

Personal Cannabis Production

Wheatland County

WHEREAS the Government of Canada is responsible for setting strict requirements for producers who cultivate and process cannabis, and to set industry-wide rules and standards; and

WHEREAS provinces and territories are responsible for developing, implementing, maintaining, and enforcing systems to oversee the distribution and sale of cannabis; and

WHEREAS under the provincial *Gaming, Liquor and Cannabis Act*, Alberta municipalities are empowered to make rules that are directly linked to their jurisdictions including establishing land use bylaw regulations on where cannabis can be commercially grown, produced, and sold, as well as where cannabis can be consumed; and

WHEREAS the regulation of personal cannabis production for recreation and medical use is currently ill-defined; and

WHEREAS the lack of regulatory clarity relating to personal cultivation of cannabis is contributing to health, safety, and nuisance concerns for residents of municipal jurisdictions; and

WHEREAS municipalities recognize that there are reasonable medical reasons for cultivation and consumption of cannabis; and

WHEREAS established municipal policies and land use regulations related to cannabis are directed towards commercial cannabis production and sales and are not applicable to personal cannabis production; and

WHEREAS under Health Canada's Medical Use of Cannabis application standard to become a licensed producer, individuals can apply for a license to produce and possess a limited amount of cannabis for their own medical purposes; and

WHEREAS under this license, one can cultivate up to 485 cannabis plants at home to treat their medical needs without the requirement to notify local authorities; and

WHEREAS under this license, the holder is only expected to meet local bylaws, regulations, and safety code requirements, and

WHEREAS the application and approval process does not require confirmation that all municipal requirements have been met; and

WHEREAS there is significant municipal concern with ensuring compliance with municipal bylaws, regulations, and safety code requirements as personal cannabis production increases on residential properties; and

WHEREAS the health and environmental risks associated with indoor cultivation and processing of cannabis cannot be addressed or mitigated if the producer fails to notify municipal authorities or fails to obtain the appropriate permits; now

THEREFORE BE IT RESOLVED that the Rural Municipalities of Alberta collaborate with the Federation of Canadian Municipalities to advocate to Health Canada that confirmation of municipal compliance for personal medical cannabis production facilities required for existing license holders, and prior to approval for all future license applicants, in order to mitigate and reduce health, environmental, and nuisance risks associated with personal medical cannabis production.

Member Background

In November of 2020, Wheatland County Council directed administration to draft a letter and White Paper to distribute to the federal and provincial elected officials representing the Wheatland County area, including the following:

Honourable Martin Shields, Member of Parliament, Bow River
Honourable Premier Jason Kenney, Premier of Alberta
Honourable Minister of Municipal Affairs, Tracy Allard
MLA Nathan Cooper – Olds – Didsbury – Three Hills
MLA Leele Aheer – Chestermere – Strathmore
MLA Angela Pitt – Airdrie – East
MLA Joseph Schow – Carleton Place – Siksika

The purpose of the study was to investigate the current realities that (specifically) Wheatland County and rural municipalities are experiencing. Rural municipalities are concerned with ensuring compliance with municipal bylaws, regulations, and safety code requirements related to the increase of personal cannabis production. The health, safety, and environmental risks associated with indoor cultivation and processing of cannabis cannot be addressed or mitigated if the producer fails to notify the County or fails to obtain the appropriate permits. There are no requirements under the Personal Medical Use of Cannabis license, up to 485 plants can be cultivated for personal medical use without the requirement to notify local authorities. Options to obtain compliance for personal cannabis production operations are limited and would require the cooperation of Health Canada to include confirmation that municipal requirements have been met prior to issuing a license.

APPENDIX A – WHITE PAPER

WHITE PAPER: PERSONAL CANNABIS PRODUCTION FOR MEDICAL PURPOSES

1.0 *Introduction*

Since the enactment of the Cannabis Act in October 2018, legislation around the regulation of personal cannabis production has been ill-defined. From this, health, safety, and nuisance concerns for the residents of Wheatland County (the County) have arisen. Like many other municipalities, the County established policies and land use regulations in response to the legalization of cannabis, however these policies are directed towards commercial cannabis production and sales and are not applicable to cannabis production at home.

