

Date: May 27, 2021	Originator's files:
To: Chair and Members of General Committee	
From: Paul Mitcham, P.Eng, MBA, City Manager and Chief Administrative Officer	Meeting date: June 9, 2021

Subject

Cannabis Retail Sales Update

Recommendation

That the Corporate Report entitled "Cannabis Retail Sales Update", dated May 27, 2021, from the City Manager and Chief Administrative Officer, be received for information.

Executive Summary

- City staff brought a report to General Committee in April 2020 to provide an update on the status of retail cannabis, but the report was deferred due to Committee only considering matters pertaining to COVID-19 at that time. Council has directed staff to bring an information update report to the June 9, 2021 General Committee meeting;
- Since Council passed its resolution in December 2018 to prohibit cannabis retail stores from operating in Mississauga, the legal landscape has changed in two significant ways: (1) cannabis edibles can now be sold and (2) the Province has lifted the cap on the number of licences that can be issued by the Alcohol and Gaming Commission of Ontario ("AGCO");
- Since the cap was lifted on March 2, 2019, the number of cannabis stores across Ontario has increased from 30 to 772 at the time of writing this report.
- According to the AGCO's website, the Provincial regulator is approving approximately 30 new locations across Ontario each week.
- The AGCO has the sole authority to licence and regulate the sale of cannabis in privately run stores in Ontario;
- Other than deciding to permit or prohibit retail sale, municipalities still have a limited role to play in regulating cannabis in Ontario. Municipalities cannot require that cannabis retail stores obtain a business licence nor can they designate cannabis retail as a separate land use from retail or commercial;

- Municipalities are permitted to provide comment to the AGCO regarding its licensing system, but the decision to licence is made by the AGCO alone. The AGCO has never denied a licence because a municipality objected to a particular location.
- From an enforcement perspective, the AGCO and Peel Regional Police are responsible for ensuring the operators of retail cannabis stores are compliant with applicable legislation. Currently, any complaints received by City staff are directed to Peel Regional Police for investigation;
- At its April 23, 2021 meeting, the Peel Police Services Board received a report entitled “Illicit Cannabis in Peel Region”. The report included a summary of cannabis related enforcement trends and concluded that legal cannabis retail stores are safer than illegal ones and the number of brick and mortar locations are decreasing (up to 75%) while mobile dispensaries are on the rise;
- Staff canvassed 8 municipalities that currently licence retail stores (Toronto, Brampton, London, Kitchener, Hamilton, Guelph, Burlington and Ajax) regarding their experience with legal retail cannabis stores. Many shared concerns with location clustering, however not from an enforcement perspective. These locations for the most part remain legally compliant.
- According to the Ontario Cannabis Store, legal cannabis has had an impact on the illegal market. In 2020, the average price of legally purchased dried cannabis fell below the average price in the illegal market for the first time. Currently, legal retail represents 40% of all cannabis sales in Ontario. This could suggest that over time, the legal market could overtake the illegal market; and
- Given how relatively new legal retail cannabis is in Canada, new information pertaining to its impact becomes available on a regular basis. As a result, some of the data in this report may be outdated by the time this report is received.

Background

On November 14, 2018, the Provincial Government enacted the Cannabis Licence Act, which requires persons to obtain a licence from the Alcohol and Gaming Commission of Ontario (“AGCO”) in order to operate a “brick and mortar” cannabis retail store in Ontario.

Despite introducing this licensing regime, the Provincial Government gave municipalities the opportunity to prohibit cannabis retail stores from being located in the municipality by passing a resolution no later than January 22, 2019. On December 12, 2018, Council passed a resolution to ban cannabis retail stores from being located in the City of Mississauga.

The City of Mississauga may by resolution, lift the prohibition and permit cannabis retail stores to be located in the municipality. However, this resolution would be final and cannot be reversed.

