



RESORT MUNICIPALITY OF WHISTLER

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STAFF REPORT TO COUNCIL

PRESENTED: December 7, 2021 **REPORT:** 21-137
FROM: Planning – Projects **FILE:** 7657.00
SUBJECT: RESORT MUNICIPALITY OF WHISTLER CANNABIS RETAIL STRATEGY

RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICER

That the recommendation of the General Manager of Resort Experience be endorsed.

RECOMMENDATION(S)

That Council direct staff to proceed with developing the recommended approach to administer and regulate cannabis retail in Whistler described in this Administrative Report 21-137, including a policy framework, a Temporary Use Permit framework, bylaw amendments, and a stakeholder and community engagement strategy.

PURPOSE OF REPORT

The purpose of this report is to provide Council with an overview of the recommended approach to permitting and regulating cannabis retail in Whistler, and to seek endorsement of a work program and engagement strategy to bring forward an Official Community Plan (OCP) - based framework outlining community goals, objectives, and policies to guide consistent decision-making, and bylaw amendments to the Zoning and Parking Bylaw No. 303, 2015 (Zoning Bylaw), Land Use Procedures and Fees Bylaw No. 2019, 2012 (Fees Bylaw), and to the Business Licence and Regulation Bylaw No. 2253, 2019 (Business Licence Bylaw), for regulation of cannabis retail in Whistler.

Information Report Administrative Report (Decision or Direction)

DISCUSSION

Background

The federal *Cannabis Act* made the consumption and retail sale of cannabis legal in Canada as of October 2018, subject to provincial and local government regulations. The BC provincial *Cannabis Control and Licensing Act* makes the Province the licensing authority for retail sales licences for cannabis through the Liquor and Cannabis Regulation Branch (LCRB), subject to local government approval. Local governments have the authority to regulate the location of cannabis retail stores under its zoning power. Local governments also must be in support of a particular location for a cannabis retail store for the Province to issue a licence under the *Cannabis Control and Licensing Act*.

While many communities have created regulatory schemes to approve and license cannabis retail, cannabis retail has been prohibited as a use in all zones by the Resort Municipality of Whistler's (RMOW) Zoning Bylaw, and the RMOW has declined to support cannabis retail stores in Whistler. In 2014 the RMOW amended zoning and business licencing bylaws to allow cannabis production for one cannabis production facility licensed for medical production, and updated the same in 2017 to align with changes to federal cannabis legislation, and reinforcing Whistler's prohibition on cannabis retail. This prohibition provided the greatest amount of local control over this land use, and was put in place pending further review and consideration of permitting cannabis retail in Whistler. The RMOW has now had an opportunity to learn from the experiences and regulatory schemes of other BC communities, and the general acceptance of cannabis retail as a supported land use. Staff recognize that this work program item has been delayed and are now prepared to bring forward a focused approach to cannabis retail that benefits from the lessons learned and that supports and is consistent with the municipality's updated OCP.

Implementation of a cannabis retail regulatory system provides an opportunity for the RMOW to ensure community goals and objectives outlined in the OCP are supported. Staff have identified a regulatory approach that will allow for a permitting system for cannabis retail that addresses the location and potential number of cannabis retail locations, and will serve to further identified community priorities such as health, safety, and community well-being, resort and community balance, climate action and sustainability, and reconciliation. This can be accomplished by retaining discretionary approval for each potential individual retail location.

Recognizing the RMOW's limited land supply, growth management policies, and ongoing desire for a diverse and vibrant commercial sector, staff will introduce a system that provides for limiting approval to a select number of locations, providing reasonable access while limiting proliferation. This system will enable the RMOW to oversee approval and monitoring of cannabis retail, which will be thoughtfully integrated within existing land use patterns, consistent with community objectives and land use planning in Whistler, reflect lessons learned by other municipalities since federal legalization, and support the goals, objectives and policies of the OCP.

Scope of Jurisdiction

Responsibility for cannabis legalization, production, and distribution is divided among the three levels of government. Local governments have the authority, granted by the province, to regulate land use (location of retail stores) and business activities (including creating operational guidelines within the authority of the *Community Charter*).