Under Medical Use of Cannabis (Personal Use), individuals can apply and register to produce and possess a limited amount of cannabis for their own medical purposes. Under this license, one can cultivate up to 485 cannabis plants at home to treat their medical needs without the requirement to notify local authorities. The license holder is expected to meet local bylaws, regulations, and safety code requirements (municipal requirements), but the application and approval process does not require confirmation that all municipal requirements have been met. Without the requirement for an applicant or license holder to confirm that all municipal requirements have been met, these home growing operations are able to circumvent building and safety code requirements which may lead to health and safety concerns.

License holders may be reluctant to notify local authorities for personal and/or privacy reasons; however, from an approval's perspective, there is no reason to circumvent the requirement to obtain approvals related to development or safety codes permits. If an applicant applied to construct an accessory building, the development permit and subsequent building permit would be issued without asking what it would be used for. Obtaining development, building, electrical permits for example means they have met municipal requirements; therefore, meeting the provisions of the Health Canada license.

This report reviews the issues and concerns that have arisen regarding cannabis grown for personal use since its legalization in October 2018. The report discusses the County's inability to ensure these properties comply with municipal requirements, including regulating neighbourhood disputes over nuisance issues.

2.0 Background

The Cannabis Act came into effect on October 17, 2018, creating a legal and regulatory framework for controlling the production, distribution, sale, and possession of cannabis in Canada. Implementation of the Cannabis Act is a shared responsibility between the federal, provincial, and territorial governments.

The Federal government's responsibilities are to set strict requirements for producers who cultivate and process cannabis, and to set industry-wide rules and standards. Provinces and territories are responsible for developing, implementing, maintaining, and enforcing systems to oversee the distribution and sale of cannabis. Municipalities are empowered to make rules that are directly linked to their jurisdictions. These types of things include establishing land use bylaw regulations on where cannabis can be commercially grown, produced, and sold, as well as where cannabis can be consumed. There is some overlap between provincial and municipal responsibilities.

Prior to the legalization of cannabis, enforcement issues related to the illegal production and sale of cannabis was the responsibility of the local police and the RCMP with municipal authority limited to passing bylaws (e.g. nuisance issues such as odours, public behaviour, etc.) to address community impacts. With the legalization of cannabis, enforcement of cannabis related issues is still the responsibility of the local police and RCMP with municipal authority consisting of inspection and compliance with provincial building codes and municipal bylaws.

It is difficult to ascertain the number of legal personal cannabis production operations that are located within the County and whether they have all the proper permits in place. Many of these license holders may not have notified the County about their license but may have obtained the appropriate permits. They are not required to disclose the reason for the necessary improvements to an accessory building or to their home.

2.1 Growing Cannabis at Home

The Cannabis Act permits adults to cultivate up to four (4) cannabis plants per household (not per person). If a private resident is growing more than the restricted four (4) plants that are allowed for and does not have a production license issued by Health Canada, it becomes an offence under the Cannabis Act. Investigation and enforcement of the Cannabis Act is the responsibility of the RCMP and will be investigated by way of a formal complaint.

Under Accessing Cannabis for Medical Purposes, an adult can apply to Health Canada to produce their own cannabis for medical purposes. If a license is granted, an individual can cultivate a limited quantity of cannabis at home to treat their medical needs. The number of plants permitted is determined by entering the number of grams prescribed daily into a calculator tool which then determines the number of plants (up to 485 plants) that a person can grow on their property. This license does not include selling cannabis.

3.0 Discussion

The County can establish policies and land use bylaw regulations for personal cultivation of cannabis but is limited in its ability to enforce these regulations. Since individuals authorized to produce cannabis for their own medical use do not have to notify local authorities, there is no way for a municipality to know how many of these personal cultivation operations exist and to ensure compliance with safety code requirements. There are limited enforcement tools to control home cultivation or processing, which increases overall environmental health and safety risks associated with these operations. Some of the concerns that have been raised are outlined below.

