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LEGALIZATION OF CANNABIS: PLANNING, LICENCING & REGULATION

October 18, 2018
Kelsey Becker Brookes



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Background

- *Act to Control and Regulate Cannabis* (Bill 26)
- Given Royal Assent on December 15, 2017
- Amends the *Gaming and Liquor Act* to create the *Gaming Liquor and Cannabis Act* ("Act")
- Regulations released on February 12, 2018

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Background

- Primary provincial legislation for the oversight, compliance, retail licensing, sales, and consumption of cannabis in Alberta
- Amended *Act* will work in conjunction with the federal *Cannabis Act* to create a comprehensive scheme for regulating cannabis in Alberta
- *Federal Cannabis Act* in force October 17, 2018

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Background

- The amended *Act* regulates cannabis in a manner similar to the regulation of liquor under the current *Gaming and Liquor Act*
- May use similar tools to address cannabis related businesses as you currently use to regulate alcohol related businesses

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Background

- The Alberta Gaming and Liquor Commission will have the general authority to import, distribute, purchase, sell, transport, possess and store cannabis
- Also oversees the issuance of licences and the conduct of licensees for cannabis

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Distribution and Retail Sales

- Municipalities will play a key role in regulating both retail sales, and production and processing of cannabis from a planning perspective
- Unless authorized by the *Act* or a cannabis licence, no person may, (a) display cannabis for sale, (b) store cannabis for sale, or (c) directly or indirectly sell or offer to sell cannabis

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Distribution and Retail Sales

- No cannabis licensee may sell cannabis unless it has been produced by a person that is authorized under the federal Act
- Hours of operation are limited to 10AM to 2 AM

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Licences

- Board may not issue a cannabis licence that authorizes the sale of cannabis unless
 - The business under which the activities authorized by the licence will be carried out is *separate* from any other business of the applicant; and
 - The activities authorized by the licence will be carried out in a location where no alcohol, tobacco, pharmaceuticals or *other things* are sold except cannabis accessories or prescribed things.

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Licences

- Licence authorizes the licensee to purchase cannabis from the Commission and possess, store and sell cannabis in the licenced premises
- Licence requirements include:
 - background checks for licencees and employees; and
 - obtaining development permit issued by the municipality.

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Licences

- Other licence conditions and terms include:
 - Requiring certain security, inventory tracking and display measures be taken;
 - Limiting number of licences held by single person or entity; and
 - Prohibiting the consumption of cannabis on a licenced premises or presence of minors in licenced premises.

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Consumption

- Municipalities will also play a key role in determining where individuals may smoke or vape cannabis
- Under the amended *Act*, smoking and vaping of cannabis are prohibited in the following areas:
 - In any area or place where that person is prohibited from smoking under the *Tobacco and Smoking Reduction Act* or any other *Act* or the bylaws of a municipality,

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Consumption

- On any hospital property, school property or child care facility property,
- In or within a prescribed distance from:
 - A playground,
 - A sports or playing field,
 - A skateboard or bicycle park,
 - A zoo,

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Consumption

- An outdoor theatre,
- An outdoor pool or splash pad, or
- Any other area or place that is prescribed or otherwise prescribed in the regulations

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Consumption

- S. 10 of the *Tobacco and Smoking Reduction Act* provides nothing in that *Act* affects a municipality's power to make bylaws to regulate, restrict or prohibit smoking
- Where there is a conflict between the *Act* and a bylaw that regulates, restricts or prohibits smoking, the more restrictive provision will prevail
- Able to restrict where smoking and vaping of cannabis may occur

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Cannabis Regulation at Municipal Level

- Planning and development
- Business licensing
- Public consumption
- Nuisance

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Planning and Development

- Bill 26 amends the *MGA* by requiring each land use bylaw to be consistent with the Regulations respecting the location of premises described in a cannabis licence and distances between those premises and other premises
- As a general rule, a Land Use Bylaw cannot prohibit cannabis related businesses entirely but can, through zoning, regulate the location and applicable development standards, provided not inconsistent with the Regulations
- How does this apply to Summer Villages?

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Planning and Development

- Regulations prescribe 100 metre set back from any of Provincial health care facility, school and parcel of land designated as municipal or school reserve
- Municipalities have express authority to, in their land use bylaws, vary those distances and set a different distance, including making the setback or separation requirement more restrictive

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Planning and Development

- The location of cannabis retail stores, lounges, counselling services, cannabis production facilities
- Application process for cannabis retail stores, lounges, counselling services, cannabis production facilities
- New use classes - consider level of specificity

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Planning and Development

- Change Land Use Bylaw to add use classes
- Zoning, permitted or discretionary
- Development standards
- Consider including development standards in use definition

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Planning and Development

- Key - where these uses can operate, taking into consideration proper planning considerations and compatibility with neighbouring uses
- What development standards are required to minimize negative impacts
- Conditions on permits
- Variance powers

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Planning and Development

- Drafting considerations:
 - Use class that best fits proposed used
 - Exclude use from other, more general use classes
 - Direct control
 - Consistency with other planning instruments
 - Setbacks need to be reciprocal

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Planning and Development

- Cannot prohibit but can regulate for proper planning reasons
- Consider the impacts you would like to address - reports, studies, community consultation will all support there being proper planning reasons

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Business Licencing

- Broad power to pass bylaws respecting business and business activities
- Categories of businesses
- Fees
- Conditions
- *Passutto Hotels* (2006) ABQB 641

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Business Licencing

- Consider anticipated impacts and associated costs
- Fees differentiation
- Additional application requirements
- Need to re-apply and tie to provincial license

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Consumption

- Broad power to pass bylaws with respect to safety, health and welfare, and protection of people and public places
- Where to allow consumption in public

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Consumption

- Treat same or different as smoking?
- Deal with edibles proactively
- Define public places
- Exception for medical
- Offences

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Nuisance

- Broad power to pass bylaws with respect to safety, health and welfare, and nuisances
- Personal cultivation
- Consumption on private property

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Nuisance

- Think in terms of enforcement
- Odour - can be dealt with other ways
- Wait and see approach

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Thank You For Your Attention Questions Are Welcome

Kelsey Becker Brookes
 780.497.3304
kbeckerbrookes@rmrf.com

Toll Free: 1.800.661.7673 (RMRF)
www.rmrf.com
