

City of Mississauga
Corporate Report



<p>Date: March 27, 2023</p> <p>To: Chair and Members of General Committee</p>	<p>Originator's files:</p>
<p>From: Shari Lichterman, CPA, CMA, Acting City Manager and Chief Administrative Officer</p>	<p>Meeting date: April 12, 2023</p>

Subject

Cannabis Retail Sales Update

Recommendation

That the Corporate Report entitled “Cannabis Retail Sales Update”, dated March 27, 2023, from the Acting City Manager and Chief Administrative Officer, be received for information.

Executive Summary

- At the General Committee meeting of January 25, 2023, staff were directed to bring back a report on the status of retail cannabis in Ontario. Staff brought a similar report to General Committee in June 2021, which was received for information.
- Since the June 2021 report to General Committee, the Province of Ontario established new rules (in 2022) authorizing cannabis retailers to offer delivery and curbside pick-up services on a permanent basis.
- There has been no change to the authority granted to municipalities to permit or deny a retail cannabis location in their community. Municipalities cannot require cannabis retail stores to obtain a business licence, nor can they 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.
- There are 1714 retail cannabis stores in Ontario. The AGCO is approving between 6 and 23 new locations across Ontario each week.
- To date, 64 municipalities remain “opted out” of retail cannabis. Mississauga is the largest city in the province to opt out.
- The Ontario retail cannabis market is growing annually, with \$184 million in revenue in 2021/22. The sector currently employs approximately 48,000 people in Ontario, and contributes \$13.3 billion to the province's GDP.
- Mississauga residents continue to be disproportionately served by the illegal cannabis market, compared to municipalities that have opted in. Residents are also served by the

legal mail delivery service offered by the Ontario Cannabis Store and licenced retailers.

- According to Peel Regional Police, there have been no complaints regarding illegal cannabis in 2023 and only 15 since 2021. The illegal dispensary, “Weed Releaf” operating at 2563 Hurontario Street, continues to be an issue for Police.
- Based on the feedback received from neighbouring municipalities that permit retail cannabis, clustering of stores has not proven to be an issue to date.

Background

On November 14, 2018, the Provincial Government enacted the *Cannabis Licence Act, 2018*, 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 their municipality by passing a resolution no later than January 22, 2019. On December 12, 2018, Council passed a resolution to prohibit cannabis retail stores from being located in the City of Mississauga – in other words the City “opted out.”

The City of Mississauga may by resolution, lift the prohibition at any time and permit cannabis retail stores to be located in the municipality. However, this resolution would be final and cannot be reversed. Once a city has opted in, it cannot opt out.

Since 2019, the Provincial Government, has shared approximately \$44 million from the federal excise duty on recreational cannabis with the municipalities that opted in under the Ontario Cannabis Legalization Implementation Fund (OCLIF). As Mississauga opted out of cannabis retail sales, it received modest payments from the Province under OCLIF, totalling \$318,309, as set out on the Provincial Government’s website:

- First payment - \$313,309 (\$15 million payment to all municipalities on a per-household basis, adjusted so that at least \$5,000 is provided to each municipality).
- Second payment - \$5,000 (\$15 million payment; municipalities that opted out received \$5,000 each and municipalities that opted in received funding on a per-household basis, adjusted so that each received at least \$5,000)
- Third payment – none (\$6.74 million payment to municipalities that opted in, adjusted so that each received at least \$5,000).
- Final payment – none (approximately \$4 million payment to municipalities that opted-in, on a per-household basis, adjusted so that each municipality received at least \$5,000).

The OCLIF is now closed. At present, no new funding is available to municipalities that decide to opt in now.

At the direction of Council, staff last brought forward an information report to General Committee on June 9, 2021. At that time, Council voted to receive the report and no further action was taken. On January 25, 2023, General Committee directed staff to bring forward an information report to provide an update on the state of retail cannabis in Ontario. The following report provides an update on the status of retail cannabis in Ontario, including the current situation in Mississauga.

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 (OCS), 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, 2017*, 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 OCS is a Crown corporation and is the only legal supplier of cannabis for retail stores in Ontario. According to the *Cannabis Control Act, 2017*, 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, 2018*, 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”). Beginning in March 2022, the Provincial Government established new rules to enable cannabis retailers to offer delivery and curbside pick-up services on a permanent basis.

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.

The Role of the Municipality

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.

Municipalities have the ability to provide feedback to the AGCO related to pending licences and are granted 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. 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.

To date, the AGCO has never denied a licence to an applicant because a municipality objected to a particular location.

The Role of 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, 2018*. 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, 2018*.

If a licenced operator does not comply with the *Cannabis Licence Act, 2018* 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.

To date, 37 stores have had their Cannabis Retail Store Authorization (CRSA) revoked, as well as one Operator and two Manager licences.