At the October 2, 2019 General Committee meeting, staff was directed to report back to General Committee with an update on cannabis retail use in Ontario. Due to the pressures and priorities related to COVID-19, the staff report was deferred in April 2020 to a future committee meeting. At its May 19, 2021 meeting, Council directed staff to bring a report to the June 9, 2021 GC meeting for discussion.

Present Status

Cannabis use (including production, sale and consumption) is regulated by all three levels of government in Canada, although the role that municipalities play is minimal. The following section of this report provides a legislative outline of the role of the federal, provincial and municipal governments in regulating cannabis.

The Role of the Federal Government - Production

Health Canada regulates the cultivation and processing of cannabis. Any person that wishes to produce cannabis for commercial purposes must obtain a licence from Health Canada. Licensed producers can only sell their product to the Ontario Cannabis Store, the sole wholesaler of cannabis owned by the Provincial Government. For personal production, persons are permitted to grow up to four cannabis plants per residence.

The Federal Cannabis Act has established criminal offences related to the possession, distribution and production of cannabis in Canada:

- Possession over the limit – up to 5 years in jail
- Illegal distribution or sale – up to 14 years in jail
- Producing cannabis beyond personal cultivation limits – up to 14 years in jail
- Taking cannabis across Canadian borders – up to 14 years in jail
- Giving or selling cannabis to a person under 18 years of age – up to 14 years in jail

The Role of the Provincial Government – Smoking and Retail Sale

According to the *Smoke Free Ontario Act*, smoking cannabis is prohibited in a number of places including: enclosed workplaces, enclosed public places, restaurants and bar patios, schools, and any indoor common areas in a condominium, apartment building or university or college residence.

The retail sale of cannabis is also regulated by the Provincial Government. The Ontario Cannabis Store is a Crown corporation and is the only legal supplier of cannabis for retail stores in Ontario. According to the *Cannabis Control Act*, no licensed person shall sell cannabis to:

- Someone in excess of 30 grams;
- To a person under 19 years of age; or
- To a person who appears under 25 years of age or intoxicated.

(a) Issuing Licenses

In accordance with the Ontario Cannabis Licence Act, the AGCO has the sole authority to licence the sale of cannabis in privately run stores in Ontario. A licence is required to open a retail store (“Operator Licence”), to open up a store at a particular location (“Retail Store Licence”) and to manage a particular location (“Retail Manager Licence”). The table below outlines some of the examples where the AGCO will not issue a licence to an applicant:

Circumstances where an <u>Operator Licence</u> will not be issued	Circumstances where a <u>Retail Store Licence</u> will not be issued
<ul style="list-style-type: none"> • The applicant is under 19 years of age • The applicant has been convicted of a cannabis related offence • The applicant is in default of filing a tax return 	<ul style="list-style-type: none"> • The location is less than 150 metres from a public or private school • The applicable municipality has opted out of permitting the sale of cannabis • The applicant doesn't have an Operator Licence • The issuance is not in the public interest of the municipality • The location is not enclosed by walls separating it from other businesses, is not equipped with a surveillance system, cannabis is visible for people passing by on the street.

(b) Municipal Guidelines

Municipalities have the ability to provide feedback to the AGCO related to pending licences. Municipalities have 15 days to provide comments to the AGCO having regard to “protecting health and safety, protecting youth and preventing illicit activities in relation to cannabis”. Although municipalities can provide input, the decision to licence is made by the AGCO alone. The AGCO has never denied a licence because a municipality objected to a particular location.

To assist the AGCO in considering the public's interest, some municipalities (including the City of Burlington and the City of Hamilton) have developed policy guidelines that are made available to the AGCO. Attached as Appendix 1 is the City of Hamilton's Cannabis Policy Statement which advocates for cannabis retail stores to be located at least 300 metres away from sensitive areas such as schools, parks and mental health/addiction centres.

On March 8, 2021, Hamilton staff introduced a report entitled "Cannabis Retail Store Locations" to provide a cannabis update to its City Council. This report indicated that staff have objected to a total of 29 locations, primarily based on concerns of clustering and close proximity to schools and parks. Despite these objections, the AGCO issued all 29 licences.

