

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW 2019-069

A By-law to Regulate Certain Matters Related to Cannabis

WHEREAS Section 128 (1) of the Municipal Act, 2001 provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances;

AND WHEREAS the legislation and regulations permitting the sale and consumption of Medical cannabis and Non-Medical cannabis do not regulate certain matters of public interest in relation to health, safety, comfort or convenience;

AND WHEREAS without proper regulation the activities regulated by this By-law, especially in the absence of sufficient regulation or enforcement by another level of government, could become or cause public nuisances.

NOW THEREFORE the Council of the Town of Amherstburg **ENACTS AS FOLLOWS:**

1. DEFINITIONS

In this By-law:

“Cannabis” shall have the same meaning as cannabis defined in the Cannabis Act S.C. 2018, c. 16 (Canada);

“Cannabis Accessories” shall have the same meaning as cannabis accessories defined in the Cannabis Act S.C. 2018, c. 16 (Canada) and shall also include Cannabis educational and informational material;

“Cannabis Lounge” means a building, which is not a residence, in which Cannabis Products, legally possessed by one or more persons are consumed;

“Cannabis Products” means any product for which Cannabis is one of the principal ingredients, including cannabis derivatives;

“Cannabis Retailer” means a Premises from which Cannabis or Cannabis Products are sold to the general public on a retail basis;

“Cannabis Retail Space” means a room or Premises where only Cannabis or Cannabis Products are sold;

“Council” means the Council of the Corporation of the Town of Amherstburg;

“Loiter” means to stand or wait around idly without apparent purpose;

“Medical Cannabis” means Cannabis for which a prescription has been issued by a medical practitioner in accordance with the Health Canada regulations for medical Cannabis;

“Municipal Law Enforcement Officer” means an individual appointed by the Town for the purpose of enforcing Town by-laws;

“Non-Medical Cannabis” means Cannabis or Cannabis Products for which a prescription has not been issued by a medical practitioner in accordance with the Health Canada regulations for medical Cannabis;

“Noxious Odour” means an odour of Cannabis or from Cannabis Related Activities emanating from a Premises that is persistent or continuous and is likely to interfere with the ordinary enjoyment of other property in the vicinity of the Premises;

“Odour Abatement Protocol” means the combination of methods, practices, equipment and technologies designed for the purpose of eliminating the emission and emanation of Noxious Odours from the Premises to any other property;

“Person” means any individual, owner, occupant, tenant, association, firm, partnership, corporation, agent or trustee and the heirs, executors, or other legal representatives of a person to whom the context can apply according to law;

“Premises” means a Cannabis Retailer, Cannabis Retail Space or Cannabis Lounge;

“School” means a School as defined in the Education Act and includes private schools as defined in the Education Act;

“Town” means the Corporation of the Town of Amherstburg;

“Zone” shall mean a designated area of land use as defined in the Town's Zoning By-law, as amended from time to time.

GENERAL PROVISIONS

- 2.1** This by-law is administered by the Licensing and Enforcement Department of the Town of Amherstburg.

PROHIBITIONS

- 3.1** No Person shall operate a Cannabis Retail Store, Cannabis Retailer or Cannabis Lounge except in accordance with the provisions of this By-law.
- 3.2** No Person shall hinder or obstruct, or attempt to hinder or obstruct, a Municipal Law Enforcement Officer in the enforcement of the provisions of this By-law.
- 3.3** No Person shall contravene an Order to Comply or an Order to Discontinue Activity.