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, 2017*, 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 the Act; or
- Lay an obstruction charge.

The enforcement powers that police have are more comprehensive than the powers afforded to municipal officers under the *Municipal Act, 2001*. For example, in July 2019, Toronto Police Services relied on the powers under the *Cannabis Control Act, 2017* to place concrete blocks outside the entrance of an illegal retail shop to ensure the store would not re-open. Municipal enforcement officials would not be permitted to take such action.

Upon conviction under the *Cannabis Control Act, 2017* 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.

Comments

Licensed Retail Stores in Ontario

Prior to March 2020, the cap on the number of retail stores in the province was 75. That cap has since been lifted. According to data from the OCS, at the time of writing this report, the number of licensed retail shops in Ontario has increased to over 1700, operating in 348 Ontario municipalities, with more applications pending.

Over the past two years, the pace of applications and new stores opening has decreased, suggesting that the retail cannabis market is stabilizing. As of December 2022, 97 per cent of all legal sales in Ontario occurred through an authorized retail store.

The following is a chart of comparator municipalities showing the number of retail cannabis stores currently operating in those communities.

	Locations Permitted to Open (as of May 31, 2021)	Locations Permitted to Open (as of March 9, 2023)	Pending Applications (as of March 9, 2023)
Ajax	2	8	1
Aurora	5	12	2
Barrie	12	25	9
Brampton	18	49	4
Burlington	16	27	4
Cambridge	10	16	5
Guelph	8	21	7
Hamilton	47	71	13
Kitchener	17	27	7
London	21	52	12
Milton	6	10	0
Oshawa	12	28	8
Toronto	231	220	32

Cannabis Market in Ontario

According to the OCS, the GDP contribution of legal cannabis in Ontario is approximately \$13.3 billion, and has created over 48,000 jobs. In 2021/22, the OCS generated net income of \$184 million, up from \$70 million in the 2020/21 period. Ontario continues to have the highest provincial market share at 39.5 per cent.

According to an Angus Reid Forum Research study in December 2022, commissioned by the OCS, public attitudes towards cannabis have been improving:

- 70 per cent of Ontarians perceive cannabis use as somewhat/mostly positive.
- Ontarians are significantly more likely to feel alcohol poses greater health risks than cannabis.
- 76 per cent of Ontarians perceive legalization of cannabis as being mostly good for Canada.
- 64 per cent say access to safe cannabis products is a significant benefit to cannabis legalization.

Legal Versus Illegal Cannabis

Mississauga residents continue to access cannabis product through online delivery and by visiting retail cannabis stores in nearby communities where cannabis retail is permitted. Some residents continue to access cannabis through illegal channels as well.

According to the OCS, Mississauga continues to be disproportionately served by the illegal market, compared to communities that have “opted in:”

- 42 per cent of Mississauga cannabis consumers report having purchased from mail-order cannabis sites; 61 per cent from an individual; and 47 per cent from an illegal dispensary;
- While a significant proportion of consumers have purchased cannabis illegally, two-thirds value being able to purchase through an authorized seller; and
- Three-quarters believe that authorized sellers are better at ensuring products are safe and quality control practices are in place.

(Source: Ontario Cannabis Store Retail and Distribution Report – February 2023. Found in Appendix 1)

According to the 2022 Canadian Cannabis Survey, commissioned annually by the Federal Government:

- Cannabis use was highest amongst 20-24 year olds (50%), followed by 16-19 year olds (37%) and those 25 years and older (25%).
- Men reported higher usage rates (30%) versus women (25%).
- 65% say they use dry leaf cannabis and 53% use edible cannabis products.
- 48% of people who used cannabis in the last 12 months purchased from a legal retail operation.
- 61% reported purchasing cannabis from a legal storefront, 11% from a friend, 8% grow their own, and 2% purchased from an illegal online or retail storefront.

More information on the 2022 Survey can be found [online](#) on the Government of Canada's website.

Since the cap on retail stores was lifted in March 2019, the OCS 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 OCS. According to the OCS, the illegal cannabis market still represents 43% of sales, although the legal market is growing at 56%. In 2020, the sale price for legal cannabis fell below the price for illegal cannabis. Current price data is not available.

Ontario Market Share				
	Q4 2018	Q4 2019	Q4 2020	Q4 2021
Legal	5.4%	19%	44.1%	56.9%
Illegal	94.6%	81%	55.9%	43.1%

On February 16, 2023, the OCS announced it would be reducing its price margins to help legal cannabis retailers combat the illicit market. This change will give up to \$35 million back to licenced cannabis retailers in 2023 and \$60 million in 2024.

The Federal Government has created an expert panel to review the *Cannabis Act* to "...address the ongoing and emerging needs of Canadians while protecting their health and safety." The Panel will also review the Act to ensure it meets the needs of Canadians and displaces the illicit market. The Panel is expected to announce its conclusions in the Spring of 2024.