Should Council choose to lift the prohibition to permit cannabis retail stores, staff recommend that the City first develop cannabis retail store guidelines to inform the AGCO of the broader community interests for stores located in the City of Mississauga including identifying sensitive areas where cannabis retail stores should not be permitted.

A cannabis policy could include the following:

- Project Lead - Identifying one staff person who will be designated to be responsible for coordinating with other Divisions to provide comment to the AGCO within the 15 day deadline.
- Identifying Sensitive Areas - Discourage the placement of stores in "sensitive areas" related to youth or other vulnerable populations which could include libraries, community centres, parks, universities and colleges, day cares, mental health/addiction centres or other retail cannabis stores.
- Despite municipalities having the ability to provide feedback, the AGCO has issued licences for retail cannabis stores even where a municipality has objected to a particular location.
- Hamilton - Retail cannabis stores have been approved in certain areas despite the City's objections made pursuant to its Cannabis Policy Statement. This policy states that cannabis retail stores should not be permitted in areas that already have a high concentration of cannabis stores.
- Guelph - In July 2020, a retail licence was approved in downtown Guelph, near the Guelph Community Health Centre, despite the City's policy statement, which considers addiction and health centres to be sensitive areas.
- Orillia - In September 2020, a location was approved despite the City's objection that the proposed location was in close proximity to medical clinics and addiction treatment services.

On November 25, 2020, the Ontario NDP introduced Bill 235 – *Cannabis Licensing Amendment Act*. If passed, this legislation would permit municipalities to submit Council resolutions to the AGCO, instead of relying on written submissions or cannabis policies alone. A Council resolution could address a particular retail application, an area of the municipality or the entire municipality. It is important to note that even if this Bill passes, the AGCO will continue to have full control over whether a particular location is approved. At present, the Bill has not moved past first reading.

Members of the public are also permitted to file submissions related to pending licences. On the AGCO's website, persons can fill out an electronic form related to a current application to provide details of their objection.

(c) Enforcement by the AGCO

Inspectors designated by the AGCO are permitted to inspect any place, other than a dwelling, to ensure persons who sell cannabis are in compliance with the Cannabis Licence Act. An inspector may examine, remove and/or make copies of records related to an inspection. An inspector may also seize anything that the inspector reasonably believes is not in compliance with the Act. Police officers are also empowered to enforce the provisions of the Cannabis Licence Act.

If a licenced operator does not comply with the *Cannabis Licence Act*, the AGCO may revoke or suspend their licence. For example, if a licenced person does not comply with the rules in place related to the surveillance and security of store premises, their licence can be revoked. A suspension or revocation can be appealed to the Licence Appeal Tribunal.

The City of Mississauga has found the AGCO an effective and cooperative partner in the enforcement of liquor laws.

The Role of Peel Regional Police

Local police forces such as Peel Regional Police are responsible for ensuring persons are selling cannabis in accordance with applicable legislation. According to the Cannabis Control Act, a police officer has the ability to:

- Seize anything, including cannabis, remove or arrest a person, if there are reasonable grounds to believe the Act is being contravened;
- Close a premises and bar entry if a charge is laid for a contravention of this Act; or
- Lay an obstruction charge

These enforcement powers that police have are more comprehensive than the powers afforded to municipal officers under the Municipal Act, 2001. In July 2019, Toronto Police Services relied on the powers under the Cannabis Control Act to place concrete blocks outside the entrance of an illegal retail shop to ensure the store would not re-open.

Upon conviction under the Cannabis Control Act, an individual is liable to a fine of not more than \$100,000 and a corporation is liable to a fine of not more than \$250,000. A court that convicts a person under this Act is permitted to close the premises for a period not exceeding two years or to order a person not to do anything for a specific period of time.

