STAFF REPORT TO COUNCIL

Date: August 29, 2018
To: Chief Administrative Officer
From: Michelle Martineau, Director of Corporate Services
Subject: Cannabis Regulations and Smoke Free Bylaws

RECOMMENDATION

1. THAT Council gives first, second and third reading to Clean Air Bylaw 1229, 2018 as presented in the Director of Corporate Services’ August 29, 2018 report; AND THAT Council directs Staff to deposit a copy of Bylaw 1229 with the Minister of Health.

2. THAT Council gives first, second and third reading to Zoning Bylaw No. 264, 1981, Amendment Bylaw 1234, 2018 as presented in the Director of Corporate Services’ August 29, 2018 report; AND THAT a Public Hearing for Bylaw 1234 be scheduled for September 17, 2018.

3. THAT Council gives first, second and third reading to Business Licence No. 849, 2001, Amendment Bylaw 1236, 2018 as presented in the Director of Corporate Services’ August 29, 2018 report; AND THAT Council directs Staff to post notice for public input on Bylaw 1236 on the District’s public notice posting places.

4. THAT Council gives first, second and third reading to Administrative Fees and Charges Bylaw 1237, 2018 as presented in the Director of Corporate Services’ August 29, 2018 report.

PURPOSE

This report is provided so that Council may consider the proposed Clean Air Bylaw which shall prohibit all tobacco and cannabis smoking/vaping in public places in Sparwood, amendments to the Zoning and Business Licence Bylaws to regulate private retail cannabis stores, and the establishment of a fee for the District to assess provincial licence applications.

BACKGROUND

The recreational use and sale of Cannabis will become legal in Canada on October 17, 2018. To prepare for the legalization, Council, at the May 28, 2018 Committee of the Whole meeting, directed Staff to consult with the public in respect to:

• banning retail sales altogether
• capping the number of retail outlets
• regulating permissible locations (by zones and/or proximity to certain uses)
• imposing security requirements and restrictions on hours of operations
• requiring proof of provincial licence issuance and successful completion of the provincial employee training program as prerequisites to business licence issuance
• establishing procedures for public consultation on licence applications
• creating a new category of business licence fees, and
• regulating public consumption.
Resolution # CW 18-34  MOVED AND SECONDED THAT Staff be directed to include a gift certificate in the survey for one day’s access to the Leisure Centre as a token of Council’s appreciation for their participation in the cannabis legalization research; AND THAT Staff be directed to post the Cannabis Legalization Survey online and leave paper copies at the front counters at the District Office and the Leisure Centre; AND FURTHER THAT Staff be directed to mail out the survey to that every household in Sparwood as admall. CARRIED

Following the close of the survey (July 9, 2018), the Cannabis Legalization Survey Results were presented at the Committee of the Whole meeting on July 30, 2018, which included recommendations for Council’s consideration for regulating tobacco and cannabis use in public places, personal cultivation of cannabis, and regulating commercial production and private retail sales. Staff was directed at that meeting to draft a Clean Air Bylaw which prohibited cannabis and tobacco use in all public places, and to amend existing bylaws to regulate where private retail cannabis stores could locate and establish operating requirements in respect to security and hours of operation.

Resolution # CW 18-39  MOVED AND SECONDED THAT the Committee of the Whole directs staff to draft a Clean Air Bylaw which bans cannabis and tobacco use in all public areas. CARRIED

Resolution # CW 18-40  MOVED AND SECONDED THAT the Committee of the Whole directs staff to draft an amendment to the Business Licence Bylaw to impose regulations for private cannabis retail stores which:
- restricts private retail stores to C1, C3 and C4 zones only;
- sets a limit of 2 private retail stores;
- requires owners to install a security surveillance system or security guard; and
- permits private stores to operate under the same hours as liquor stores. CARRIED

Resolution # CW 18-41  MOVED AND SECONDED THAT the Committee of the Whole directs staff to draft an amendment to the Administrative Fees and Charges Bylaw to establish a fee for assessing private retail cannabis stores. CARRIED

Clean Air Bylaw 1229

The proposed bylaw will prohibit tobacco and cannabis use in all public areas in Sparwood and sets out the requirements for the District to post signage within the community to inform citizens of the new prohibitions. The proposed bylaw provides an exemption for Indigenous Nations traditional cultural activities for the use of tobacco or other native plants which may be smoked within public areas.

Staff is suggesting that a grace period be added to the bylaw so that it comes into force on October 17, 2018, which is the same day that the cannabis legislation will come into force and effect. This grace period will also provide the District with additional time to educate the public on the proposed changes, and order and install the new signage.

Zoning Amendment Bylaw 1234

The proposed amendment will allow private cannabis retail stores to operate within a C-1, C-3 or C-4 zone. However, the bylaw sets a maximum of 2 private cannabis retail stores to operate in Sparwood and prohibits consumption within the establishment.