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 operate. It is unknown whether the number of illegal delivery services in Mississauga will decrease over time if Mississauga opts-in. Although Toronto opted-in over two years ago, some illegal websites continue to persist in that municipality.

Cannabis Safety

A recent study by the National Research Council of Canada (NRC) on behalf of the OCS and the Ontario Provincial Police on illegal versus legal cannabis concluded that:

- There was great inconsistency in illegal cannabis in terms of the amount of Tetrahydrocannabinol (THC) and what was actually in the edible. In most cases, far less. Consumers could not rely upon the listed amounts on the packaging;
- Illegal cannabis products had dangerously high levels of pesticides, some of which were hundreds of times above the Health Canada limits for regulated products;

- Illegal cannabis products often have bright coloured packaging that looks like food products (candy) for children. Illegal packaging does not have child resistant features like legal packaging does.

Overall, the NRC found that illegal cannabis products do not follow the same rules as legal cannabis products, nor do they meet the same quality testing standards, and in many cases, are harmful to the health of the consumer.

Legal cannabis is safer than illegal cannabis as retailers can only purchase from federally-licenced producers that must comply with federal regulatory and health requirements. Every batch must be tested by an independent third party lab and given a certificate of analysis. This data must be provided to the retailer.

Update from Peel Regional Police

The Peel Regional Police Specialized Enforcement Bureau has produced a report updating its interactions with illegal cannabis in Mississauga.

Peel Regional Police have received very few Crime Stoppers complaints regarding illegal cannabis in the last few years:

- 2023 – 0 (As of February 27, 2023)
- 2022 – 6
- 2021 – 9

With the introduction of cannabis edibles and the availability of “bricks and mortar” store fronts (post COVID-19), as well as the online legal products and delivery system, Peel Police have seen no additional upward crime trends associated to cannabis in Peel Region. The illegal mobile dispensaries in Mississauga that were on the rise in 2021 due to the pandemic, have become relatively obsolete.

Weed Releaf Cannabis Dispensary located at 2563 Hurontario Street, Mississauga, has been an illegal dispensary of concern. Since January 2019, PRP has executed several Cannabis Control Act search warrants and has seized thousands of dollars in cannabis products each time. The dispensary consistently re-opens after it has been ordered to stop operations. This operation has effectively cornered the illegal cannabis market in Mississauga and its central location provides easy access to consumers. There has not been a drastic increase in violence surrounding this location, however it does attract significant foot traffic and customer base, which negatively impacts the quality to life for the surrounding businesses. Peel Police continue their efforts to mitigate the impact of this illegal dispensary.

Peel Police note the same challenges persist. They state they have limited powers under the *Cannabis Act* and *Cannabis Control Act*, the fines are minimal, and the illegal businesses make significant cash profits that are not regulated or taxed. Penalties are not a deterrent.

Municipal Benchmarking

Staff sought updates from neighbouring municipalities on their experience with cannabis retail. Below is a short summary of the feedback received from staff in each municipality.

Brampton: Refers any relevant complaints to Peel Police, assisting in a support role only (zoning, property standards). Do not have more than one store per postal code. Have not had issues with clustering or vagrancy/nuisance.

Toronto: Enforcement pursued delegated enforcement from Toronto Police Services. Went from 112 illegal stores to 6 following enforcement. Has seen a small resurgence from resources delegated elsewhere through COVID. No issues with clustered stores or nuisance/vagrancy around stores.

Burlington: Minimal complaints-mostly related to signage. Enforce Municipal Act only through property standards and zoning. Clustering has not been a problem. Only two small stores downtown. Burlington has created guidelines for providing comments to the AGCO in response to retail store applications.

Guelph: Has four stores in the downtown core. Have not had a high volume of complaints relating to cannabis retail stores and did not report any vagrancy or nuisance issues. They have sent letters to the AGCO regarding concerns over locations but have not been successful. They support police with zoning and property standards issues only.

Hamilton: Hamilton reported no issues with clustering or vagrancy/nuisance around cannabis stores. They do not take an enforcement role and support Hamilton Police through zoning and property standards only. They have not had any response from the AGCO on concerns with store locations.

Financial Impact

There is no financial impact associated with this report.

Conclusion

Since Council passed its resolution to prohibit cannabis retail stores from operating in Mississauga, the legal landscape has changed in three significant ways: Cannabis edibles can now be sold in retail stores, the Province has lifted the cap on the number of licences that are issued, and cannabis retailers are authorized to offer delivery and curbside pick services on a permanent basis.

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 – or “opt-in.” A resolution to opt-in 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.

Attachments

Appendix 1: OCS Retail and Distribution Presentation Cannabis Retail Sales Update



Shari Lichterman, CPA, CMA, Acting City Manager and Chief Administrative Officer

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