Federal Legislation

- The Federal Government of Canada legalized recreational cannabis across the country with the adoption of the *Cannabis Act* on October 17, 2018. The *Cannabis Act* has created a framework for cannabis production and distribution, as well as regulation and enforcement of criminal offences - including measures to protect youth. On October 17, 2019, the *Cannabis Act* was updated to legalize edibles, topical applications and extracts.

Provincial Legislation

- Through legislation including the *Cannabis Control and Licensing Act*, the Province of British Columbia established the legal framework for the possession, use, and retail licensing of cannabis. This is based on the familiar liquor store model. The *Cannabis Distribution Act* established the Liquor and Cannabis Regulation Branch (LCRB) as the wholesale distributor of

non-medical cannabis in the province and regulator of BC cannabis stores. Applications for a provincial cannabis licence must include a background check, financial information, the location of the proposed store, and floor plan including security elements. The provincial rules also require that cannabis products are not visible to the public and no other products can be sold (e.g. snacks, tobacco, etc).

Local Government

- Local governments retain the power to allow or prohibit cannabis retail as a land use and create separation from sensitive locations and between stores through the zoning power; establish business licence application fees and operational requirements through the business regulation power.

Analysis

RMOW staff have reviewed different approaches taken by BC municipalities to regulating cannabis retail as a land use. Municipalities in BC have typically chosen one of three approaches: adding cannabis retail as an outright use in specific zones, approving the use in a case-by-case rezoning, or issuing a Temporary Use Permit (TUP) on a case-by-case basis.

While an outright zoning approach might lower the administrative burden of making land use decisions on a case-by-case basis, it reduces the level of control retained by the municipality to oversee the location and number of cannabis retail locations within the municipality. Both site-specific rezoning and the TUP process provide municipalities with the authority to decide whether an application should be approved or denied based on its merits. Implementation of a regulatory scheme based on TUPs could be implemented more quickly than one based on rezoning, and the approval time for each individual retail location would be quicker as well.

Pros and cons of the three approaches as it relates to the RMOW are outlined in Table 1 below.

Table 1: Regulatory Approach Analysis for Retail Cannabis

Outright zoning	Site-specific rezoning	Temporary Use Permit
<ol style="list-style-type: none"> 1. Update RMOW Zoning Bylaw to include cannabis retail as an allowable use in select zones. 2. Land use permitted in applicable zone, applicant proceeds to Development Permit (if applicable) and Business Licence applications. 	<ol style="list-style-type: none"> 1. Update RMOW Zoning Bylaw with definition of cannabis retail. 2. Applicant required to apply for rezoning to permit retail cannabis on a site by site basis, before proceeding to Development Permit (if applicable) and Business Licence applications. 	<ol style="list-style-type: none"> 3. Update RMOW Zoning Bylaw to define Cannabis Retail and designate TUP Area(s). 4. Applicant required to apply for TUP before proceeding to Development Permit (if applicable) and Business Licence applications.
Opportunities and Limitations		
<ul style="list-style-type: none"> • No opportunity for discretionary approval if a permitted use in applicable zone. • Reliance on any distance rules to prevent proliferation. 	<ul style="list-style-type: none"> • Rezoning approval is discretionary: RMOW retains authority for approval that aligns with specific community objectives. • Site-specific zoning locks in location. • Full rezoning process required for each location. 	<ul style="list-style-type: none"> • TUP approval is discretionary: RMOW retains authority for approval that aligns with specific community objectives. • Once TUP regulations are in Zoning Bylaw, TUP permit process provides for expedited approval. May be approved by Council (or delegated approval), without further bylaws.

Proposed Regulatory Framework

Of the three main approaches contemplated, staff propose a TUP approach to balance a high level of municipal control over the number of retail stores and location of cannabis retail in our community, with efficiency and certainty of approval for proponents. A TUP may allow a use not permitted by the Zoning Bylaw and specify the conditions under which the temporary use may be carried out. TUPs authorize the specific use for three years, and can be renewed once for an additional three years. Once the initial six-year period is up, the RMOW could consider a site-specific rezoning to authorize the use permanently. This allows the RMOW to maintain discretion over the approval process and a degree of on-going oversight through permit conditions and renewal requirements.

