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To: "Direct to Mayor and Council - DL"

CC: "City Manager's Correspondence Group - DL"

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Date: 12/17/2018 5:50:36 PM

Subject: Cannabis - update on BC Supreme Court ruling

Attachments: DBL - Memo to Mayor Council Cannabis Ruling Update FINAL - 17.12.2018.pdf

Dear Mayor and Council,

Please find attached a summary of last week's BC Supreme Court hearing against the cannabis retail outlets operating illegally in Vancouver. Also included in this memo is additional context that led to the court case, as well as potential next steps following the ruling.

And because the statistics on the progress of new retail outlets changes regularly, we have included the latest data on the number of retail outlets referred from the Province and under municipal review.

I hope you find this update useful. Please contact Kaye Krishna, General Manager of DBL, or Iain Dixon, Solicitor Team Lead and lawyer on the case, if you have additional questions.

Best,
Paul

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MEMORANDUM

December 17, 2018

TO: Mayor and Council

CC: Sadhu Johnston, City Manager
Paul Mochrie, Deputy City Manager
Anita Zaenker, Chief of Staff
Neil Monkton, Chief of Staff
Alvin Singh, Director of Communications, Mayor's Office
Rena Kendall-Craden, Director, CoV Communications
Kathryn Holm, Chief Licence Inspector
Iain Dixon, Assistant Director, Legal Services
Adam Palmer, Chief Constable, Vancouver Police Department

FROM: Kaye Krishna, General Manager of Development, Buildings, and Licensing

SUBJECT: Response & Next Steps on Cannabis Retail Court Ruling

Summary

The purpose of this memo is to update Mayor and Council on the key decisions handed down by the BC Supreme Court on December 13, 2018 regarding non-compliant cannabis retail outlets operating in Vancouver. This memo also provides additional context and next steps for the non-compliant cannabis retail shops, as well as the latest status on cannabis retail shops moving through the Provincial and municipal approvals process.

Cannabis Retail Regulatory Context

Prior to the legalization of cannabis by the federal government, the City of Vancouver implemented a zoning and licensing regime to regulate the proliferation of storefront cannabis retail stores in Vancouver.

From 2013 to 2015, the number of illegal marijuana-related businesses in Vancouver grew by 100 per cent per year, and in the first six months of 2015 there was an increase from 60 to

100 businesses. If left unregulated, illegal dispensaries can negatively impact neighbourhoods and pose a significant risk to public health and safety, particularly in youth.

In 2016, Vancouver was the first City in Canada to provide a mechanism by which medical marijuana-related (MMRU) businesses could obtain municipal permission to operate. While the City has no jurisdiction to regulate the sale of marijuana, it does have clear jurisdiction to regulate how and where businesses can operate.

Following an extensive public hearing, Council voted to amend the Zoning & Development by-law to provide for such use. The Zoning & Development by-law states that cannabis retail outlets must be 300m from each other, and 300m from schools, community centres and neighbourhood houses with the intent of limiting youth access. Cannabis retail outlets may also only be placed in commercially zoned districts and are prohibited in the Downtown Eastside (DTES).

The distancing rules were based on best-practice research, including detailed consideration of the experiences in US states such as Colorado and Washington. Although there are variations, there are analogous distancing requirements in effect for retail liquor stores, including a prohibition on any new outlets in the DTES.

In July 2018, Council approved minor amendments to the by-law to apply the distancing rules to all cannabis retail outlets (i.e. removing the reference to medical use), in anticipation of the pending legalization of non-medical cannabis in October 2018. Council again conducted an extensive public hearing, and heard various speakers and perspectives in both strong support and opposition of the existing distancing framework. Overall, the municipal framework remained largely consistent and integrated cleanly into the new federal and provincial rules.

As of October 17, 2018, all cannabis retail stores require a Provincial licence to operate in Vancouver, which is regulated and enforced by the BC Liquor and Cannabis Regulation Branch under the Cannabis Control and Licensing Act. A requirement of the Provincial licence is to receive land use approval from municipalities. Therefore, Vancouver operators also require a municipal development permit and a municipal business licence (as they have been required to do since 2016). (Similarly, liquor retail outlets require a provincial licence, a municipal development permit, and a municipal licence.)

Staff have indicated that they will conduct a review of the cannabis regulatory regime (zoning, licensing, fees, etc.) approximately one year after legalization and once the Provincial regulations and processes (e.g. revenue-sharing and enforcement) are clearly established, in order to assess, and update if needed, the municipal elements of the new legalization framework. Thus far, revenue sharing has not been established and Provincial enforcement staffing progress is unclear.

Cannabis Retail Enforcement

In April 2016, the City introduced the medical marijuana-related use (MMRU) model. All existing dispensaries at that time were given until April 29, 2016 to cease operations or face enforcement action. Thirty-one stores complied with City instructions to close before that deadline, and another 71 stores have since complied with regulations and have closed or are no longer selling marijuana.

However, after the implementation of the regulations there remained a number of cannabis retail locations in zoning non-compliant locations that refused to close. The City pursued regular inspections of these locations, issuing weekly tickets for non-compliance. The City also sought court injunctions against these non-compliant locations seeking to shut them down for carrying on business without a licence. On May 31, 2016, the first set of injunctions was filed against 17 MMRU retail businesses that remained open after the April 29 deadline.