Cannabis production facilities will be permitted within agricultural zones; however, retail sales will not be permitted from their facility.
Business Licence Amendment Bylaw 1236

The proposed amendment will establish the regulations for licensing, operations and security requirements for private retail cannabis stores. The fee proposed by Staff for obtaining a Cannabis Retail Store business licence has been set at $500, which is $400 more per year than a municipal business licence. This is intended to help offset the cost incurred by the District for the bylaw enforcement officer monitor the business on a regular basis to ensure compliance with the bylaw. This increase is equivalent to approximately one hour per month of the bylaw enforcement officer’s wage.

Under the bylaw, private cannabis retail store owners would be:
• permitted to operate under the same hours as liquor stores;
• prohibited from allowing anyone under the age of 19 on the premises;
• prohibited from allowing customers to consume any products within the facility;
• limited on their advertising and signage;
• required to install video surveillance, security, fire alarm, and air filtration systems; and
• required to securely lock up products or remove them from the store when it is not open, and the store is empty of personnel.

Administrative Fees and Charges Amendment Bylaw

Under provincial legislation, local governments may impose fees on applicants for assessing their application to the Liquor and Cannabis Regulation Branch (LCRB). The LCRB would notify the District of an application for a non-medical retail store licence and the proposed location. The District would then be required to gather the views of residents when making a recommendation to the LCRB to deny the application or recommend in favour of it.

• If the Council were to recommend denying the application, that would end the application process as the LCRB cannot issue a licence unless the District gives a positive recommendation.
• If the Council were to recommending approving the application, then the LCRB would have the discretion of whether to issue the licence but must consider Council’s recommendation.

If the District were to impose a fee on applicant to the LCRB to collect the views of residents so that Council could make a recommendation on whether to support or deny an application for a private cannabis retail store, then the same fee should be imposed for providing that same service for a provincial liquor licence. Please note that these fees would not apply towards a Special Occasion Liquor Licence (SOL), where Council has delegated their authority to the Director of Community and Facility Services to authorize SOLs under Delegation Bylaw 1186, 2016, as Staff is not required to gather the views of residents to support the issuance of an SOL.

Staff is suggesting setting a fee of $500 which would cover the following resource time and expenditures to gather residents’ views and conduct a public hearing:

• $250 to cover the costs of running advertisements in two editions of the Free Press (the District’s page costs approximately $500/edition and the advertisement would take about a quarter of the page);
• $250 to cover a portion of the costs associated with staff time spent collecting residents’ views and submitting them the LCRB. Staff estimates that they would spend approximately 6-8 hours to:
  o prepare a report to Council to outline the process and schedule the public hearing;
  o draft the notice to post in the Free Press and the District’s website and social media accounts;
  o prepare a report to Council summarizing the comments received and provide recommendations on options for Council’s consideration; and
  o summarize Council’s recommendation and provide supporting documentation to the LCRB.
As the same process as for provincial liquor licences must be followed for collecting the views of residents and making a recommendation on the licence application, must be followed for cannabis related licences, Staff recommends imposing the same fee for provincial liquor licences as for cannabis licences. If the bylaw receives first three readings, Staff will draft a policy on how the process for gathering the views of residents to bring forward to Council when the bylaw is considered for adoption.

INTERNAL CIRCULATION

The Clean Air Bylaw (see proposed Bylaw 1229) was circulated to the senior management team on August 21, 2018 for comment. The feedback received has been incorporated into the bylaw currently presented to Council.

The amendments to the Zoning and Business Licence Bylaws (see proposed Bylaws 1234 and 1236) were circulated to the Manager of Planning and the Deputy Director of Corporate Services on August 29, 2018. The feedback received has been incorporated into the bylaw amendments currently presented to Council.

LEGAL/STATUTORY AUTHORITY

Section 8 of the Community Charter authorizes Council, by bylaw, to regulate, prohibit and impose requirements in relation to public health.

Section 73 of the Public Health Act requires that a medical health officer advise local governments on bylaws, policies and practices respecting public health issues.

Section 120 of the Public Health Act authorizes the Lieutenant Governor in Council to require a local government to modify or rescind a bylaw which promotes or protects the health of the people within the jurisdiction.

Section 63 (once in force) of the Cannabis Control and Licensing Act will authorize local governments to prohibit smoking or vaping of cannabis in outdoor areas for purposes of community recreation.

Part 4, Division 3 of the Cannabis Control and Licensing Act requires that the Liquor and Cannabis Regulation Branch consult with local governments and Indigenous Nations prior to issuing a licence for a private retail cannabis store (see Local Governments role in licensing cannabis retail stores and the Cannabis Retail Store Licence Handbook attached to this report). Local governments are authorized under section 35 of this Part to impose fees on an applicant to recover costs incurred in assessing an application.