While an outright zoning approach to permitting cannabis retail in specific zones might reduce the administrative burden and approval timelines relative to an approach requiring site specific rezoning, this would eliminate the ability for discretionary approvals. A TUP approval can be processed more quickly than a site-specific rezoning, and the 3-year renewable term allows the RMOW to maintain ongoing oversight of the land use. The municipal approval process would identify supported locations and necessary approvals, and would be created to align and coordinate with the provincial approval process.

By maintaining case-by-case approval for cannabis retail stores through a TUP approach, the RMOW maintains authority to select successful proponents based on considerations that are consistent with the community's vision and updated OCP and advance community and municipal policy goals. This approach provides the RMOW with the authority to decide whether each application should be approved or denied based on its merits such as context, neighbourhood fit, public interest and the ability to limit the number of locations. This approach is consistent with cannabis retail regulation in other BC municipalities.

The proposed regulatory framework would require amending the Zoning Bylaw to designate TUP areas where the RMOW will consider allowing cannabis retail as a temporary use and amending the Business Licence Bylaw to introduce a fee category and operational requirements.

Staff propose creating TUP areas to allow one retail cannabis location in each of Function Junction and Creekside, and two locations in Whistler Village. Another location that could be considered is in the Nesters Plaza. This allocation of locations will ensure access to retail cannabis for residents and visitors, while limiting proliferation. Distancing requirements between cannabis locations can be added to avoid clustering of the two locations in the Village.

The *Local Government Act* (LGA) Part 14 s. 460(2) requires that the RMOW consider all applications. Under the same section of the LGA, local governments must also define the procedures under which an application can be made. The application and review process will ensure procedural fairness.

Policy Framework

A framework based on relevant OCP goals, objectives and policies will help provide direction on regulations, and guide review of applications and consistency in decision-making.

The recommended regulatory approach reflects an intentionally cautious approach consistent with the community's values and policies expressed in the Official Community Plan including upholding the resort experience, while balancing community and guest demand with community safety and a family-friendly environment.

Bylaw Amendments

Bylaw amendments proposed to form the overall regulatory framework will include:

- Zoning Bylaw to designate the TUP areas, to add the definition of cannabis retail, and distancing requirements;
- Business Licence Bylaw to create a business licence fee category and outline operational requirements for cannabis retail stores; and
- Fees Bylaw to amend the application fee category, outline application requirements, and add application fees for processing TUPs for cannabis retail.

The LGA Part 14 s. 479 defines how local governments can regulate the location, size, and siting of uses through zoning bylaws. Under Sections 8(6) and 15(1) of the *Community Charter*, local governments can regulate licensing and operation of businesses by setting fees, application requirements, and operational requirements, such as business hours and security requirements.

Under the proposed regulatory system, TUP applications will be evaluated against any specified conditions regarding the issue of TUPs and the OCP and recommendations will be made to Council for consideration of application approval. Approval of a particular application would be conditional until confirmation of provincial approval, at which point the RMOW would be able to finalize approval and issue a business licence. The benefits of this are that it maintains the RMOW's discretionary approval, while still enabling an overall quicker permit approval timeline than rezoning.

Provincial Approvals

The provincial Liquor and Cannabis Regulation Branch (LCRB) is responsible for issuing licences for cannabis retail stores. Cannabis retail stores must obtain a cannabis retail licence from the LCRB in order to operate. As part of the application process, the LCRB provides notice of the cannabis applications received to the local government, and will not issue a provincial licence until a positive recommendation from the local government is received. As part of the application process, local governments that decide to give comments and recommendations must receive public input on the proposed location of the cannabis business; if the local government is not supportive of the application and does not provide a recommendation that the licence be issued, the LCRB cannot issue the licence and the application process ends. Alternatively, if the local government provides a positive recommendation for the application, the LCRB will review the recommendation, but still maintains discretion whether or not to issue the licence.