In response to the City's applications for injunctive relief the operators of most of these locations challenged the constitutionality of the City's regulations. The City agreed to a "test case" involving all of the locations that wished to challenge the constitutionality of the City's cannabis regulations. This process was agreed to in order to have one decision on the issues raised by the dispensaries rather than a number of separate court hearings and decisions. In September 2018 the City participated in a two week hearing on the constitutionality of the City's cannabis regulations.

In total, the City issued 53 injunctions against illegal dispensaries, the majority of which agreed to a test case that was scheduled on September 4, 2018 before the BC Supreme Court. Of the 53 originally included in the case, approximately half ceased operating prior to the hearing, and 28 proceeded as named defendants in the case.

In addition to those who agreed to participate in the case, there are additional non-compliant operators in the City: 7 of which have had injunctions filed, and another 16 are ready for filing but have not yet been filed. To date the City has issued 3,713 tickets totaling close to \$3 million against those operating outside the regulations.

Under the current legalization framework, the non-compliant locations do not meet the distancing requirements required to obtain a development permit. Without a valid development permit, these locations have no means to be compliant and operate legally in Vancouver.

Key Court Findings & Next Steps

The decision of Mr. Justice Hinkson of the BC Supreme Court was released on December 13, 2018. The key rulings are as follows:

- The City's zoning authority gives it the legal authority to determine the appropriate location of storefront cannabis retail in the City of Vancouver;
- The City's licencing power gives it the legal authority to require that storefront cannabis retail stores obtain a business licence from the City of Vancouver;
- The Court determined that the existing City restrictions on the location of cannabis retail stores (including distancing from schools and other sensitive uses) are reasonable and appropriate;
- The Court declined to rule on whether the prohibition on the sale of medical cannabis at storefront retail locations constituted a violation of the Canadian Charter of Rights and Freedoms; and
- The Court declined to make an order in response to the dispensaries requesting that the Court declare all outstanding tickets and prosecutions to be void due to unconstitutionality.

The full ruling can be found here: <https://www.courts.gov.bc.ca/jdb-txt/sc/18/22/2018BCSC2221.htm>.

As a result of the above findings the Court ordered that all of the 28 dispensaries that participated in the hearing and remained open during the court case are required to cease operation immediately.

The Law Department is in the process of contacting counsel for these dispensaries to resolve the issue of court costs and to ensure that the Court's order is complied with. Should there be non-compliance with the Court order it is open to the City to commence contempt of court proceedings to obtain compliance with the Court's order.

It is open to both the Province and the VPD to take action against these dispensaries but the City cannot direct either of those organizations to take specific action. It is important to note that this decision does not apply to the 56 Vancouver cannabis retail stores that are located in zoning compliant locations and have obtained an appropriate development permit.

Current Status of Retail Outlets in Vancouver

Currently there are 56 locations in Vancouver granted land use approval (i.e. development permits) for a cannabis retail outlet. Staff estimate that there is capacity for an additional 10-15 retail outlets in the city per the distancing requirements.

Staff are actively working with the province to advance cannabis retail outlet applications, however staff do not have visibility into how many of the CoV land-use approved outlets have initiated the provincial process. Thus far, the province has referred 22 applications to the City for review of appropriate land use, 18 of which are among the 56 locations with an existing valid development permit. Upon the completion of the provincially-mandated public notification and review of the location's track record of by-law compliance, staff are issuing letters of recommendation to the province.

To date, staff have provided a letter of recommendation for 5 of the 22 applications. A letter of recommendation from the City does not guarantee the issuance of a provincial licence. The province is actively reviewing the 5 recommended operators to confirm their suitability, based on their financials and any links to organized crime. Once the province issues a cannabis retail licence, the City intends to issue a municipal business licence as quickly as possible, to enable legal operators to commence operations.

Conclusion

Last week's court ruling affirms the City's authority to regulate land use and operating requirements for cannabis retail in Vancouver. The current Zoning & Development and Licensing By-laws for cannabis retail are in keeping with this ruling and are aligned with Provincial and Federal regulations. Currently, 56 businesses have development permits and at least a third of those have initiated efforts to get into compliance with the Province's and City's regulations. At the same time, a number of businesses continue to defy the rules and have chosen not to pursue municipal permits and licensing, despite many opportunities to do so. The court has required the 28 included in the hearing to cease operation immediately and,

given the precedent, staff suggest that any other retail outlet without a development permit should follow suit.

As the Province implements its new cannabis retail regulations and continues to define other factors to support cannabis legalization, such as municipal revenue sharing and enforcement staffing, the City will continue to make every effort to enable an effective municipal framework to support Canada's legalization of recreational marijuana. Staff will evaluate the municipal rules and processes and report back to Council in Q4 with findings and any recommendations.

Please don't hesitate to contact me or Kathryn Holm, Chief Licence Inspector, if you have questions or concerns.

A handwritten signature in black ink, appearing to read 'Kaye Krishna', with a stylized, cursive script.

Kaye Krishna
General Manager of Development, Buildings and Licensing

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