Section 41 of the Liquor Control and Licensing Act authorizes local governments to impose a fee on an applicant to recover costs incurred in assessing an application.

Cannabis Distribution Act establishes:
• a public wholesale distribution monopoly; and
• public (government-run) retail sales, both in stores and online.

LEGAL/STATUTORY PROCEDURAL REQUIREMENTS

Cannabis Control and Licensing Act
• sets the minimum age to purchase or consume cannabis at 19 years of age;
• allows adults to possess up to 30 grams of cannabis in a public place;
• prohibits cannabis smoking and vaping everywhere tobacco smoking and vaping are prohibited, as well as at playgrounds, sports fields, skate parks, and other places where children commonly gather;
• prohibits the use of cannabis on school properties and in vehicles;
• authorizes adults to grow up to four (4) cannabis plants per household, but the plants must not be visible from public spaces off the property, and home cultivation will be banned in homes used as day-cares;
• establishes a cannabis retail licensing regime similar to the current licensing regime for liquor; and
• provides enforcement authority to deal with illegal sales.

COMPLIANCE WITH CORPORATE STRATEGIES & POLICIES

2014-2018 Corporate Strategic Plan
• **Goal:** 3. An active, involved and healthy community
  o **Objective:** 3.4 To develop, facilitate and monitor activities that contribute to an improved standard of cleanliness across Sparwood that add value to existing cleanliness, beautification and environmental stewardship programs delivered by the District & its partners.

• **Goal:** 4. An effective and responsible local government
  o **Objective:** 4.1 To ensure that the District possesses adequate human resources to meet the organization’s strategic goals and operational plans.
  o **Objective:** 4.2 To ensure that the organization, as a whole, is allocating the right level of funding to each program, to do its job and to ensure its long-term sustainability.
  o **Objective:** 4.5 To ensure openness and transparency of all public processes.

FINANCIAL / BUDGETARY CONSIDERATIONS

None.

PERSONNEL IMPLICATIONS

Although the District anticipates that the Bylaw Enforcement Officer will need to spend more time monitoring private cannabis retail stores to ensure compliance, we do not at this time believe that the District will need to increase his hours.

EXTERNAL AGENCY / PUBLIC COMMENTS

The Clean Air Bylaw was circulated to the Tobacco Coordinator/Enforcement Officer, Integrated Tobacco Program, Population Health, Interior Health Authority on August 28, 2018. Feedback received was incorporated into the bylaw (Bylaw 1229) currently before Council.

The Clean Air Bylaw was circulated to the Ktunaxa Nation on August 28, 2018 for feedback on the exemption under section 3.3 regarding traditional Indigenous cultural activities. As it has only been two days since the bylaw was sent for referral, Staff have not received any comments from the Ktunaxa at the time of writing this report. However, if there are any concerns and the wording of the section needs to be amended prior to adoption, there will be enough time to make the amendment as the bylaw would not come into force and effect until October 17, 2018 (if adopted by Council).

COMMUNICATION CONSIDERATIONS

If Council gives first three readings to the proposed bylaws, Staff will prepare a public information package
to circulate to residents which will be presented to Council at the time of adoption of the bylaws, along with a formal communication plan.

OPTIONS

1. **Give first three readings to the bylaws as presented.** This option would enable the District to proceed with preparing the educational information for citizens on the new regulations prior to the October 17, 2018 cannabis legalization date and order signage.

2. **Give first reading to the bylaws and then, by way of resolution, provide instruction for amendment to one or all four bylaws, before further consideration of the bylaws.** This option would allow Council to fine tune one or all bylaws and still be able to consideration adoption of the bylaws prior to the October 17, 2018 cannabis legalization date.

3. **Abandon one or all four of the bylaws and continue with the status quo.** This option would allow citizens to continue to smoke tobacco wherever permitted under provincial legislation and cannabis to be consumed, and Council would still have input into private retail cannabis store locations.

CONCLUSION

Staff is recommending Option #1 is consistent with the direction given by Council at the July 31, 2018 Committee of the Whole meeting and the vision, goals, and objectives of the Corporate Strategic Plan.

Respectfully submitted,

Michelle Martineau, Director of Corporate Services

Attachments:
- Clean Air Bylaw 1229
- Business Licence Amendment Bylaw 1236
- Business Licence Bylaw 849 (redline consolidated version)
- Zoning Bylaw Amendment Bylaw 1234
- Administrative Fees and Charges Bylaw 1237
- Local Governments role in licensing cannabis retail stores
- Cannabis Retail Store Licence Handbook
- 2018 Cannabis Legalization Survey Results