3.1 Safety Concerns

Individuals with a license to grow cannabis in their home for medical purposes are expected to abide by the relevant building and fire code requirements, as well as public health and residential tenancy regulations; however, they are not required to notify local authorities that they have been granted a license to grow cannabis. While some license holders may obtain the appropriate permits for cultivating cannabis on their property (without specifying what the improvements are for), there are others that may make changes to their property to accommodate cannabis cultivation without acquiring permits, which may compromise their health and safety.

Some of the safety issues or concerns associated with personal cannabis production are outlined below.

3.1.1 Electrical and Fire Hazards

Changes and/or upgrades to a home to accommodate personal cannabis production may require an electrical, gas, or building permit depending on the work to be completed. Permits are reviewed for compliance with the Alberta Building Code and then inspected by a Safety Codes Officer when the work is completed to ensure that it was properly installed or constructed.

For example, indoor cannabis production may require high wattage lights to enhance plant growth and the license holder may install or make changes to their electrical system without applying for an electrical permit. Without review and inspection to ensure that the upgrade or changes meet Alberta Building Code requirements and properly installed, it raises concerns that the changes/upgrades could trigger a large fire.

Another safety concern is the use of generators or “burners” that are powered by propane or natural gas to enhance plant growth and increase plant yield. These generators produce carbon monoxide, which can negatively accumulate within the home depending on the home’s ventilation system leading to carbon monoxide poisoning. The presence of

pressurized carbon dioxide cylinders and propane powered carbon dioxide generators, increases the level of carbon dioxide within the growing room displacing oxygen, leading to asphyxiation. Also, if the propane cylinders and the tubing used have any leaks, this increases the risk of an explosion.

Another hazardous practice utilized by growers is to vent furnaces or water heater exhaust fumes directly into the growing (plant) room to increase carbon dioxide, which also enhances plant growth. This releases carbon dioxide, carbon monoxide, and sulfur dioxide into the room, which could lead to carbon dioxide poisoning. If exposed to fire, these metal cylinders could cause a boiling liquid expanding vapor explosion (due to cylinder fatigue and container failure).

Since license holders do not have to notify local authorities about their license to produce or provide confirmation to Health Canada that they have met all provincial and municipal requirements for the operation, they can proceed growing cannabis without obtaining any permits. This impedes the ability for municipalities to ensure compliance and reduce the safety and environmental risks associated with home cannabis production.

3.1.2 Environmental and Health Hazards

Environmental health issues are associated with personal cannabis production due to poor indoor air quality when plants are grown within the home. If proper ventilation of HVAC systems is not installed to address the increased moisture from the plants along with the moisture from other household sources, mould and mildew will occur. Mould and mildew in the home are associated with respiratory infections, asthma, upper respiratory tract symptoms, etc. Remediating mould and mildew in a home can be costly.

Another environmental health issue associated with personal cannabis production is the indoor use of chemicals such as herbicides, pesticides, or fungicides. Each of these chemicals create health hazards if absorbed into the skin or inhaled. Health Canada does provide some general guidance for the use of chemicals used for growing cannabis in the home; however, it is insufficient regarding controlling pests, diseases, or fungi on cannabis plants.

If cannabis products are not processed and disposed of properly, children, pets, or unaware adults may inadvertently consume cannabis with detrimental effects. There is little guidance from the federal government on what is considered an acceptable method of destroying cannabis. Health Canada recommends the “Kitty Litter Method” which provides guidance to persons producing cannabis for their own medical purposes. It

recommends rendering cannabis unfit for use or consumption by blending the cannabis with water and mixing it with cat litter (for odour control) before disposing of it. The destroyed cannabis can be placed in the garbage and sent to the landfill.

3.2 *Nuisance Issues*

Municipalities have previously approached issues associated with cannabis and cannabis production through nuisance bylaws. However, there are limited tools to enforce compliance through nuisance bylaws.

