *MMPR* was repealed.

## **DISCUSSION**

Health Canada is the Federal Ministry responsible for the oversight and administration of the *ACMPR*.

The *ACMPR* is the enacted regulation under the *Controlled Drugs and Substances Act* which sets out the framework to produce medical marihuana as a licensed producer (commercial production) or as a designated person (individual production). It contains detailed provisions outlining the requirements that entities and individuals must fulfill before being permitted to produce medical marihuana. Licences and designations are issued exclusively by Health Canada.

### *Commercial Production – Licences*

There are stringent health and safety and security requirements that must be adhered to before producing and selling medical marihuana on a commercial level. The *ACMPR* requires the applicant to notify the municipality, the local fire department, and local law enforcement when it files an application to be a licensed producer. Further, licensed producers are expected to obey provincial and federal legislation, in addition to all municipal by-laws.

Provision 4.46 of the Town's Comprehensive Zoning By-law outlines the zoning requirements for commercial facilities that produce medical marihuana. Specifically, any commercial operation would be subject to a number of requirements, including, but not limited to: site plan control, minimum setbacks from areas zoned residential, institutional or recreational, and signage restrictions.

### *Individual Production - Designation*

Being designated to produce marihuana for one's own medical purposes is different than the commercial licence described above. Under Part 2 of the *ACMPR*, an individual can apply to Health Canada to produce, or to designate another individual to produce on their behalf, a limited amount of medical marihuana for personal consumption. This application process is administered exclusively by Health Canada. Similar to the commercial licensing process, there are stringent requirements that must be met before a designation will be

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<sup>1</sup> *Allard v. Canada*

issued. Once designated, an individual is required to take all necessary steps to ensure the security of the medical marihuana in his/her possession, storage and production.

However, a designated individual is not required to notify the municipality of his/her application and it is not uncommon for these types of operations to be contained within that individual's residence. In fact, Health Canada urges designated individuals to be discreet about their productions and makes a number of safety and security recommendations (i.e. installation of a home security/alarm system, ensuring plants are not visible from the outside, minimizing odours from the residence, disposal, storage of products in childproof containers etc).

Although the Town has some regulatory authority over a commercial production facility, that oversight does not apply to individuals who are designated under the legislation and who produce medical marihuana in their homes. In fact, the Town is not entitled to know the identity of a designated individual or the location to which that designation applies. With respect to waste material, Health Canada does recommend that excess marihuana is disposed of by rendering it unfit for consumption, which may include blending it with water and mixing with cat litter.

As noted above, it is commonplace for designated individuals to grow product in their homes. Although a municipality has no authority to outline specific requirements or controls as related to production, the *ACMPR* does prohibit a designated individual from growing both inside and outside simultaneously. Further, if production is outdoors, the land in which production occurs cannot have any points in common with the boundary of land on which a school, public playground, day care facility or other place frequented mainly by persons under 18 years of age.

The Ministry of Health has complete regulatory authority over individuals who are designated under the legislation to produce medical marihuana. The municipality has no ability to intervene or provide input on this process. Therefore, if there is a dispute between a designated individual and a neighbouring property owner, it is recommended that the property owner contact either the police or Health Canada with respect to their concerns.

## **LINK TO STRATEGIC PLAN**

To maintain and improve the health, safety and well-being of our residents.

## **FINANCIAL CONSIDERATIONS**

There are no financial considerations.

## **CONSULTATIONS**

None.

## RECOMMENDATION

That Council receives the Report of J. Astrologo, Director of Corporate Services, regarding medical marihuana regulation, dated May 23, 2017, for information.

*Jennifer Astrologo*

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Jennifer Astrologo, B.H.K. (hons), LL.B  
Director of Corporate Services

*Peggy Van Mierlo-West*

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Peggy Van Mierlo-West, C.E.T.  
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