Policy Development and Community Engagement

Engagement with industry, key stakeholders, and the community is proposed to occur before a cannabis regulatory scheme is adopted, through a combination of online forums with industry, in-person meetings with key stakeholders, a public input period, and information sharing via the RMOW's website, supported by social media.

Canadians are accustomed to legal cannabis and cannabis retail in their communities, and staff believes that the desire for cannabis retail in Whistler, from both visitors and community members, has been demonstrated by the establishment of retail in all other adjacent communities, and by the correspondence that has been received since 2017 when the municipality implemented its currently existing zoning regulations related to Cannabis retail. Since cannabis was legalized in Canada, planning staff have received regular inquiries regarding cannabis retail opportunities. Staff have responded letting enquirers know that they will be notified if the RMOW intends to commence consideration of cannabis retail. The majority of emails have been from prospective cannabis retail operators, and staff have responded to each with a commitment to provide information if and when the RMOW begins consultation for cannabis retail. This list of contacts forms a starting point for industry engagement.

Staff propose a two-step engagement process. The first step will be to identify community goals and priorities for cannabis retail implementation, and receive input and advice on the proposed regulatory scheme. Launching in early 2022, staff will engage with industry, key community stakeholders, the community, and the Lil'wat Nation and the Squamish Nation:

- Industry engagement will be important to receive feedback on the proposed approach, to understand industry's experience in other jurisdictions. This will provide valuable input to Whistler's regulatory framework and application and review processes, ensuring we apply best practices and incorporate lessons learned elsewhere.
- Key stakeholders will be approached to share thoughts on desirable outcomes from cannabis retail regulation and to identify concerns and mitigation strategies. Stakeholders to be targeted for engagement include Tourism Whistler, Whistler Community Services Society, Sea to Sky Community Services, Whistler Chamber of Commerce, School District 48, Vail Resorts, and the Whistler RCMP.
- Broad community engagement will be sought through a one-month public input period, seeking feedback on priorities, values and objectives to be implemented through the cannabis retail strategy. This input opportunity will be communicated with assistance from Whistler's communications team, ongoing updates to the RMOW's dedicated 'cannabis' webpage and

advertised via Whistler Today and the RMOW social media channels and planning staff will be available during this time to answer questions and provide information.

- Staff will undertake consultation with the Squamish Nation and the Lil'wat Nation to share information about the proposed framework and process and opportunities for participation.

Staff will return to council to share results of the engagement, and outline a framework that includes community priorities, values, and objectives that have been considered and refined during the public input period, as well as outlining the application process and review and approval timeline.

The final step will involve Council approval of the cannabis retail regulation consideration and adoption consistent with legislative requirements. Staff will bring forward to council the retail cannabis amendments to the Zoning Bylaw, Fees Bylaw, and the Business Licence Bylaw, with a public hearing required for the zoning bylaw amendments.

POLICY CONSIDERATIONS

Relevant Council Authority/Previous Decisions

On March 18, 2014, RMOW council received [Administrative Report No. 14-028](#) (pages 18-27) for Zoning Amendment Bylaw (Marihuana Production) No. 2042, 2014 to limit the location and size of facilities where federally-approved production and distribution of cannabis for medical purposes can occur within Whistler, and Business Regulation Amendment Bylaw No. 2043, 2014 to address security and odour control requirements for cannabis production and distribution facilities.

Council received [Administrative Report No. 18-004](#) (pages 40–52) on [January 9, 2018](#) to replace the existing definitions of “marihuana production” and “marihuana distribution” with a definition of “cannabis” which mirrors the definition in the *Cannabis Act*. The amendment expanded the existing general prohibition on cannabis production and distribution to also prohibit retailing cannabis anywhere in the RMOW.

Corporate Plan

The RMOW Corporate Plan is updated annually and articulates strategic direction for the organization. This section identifies how this report links to the plan.

Council Focus Areas

- Community Balance

*Effectively **balance resort and community needs** through deliberate planning, partnerships and investment*

- Climate Action

*Provide leadership to **accelerate climate action and environmental performance** across the community*

- Housing

*Advance strategic and innovative initiatives to enable and **deliver additional employee housing***

Pandemic Recovery

*Leadership and support for **community and tourism recovery and sustainability** – priority focuses are where recovery needs intersect with other Council focus areas*

Not Applicable

Community Vision and Official Community Plan

The OCP is the RMOW's most important guiding document that sets the community vision and long-term community direction. This section identifies how this report applies to the OCP.