Complaints most frequently received by the County associated with cannabis production is regarding the pungent odour emitted from cannabis plants. When the County receives a complaint about the odour and suspicion of an illegal cannabis cultivation or production operation, County staff will investigate the complaint by confirming whether the property has any development permit in place for the growing of commercial cannabis. If there is no development permit, the County will contact the RCMP to determine if an investigation is being conducted, or to advise them of the situation.

If the occupant/owner has a license to grow cannabis for personal medical purposes, the County's only option to address the nuisance complaint is let the license owner know about the complaint and work towards a voluntary solution to resolve the issue.

3.3 *Planning Issues*

Under the Cannabis Act, municipal governments can address planning matters related to cannabis and associated businesses by establishing bylaws to regulate location, density, setbacks, etc. but are limited in the ability to regulate and enforce bylaws for personal medical production operations. The County's Land Use Bylaw requires a development permit for a cannabis production facility, which addresses cultivation, processing, labelling and packaging, testing, destroying, storing or transporting cannabis, but the County does not have the authority to ask for a development permit for the growing of cannabis for personal medical use.

If the County pursues bylaws to regulate or consider prohibiting personal cannabis cultivation within a private residence, the ability to enforce these bylaws would be hindered due to the current licensing process. The license holder does not need to provide confirmation that all municipal bylaws have been met when applying for a license or notify the municipality that they have received a license. So, once the license has been issued, cannabis production can proceed. It then becomes the responsibility of the license holder to abide by municipal bylaws or provincial safety codes.

3.3 Health Canada Notification of Issued Licenses

Under Medical Use of Cannabis (Personal Use), an individual authorized to produce cannabis for their own medical use is not required to notify local authorities. They are informed as part of the application process that they must comply with municipal laws, including bylaws dealing with electrical and fire safety. If permits were required and not obtained prior to cannabis cultivation, compliance would occur only if a complaint were received and work had been undertaken without the appropriate permits.

Health Canada does not readily share information on the number of licenses issued for personal medical production or where they are located with municipalities due to privacy reasons. Without information on the number of personal cannabis licenses issued within the municipality or a requirement from Health Cannabis on municipal compliance, the County cannot effectively address the social, health, and safety risks associated with cannabis production in a residence.

4.0 Summary

The County is concerned with ensuring compliance with municipal bylaws, regulations, and safety code requirements as personal cannabis production increases on residential properties. The health and environmental risks associated with indoor cultivation and processing of cannabis cannot be addressed or mitigated if the producer fails to notify the County or fails to obtain the appropriate permits. Options to obtain compliance for personal cannabis production operations are limited and would require the cooperation of Health Canada to include confirmation that municipal requirements have been met prior to issuing a license.

The County could also undertake an educational campaign on the County's website informing license holders that they are to abide by applicable municipal bylaws and safety code permits. Information should be provided to advise license holders that they do not need to disclose why the upgrades or improvements are being done and that the County's goal is to ensure that installation is done properly.

As this issue is not unique to Wheatland County, it may be beneficial to initiate dialogue with other municipalities to identify common concerns and ideas for working together to find a solution to address personal cannabis production with the provincial government.

References

1. Government of Canada. Information for Municipalities – Medical Use of Cannabis [Internet]. August 19, 2016. Available from: <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/information-municipalities.html>.
2. Government of Canada. Calculator for the production of a limited amount of cannabis for medical purposes [Internet]. January 16, 2018. Available from: <https://health.canada.ca/en/health-canada/services/drug-health-products/buying-using-drug-health-products-safely/cannabis-medical-purposes/accessing-cannabis-medical-purposes/production-cannabis-medical-purposes/calculator.html>.
3. Eykelbosh, Angela and Leela Steiner (March 2018). Growing at Home: Health and Safety Concerns for Personal Cannabis Cultivation. National Collaborating Centre for Environmental Health.
4. Jelinek, Chris. Fires at Indoor Marijuana Grows [Internet]. June 1, 2017. Available from: <https://www.firehouse.com/home/article/12318245/indoor-marijuana-grows-hazards-recognition-response-considerations>.
5. Government of Canada. Information bulletin: safety and security considerations when producing cannabis for your own medical purposes [Internet]. August 11, 2016. Available from: <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/information-municipalities.html>.