Report from Peel Regional Police

At its April 23, 2021 meeting, the Peel Police Services Board received a report entitled “Illicit Cannabis in Peel Region” from Deputy Chief Nick Milinovich (Appendix 2). This report highlights the current cannabis trends from the perspective of Peel Regional Police including:

- **Safety** - Legal cannabis retail stores are safer than illegal ones (fewer police reports and non-violent crimes);
- **Illegal Dispensaries** – The number of brick and mortar illegal dispensaries is decreasing (75% of illegal dispensaries have been shut down). At the time of writing their report, there were less than five (5) illegal cannabis dispensaries in the Region of Peel, compared to 2 years ago when there were approximately twenty (20) in operation;
- **Mobile Dispensaries** - The number of mobile illegal dispensaries are increasing. Mobile dispensaries deliver cannabis to the doorstep, similar to food delivery services. At the time of writing their report, Peel Police note that there are approximately 100-150 mobile dispensaries in the Region of Peel; and
- Cannabis related driving offences are increasing.

In addition, the report highlights Peel Regional Police’s current enforcement challenges related to illegal dispensaries:

- Limited Federal and Provincial enforcement powers;
- Dispensaries that are successfully shut down sometimes re-open in a new location;
- Penalties do not act as a deterrent. Fines tend to range from \$75 to \$2000. Some illegal dispensaries can make up to \$35,000 per day; and
- The closure of a Mississauga dispensary in 2019 required six search warrants and cost Peel Police approximately \$20,000 to enforce.

The report does not indicate if or how the legal retail market has impacted these trends or enforcement challenges.

Municipal Role

Other than deciding to permit or prohibit retail sale, municipalities have a very limited role to play in regulating cannabis in Ontario. For retail sale, municipalities are not permitted to license these businesses. From a zoning perspective, municipalities are not permitted to designate cannabis retail as a separate land use from retail or commercial, however, a cannabis retail store must comply with the City's Zoning By-law related to retail use.

Comments

Legislative Update

In the time since Council opted out of retail stores in December 2018, the Provincial Government has updated the legislative framework for retail cannabis use in Ontario as follows:

- **Edibles** - Cannabis edibles (including cookies, chocolates and gummies), extracts and topicals became legal in Ontario as of October 17, 2019. These items are sold online through the Ontario Cannabis Store or through licensed retail stores, similar to dry forms of cannabis. Over the years, there have been reports of children consuming cannabis edibles because of their resemblance to candy. Health Canada requires the packaging of legal edibles to be child resistant and the labelling cannot be designed in a way that appeals to children. Evidence suggests that illegal retailers do not follow the same standards.
- **Number of Licences** – Whereas previously the number of cannabis retail stores was set at 75, as of March 2, 2020, there is no longer a cap on the number of cannabis retail stores that are permitted to operate in Ontario. At the time of writing this report, there are 772 cannabis locations that are permitted to open in the province. According to the AGCO, it is approving approximately 30 new locations across Ontario each week.
- **Licensed producers of cannabis can now obtain a licence to sell cannabis** – called “farmgate stores” - allowing them to open a store at one of their production facilities. According to the AGCO, two farmgate stores have been authorized to open at the time of writing this report. Mississauga is home to two licenced producers who could potentially operate farmgate stores if cannabis retail was permitted.
- **Cannabis Lounges and Special Occasion Permits** - In July 2020, a representative for Ontario's Attorney General released a statement that the Province would not be making any changes to cannabis legislation to permit cannabis lounges or allow for special occasion permits to consume cannabis publicly in locations such as festivals.

Current Landscape of Licensed Retail Stores in Ontario

In March 2020, before the Province lifted the cap on the number of retail cannabis stores permitted, there were 30 licensed retail shops in Ontario including one location operating in Brampton and 10 operating in Toronto. Since the cap was lifted and at the time of writing this report, the number of licensed retail shops in Ontario has increased to 772 with 18 operating in Brampton and 231 operating in Toronto. As noted above, the AGCO is approving on average 30 new retail stores each week, so these numbers have or will likely change.