CANNABIS LOUNGE / CANNABIS RETAILER REGULATIONS

- 4.1** A Cannabis Retailer, Cannabis Retail Space or a Cannabis Lounge shall not:
- 4.1.1** Permit any individual under 19 years of age in the Cannabis Retail Space;

- 4.1.2 Operate unless it is a holder of a valid retail business license as issued by the Town under its Business Licensing By-law;
- 4.1.3 Be closer than 150 metres from the property line of any School or Private School;
- 4.1.4 Be in any Zone that is not designated for commercial use;
- 4.1.5 Operate a Cannabis Retail Space that is not enclosed by walls separating it from any other commercial establishment or activity;
- 4.1.6 Sell any other items other than Cannabis Products and/or Cannabis Accessories in the Cannabis Retail Space;
- 4.1.7 Permit the consumption of Cannabis or Cannabis Products on the exterior of the Premises;
- 4.1.8 Operate without an Odour Abatement Protocol sufficient to eliminate any Noxious Odour migrating off its Premises;
- 4.1.9 Permit individuals to Loiter on the exterior of the Premises;
- 4.1.10 Operate between 11:01pm and 8:59am on any day;
- 4.1.11 Operate without proof of a Commercial General Liability (CGL) insurance policy that shall be not less than 5 million dollars per occurrence which shall be provided to the Town in a form acceptable to the Town;
- 4.1.12 Operate without providing a Traffic Study satisfactory to the Town;

PENALTY

- 5.1 Every Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is subject to a fine pursuant to the Provincial Offences Act, R.S.O. 1990, c.P.33, as amended from time to time.
- 5.2 Each calendar day a violation of Section 3 continues is deemed to be a separate offence.

ENFORCEMENT

- 6.1 Pursuant to section 436 of the Municipal Act and in addition to any other powers of entry granted to the Town, a Municipal Law Enforcement Officer designated to perform inspections and enforcement pursuant to this By-law may, at all reasonable times, enter onto premises for the purposes of carrying out an inspection of the premises to determine whether or not the following are being complied with:
 - 6.1.1 This By-law or any other By-law passed by the Town;
 - 6.1.2 An Order of the Town made under the By-law;

- 6.1.3** An Order to Discontinue or Remedy a contravention of this By-law for which a conviction has been entered by a court of competent jurisdiction.
- 6.2** If an Municipal Law Enforcement Officer is satisfied that this By-law has been contravened, the Officer may make an Order, known as an Order to Comply or Order to Discontinue Activity, requiring the Person who contravened the By-law, or who caused or permitted the contravention to discontinue or remedy the contravention.
- 6.3** The Order may be served personally on the Person to whom it is directed or by regular mail to the last known address of that Person, in which case it shall be deemed to have been served on the third day after it is mailed. Service on a Corporation can be affected by registered mail to the corporate mailing address.
- 6.4** Where anything required or ordered to be done in accordance with this By-law is not done, the Town or persons designated by the Town may upon such notice that he or she deems suitable, do such thing at the expense of the person required to do it and the expense may be recovered by action or by adding the costs to the tax roll and collecting them in the same manner as municipal taxes.
- 6.5** In addition to any other penalty or remedy available to the Town, Council may on behalf of the Town with the consent of the Chief of Police and with notice to the Attorney-General of Ontario, apply to the Superior Court of Justice for an order requiring all or part of a Premises be closed for a period not exceeding two (2) years if it be proved on a balance of probabilities that:
- 6.5.1** Activities or circumstances on or in the Premises constitute a public nuisance or cause or contribute to activities or circumstances constituting a public nuisance in the vicinity of the Premises;
- 6.5.2** The public nuisance has a detrimental impact on the use and enjoyment of property in the vicinity of the Premises;
- 6.5.3** The Owner or Occupants of the Premises or part of the Premises knew or ought to have known that the activities or circumstances constituting the public nuisance were taking place or existed and did not take adequate steps to eliminate the public nuisance; or
- 6.5.4** A conviction for a contravention of this By-law by a court of competent jurisdiction of a public nuisance in respect to the Premises has been entered and the conviction is not currently under appeal.

SEVERABILITY

- 7.1** Where a court of competent jurisdiction declares any section, schedules or part of a section or schedule of this By-law invalid, the remainder of this By-law shall continue in force unless the court makes an Order to the contrary.

SHORT TITLE

- 8.1 The short title of this by-law shall be the "Cannabis Retail Nuisance By-law."

Read a first, second and third time and finally passed this 29th day of July, 2019.



MAYOR – Aldo DiCarlo



CLERK – Paula Parker