Chapter 5: Land Use and Development addresses residential and tourist accommodation, commercial and industrial space, and agricultural and extractive uses. In particular, Goal 5.6 seeks to maintain a complementary balance of commercial land use to reinforce Whistler's mountain resort character, the needs of the community, and the local tourism economy.

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| 5.6.1 | Objective | Maintain a balanced supply of commercial and industrial space and associated land uses |
| 5.6.1.6 | Policy | Evaluate any proposed rezoning for additional space or changes in use for consistency with the intended purpose and roles of the location, compatibility of the surrounding area, the potential displacement of other essential uses, and potential impacts on the vitality and success of other existing developments. |
| 5.6.3.19 | Policy | Work to address potential impacts associated with federal legalization of cannabis. |

Further, report recommendations implement the objectives in Chapter 6: Economic Viability. Goal 6.6 supports a vibrant, growing and successful local business community with the objective to strengthen support for local business through using land use and supporting programs, including the following relevant policies:

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| 6.6.1.3 | Policy | Support new and existing businesses that enhance the use of local Whistler skills and expertise and support the authentic mountain culture. |
| 6.6.1.4 | Policy | Explore opportunities to incorporate Squamish Nation and Lil'wat Nation owned and operated businesses into the local business economy. |

BUDGET CONSIDERATIONS

Staff time for this work is covered by the Planning Department budget. Once the cannabis retail regulatory scheme has been created, and relevant bylaws amended, application fees will be set to offset staff time reviewing and administering cannabis retail temporary use permit and licence applications.

LIL'WAT NATION & SQUAMISH NATION CONSIDERATIONS

The RMOW is committed to working with the Lil'wat People, known in their language as *L'il'wat7úl* and the Squamish People, known in their language as the *Skwxwú7mesh Úxwumixw* to create an enduring relationship, establish collaborative processes for Crown land planning, achieve mutual objectives, and enable participation in Whistler's resort economy. As part of the next phase of work, staff recommend engagement with representatives from the Squamish Nation and Lil'wat Nation to receive input on the proposed regulatory strategy and cannabis retail policy goals and objectives.

Report recommendations are consistent with the goals and objectives contained in OCP Chapter 3: and OCP Chapter 4: Growth Management. Relevant policies from OCP Chapter 3 pertain to participation in Whistler planning and development for the Squamish Nation and Lil'wat Nation, specifically:

3.3.3.1 Policy The Lil'wat Nation and Squamish Nation meaningfully participate in the future direction of Whistler and the surrounding region.

OCP Goal 4.1 is to effectively manage to maintain Whistler's unique sense of place, protect the environment, provide a high quality of life for residents and provide exceptional visitor experiences. The related policy from Chapter 4 pertaining to cooperative relationship building with Squamish Nation and Lil'wat Nation is:

4.1.2.3 Policy Work collaboratively towards both Whistler and the Lil'wat and Squamish Nations benefiting from the local tourism economy and complementary economic development and capacity building opportunities.

This approach will further the RMOW's commitment to creating an enduring relationship and enabling participation in Whistler's resort economy.

COMMUNITY ENGAGEMENT

Level of community engagement commitment for this project:

Inform Consult Involve Collaborate Empower

Comment(s):

Staff has outlined an engagement strategy to inform and consult public and stakeholders as part of the Cannabis Retail Permitting project. Future Zoning Bylaw amendments and Business Licence Bylaw amendments will include opportunities for public input and comment as legislated by the *Community Charter* and LGA.

SUMMARY

This report outlines regulatory options for cannabis retail in Whistler, and recommends a regulatory approach based on Temporary Use Permits, which leaves approval discretion with Council to prioritize permitting retail operators that will support implementation of identified OCP goals. Staff has outlined a work plan and a public and stakeholder engagement process for Council consideration.

SIGN-OFFS

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