The following comparative chart highlights the increase in the number of cannabis retail shops permitted to open, across a period of approximately seven months, according to the AGCO's website at the time of writing this report:

Municipality	Locations Permitted to Open (as of October 15, 2020)	Locations Permitted to Open (as of May 31, 2021)	Pending Applications (as of May 31, 2021)
Ajax	1	2 (increase of 1)	7
Aurora	1	5 (increase of 4)	6
Barrie	4	12 (increase of 8)	16
Brampton	2	18 (increase of 16)	22
Burlington	7	16 (increase of 9)	17
Cambridge	3	10 (increase of 7)	7
Guelph	3	8 (increase of 5)	13
Hamilton	7	47 (increase of 40)	57
Kitchener	1	17 (increase of 16)	27
London	10	21 (increase of 11)	25
Milton	1	6 (increase of 5)	6
Oshawa	3	12 (increase of 9)	16
Toronto	76	231 (increase of 155)	229

There are currently 69 municipalities in Ontario that have opted out of allowing retail cannabis stores. Since January 22, 2019 (the opt-out deadline for municipalities), eight municipalities have reversed their initial decision to opt-out in order to permit retail cannabis sale, including the town of Milton and City of Pickering. Mississauga is the largest municipality in Ontario that has opted out, followed by Markham and Vaughan. Caledon is the only other municipality in the Region of Peel that has also decided to opt-out.

Impact of Retail Sale on the Illegal Market

Since the cap on retail stores was lifted in March 2019, the Ontario Cannabis Store has reported that the legal market continues to make inroads on the illegal market. The table below demonstrates the notable impact legal retail has had on the illegal market over the last two years according to the Ontario Cannabis Store.

	Q1, 2019	Q3, 2020
Share of the cannabis market	Legal: 14.1% Illegal: 85.9%	Legal: 40.3% Illegal: 59.7%
Average price per gram for dried cannabis flower	Legal: \$10.80 Illegal: \$8.13	Legal: \$6.24 Illegal: \$7.76

The sale price for legal cannabis is now less expensive than the price for illegal cannabis.

After Toronto, Mississauga remains the top municipality in Ontario in terms of the number of illegal cannabis delivery services promoted on illegal websites. While demand is being increasingly satisfied by the legal market, the illegal market in Mississauga continues to be significant. According to Peel Police in their April 23, 2021 report (Appendix 2), there are between 100-150 illegal mobile cannabis retailers in Peel Region. It is unknown whether the number of illegal delivery services in Mississauga will decrease over time if Council decides to opt-in. Although Toronto opted-in over two years ago, the illegal websites continue to persist for that municipality.

City's Recovery Plan Framework

On May 7, 2020, Council adopted the City's Recovery Plan Framework, which contains four pillars for recovery including "Economic". As part of this recovery effort, the City has set a number of strategic goals, which include supporting local businesses and job creation.

In September 2020, Council passed the Economic Recovery Plan for small business. The plan included a number of recommendations to support small retail establishments in our City. Allowing Cannabis retail in Mississauga is aligned with the Economic Recovery Plan for Small Business. New retail establishments would create jobs and potentially occupy vacant storefront retail spaces. At the present time, residents spend this money outside of the City. The Ontario

Cannabis store estimates that consumers would spend \$74 million on legal cannabis if retail cannabis stores were permitted to open in Mississauga.

City's Role in Regulating Cannabis

Below is a table setting out the City's role in regulating cannabis:

	Zoning	Licensing	Nuisance
Cannabis Production	Permitted use: medicinal product manufacturing facility	Licence required for the production of medical cannabis. Ensure compliance with the Building and Fire Code.	N/A
Cannabis Retail *requires the City to opt-in	Permitted use: retail sale. No different from any other form of retail.	Licensing scheme not permissible.	N/A
Cannabis Consumption	N/A	N/A	Can't smoke cannabis in parks or on other City property such as Celebration Square

The City requires commercial producers of medical cannabis to obtain a licence in accordance with the City's Medical Marihuana Licensing By-law 57-15. Currently, there are two licensed production facilities in Mississauga. The applicable legislation does not explicitly prohibit municipalities from licensing cannabis production in the same way as it does with cannabis retail sale. According to the City's Parks By-law 0197-2020, no person shall smoke cannabis in a City park.

Any complaints received from the City's Compliance and Licensing Division or through 3-1-1, are directed to Peel Regional Police for response. In 2020, the City's Compliance and Licensing Division received five complaints about the illegal sale of cannabis. The Compliance and Licensing Division will continue to respond to cannabis related complaints captured through zoning, licensing or property standards by-laws.

To assist with coordinating an enforcement approach across the Region, the Regional Cannabis Enforcement Working Group was established comprised of the City of Brampton, Town of Caledon, Region of Peel and Peel Regional Police. Staff believe that this approach is the most effective way to address illegal cannabis retail stores and to assist with deterring future illegal retailers from operating in the City of Mississauga.

Benchmarking

Enforcement staff have been in contact with neighbouring municipalities that permit cannabis retail stores to learn more about their experience to date. Staff received responses from eight municipalities including Toronto and Brampton. The following can be surmised from the feedback that was received:

- Enforcement – Complaints received by municipalities related to cannabis retail stores are forwarded to the AGCO and to local police for investigation.
- Location Clustering – Some municipalities including the City of Hamilton and Toronto have noted that cannabis retail stores are being approved by the AGCO in proximity to other cannabis stores.

Financial Impact

In December 2020, the monthly retail sales in Ontario was approximately \$94 million dollars. According to data received by the Ontario Cannabis Store, it is projected that businesses in the City of Mississauga would see approximately \$74 million per year in cannabis retail sales if Council decides to opt-in.

Conclusion

Since Council passed its resolution to prohibit cannabis retail stores from operating in Mississauga, the legal landscape has changed in two significant ways: (1) cannabis edibles can now be sold in retail stores and (2) the Province has lifted the cap on the number of licences that are issued.

Based on the update provided by staff in this report, Council may choose to continue to prohibit cannabis retail stores within Mississauga or to pass a resolution lifting the prohibition. A resolution to lift the prohibition would be final and may not be reversed. The resolution would need to be made available to the AGCO within three business days of its enactment.

There are some factors that Council may want to take into consideration with respect to a decision to remain opted out or to opt in:

EFFECTS OF OPTING IN	EFFECTS OF OPTING OUT
<p>Impact on Illegal Market</p> <ul style="list-style-type: none"> • Brick and mortar locations are decreasing (up to 75%) while mobile dispensaries are increasing • As of Q3 2020, the legal market had a 40% share on the market. Up from 18% in 2019 • Average price of legal cannabis fell below the average price of illegal cannabis for the first time in 2020 	<p>Lack of Municipal Oversight</p> <ul style="list-style-type: none"> • Municipalities still cannot zone or licence. AGCO is responsible for licensing • A location has never been denied by the AGCO based on an objection presented by a municipality. Hamilton has objected 29 times to date • Cannot opt out once you opt in
<p>Aligns with the City's Economic Recovery Plan</p> <ul style="list-style-type: none"> • New opportunities for small businesses, particularly given the impact COVID has had on businesses • \$74 million per year in revenue for businesses if Council opts in 	<p>Lack of Proximity Considerations</p> <ul style="list-style-type: none"> • The only legal requirement is that stores cannot be located within 150 metres of schools
<p>Enforcement</p> <ul style="list-style-type: none"> • Peel Police has noted that legal locations are safer than illegal ones • Cannabis related driving offences are increasing • AGCO enforces legal retailers stringently to ensure compliance. 	<p>No Cap on Locations</p> <ul style="list-style-type: none"> • Municipalities have reported concerns with clustering of stores • AGCO is approving 30 licences a week.

Attachments

Appendix 1: City of Hamilton's Cannabis Policy Statement

Appendix 2: Peel Police Board Report on Illicit Cannabis, April 23, 2021



Paul Mitcham, P.Eng, MBA, City Manager and Chief Administrative Officer

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