

NO: R132

COUNCIL DATE: July 8, 2013

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **July 4, 2013**

FROM: **City Solicitor**

FILE: **3900-20-17410/#2**

SUBJECT: **New Marihuana for Medical Purposes Regulations**

RECOMMENDATION

It is recommended that Council:

1. receive this report as information;
2. request that the Mayor on behalf of Council forward a letter to Health Canada:
 - a. expressing concern that the new Marihuana for Medical Purposes Regulations ("MMPR") include nurses as health care practitioners who may prescribe medical marihuana to other individuals, a circumstance which is not typical of the conventional approach to most prescription-related medical treatments in Canada that are only available to individuals based on a prescription issued by a medical doctor and further that the new MMPR do not identify reasons for which medical marihuana may be prescribed, all of which appears to leave significant risk for illicit activity to take place under the guise of medical treatment;
 - b. expressing concern that the new MMPR do not require that an applicant to Health Canada for a Medical Marihuana Producer's license demonstrate compliance with all municipal by-laws (such as Zoning, Building, Business Licensing, etc.) of the local government jurisdiction within which the operation is proposed prior to Health Canada issuing a license to that producer; and
 - c. requesting that Health Canada provide information to the City of Surrey, after the Medical Marihuana Access Regulations have been repealed, as to the location of each medical marihuana production site within the City of Surrey that was authorized for use by a licence holder under the Marihuana Medical Access Regulations; and
3. include a copy of this report and the related Council resolution with the above-referenced letter.

BACKGROUND

The current Marihuana Medical Access Regulations ("MMAR" or the "Old Regulations") came into force on July 30, 2001. The new MMPR, which are intended to over time replace the Old Regulations, came into effect on June 19, 2013. The MMAR and the MMPR will operate concurrently until the MMAR are fully repealed on March 31, 2014.

Currently, the MMAR permit individuals to apply for a licence to grow medical marihuana in residential properties. This activity will cease to be authorized once the MMAR are fully repealed.

DISCUSSION

Summary of the MMPR

The following provides a brief overview of the MMPR, focusing in particular on the provisions in six areas of concern to local governments.

I. Notice to Local Government

Health Canada does not require that a local government's approval be sought (or granted) by a prospective marihuana producer prior to the producer becoming licensed under the MMPR. In fact, a local government's involvement in the grow-op licensing process is limited to receiving (s. 38) a written notice from each applicant for a producer license. This notice, which the New Regulations require be sent to the applicable local government, local fire authority and the local police force or RCMP, must contain:

- (a) the name of the applicant;
- (b) the date on which the applicant will submit the application;
- (c) the activities for which the license is sought including (among other things) production, sales activities, and importation or export of marihuana; and
- (d) the address of the site and identification of buildings within which the activities will be conducted.

The New Regulations provide that the production, sale, storage and importation of marihuana cannot be conducted at a "dwelling" place (s. 13) and the production can only occur indoors at the producer's site (s. 14). There are no provisions in the MMPR requiring local government consultation, inspections or approvals as a condition of producer or dealer licensing. Health care practitioners (about which more will be said, below) who are engaged in the transfer, storage and distribution of marihuana to those in their care are not required to notify local government, fire services or police.

II. Possession

Under the New Regulations, dried marihuana can be possessed by:

- i. a person who has obtained it from a licensed producer for their own medical purposes or for those of another person for whom they are responsible and who has obtained a medical document (s. 3(1) and s. 129) signed by a "health care practitioner";

- ii. "health care practitioners", defined as nurses and medical doctors, can possess marihuana in the course of their practice for distribution to those whom they have provided a medical document authorizing its use;
- iii. hospital employees in connection with their employment (s. 3(2)(d)); and
- iv. licensed producers and dealers including their employees (s. 3(5)).

III. Possession Limits

The New Regulations now specify that persons who obtain marihuana for their own use or for another for whom they are responsible cannot possess more than 150 grams (5.29 ounces).

IV. Health Care Practitioners

Health care practitioners are defined in the New Regulations to include medical doctors and nurses, but not pharmacists.

Health care practitioners are authorized to possess marihuana and "transfer" it to persons under their treatment or those who are responsible for the persons under treatment (s. 128). The New Regulations provide authority for health care practitioners to possess and transfer marihuana to those to whom they have issued permission to consume medical marihuana. This being said, there are no complementary provisions within the New Regulations to govern the storage requirements, possession quantities or security clearances that apply to health care practitioners.

As a result of the New Regulations, health care practitioners have replaced Health Canada as the gateway through which individuals must pass before they will be accepted as persons authorized to possess and consume medical marihuana. The MMPR offers minimal guidance to health care practitioners since the MMPR does not identify ailments or prescribe permissible reasons that would qualify a patient for treatment with medical marihuana. The health care practitioner has complete discretion on the issuance of a "medical document" to allow a person to consume marihuana.

The MMPR indicate that a health care practitioner can issue a "medical document" that authorizes persons to purchase and possess medical. The medical document is valid for up to a year. Health care practitioners cannot transfer more than 150 grams of marihuana at any one time (s.130(2)) to a person holding a medical document.

As noted above, pharmacists are excluded from the New Regulation's definition of health care practitioners. Pharmacists could, however, apply to be a "licensed dealer" under the Narcotic Control Regulations. If this course of action were pursued, a pharmacist could then possess marihuana under s.3(3)(b) of the MMPR and purchase it from licensed producers (s.131(1)) for resale.

V. Communication of Information

Licensed producers are required to provide (s. 101) to a member of a Canadian police force information regarding an identifiable individual disclosing whether or not:

- (a) a person is a client of the producer;
- (b) an individual responsible for a client of the producer; and
- (c) the daily quantity of marihuana specified in the medical document supporting the client's registration.

VI. Security Clearance

Section 24 of the New Regulations requires a security clearance for the following persons:

- (a) the "senior person in charge" of a grow-op who has overall responsibility for management of the facility (s.22(1)(a));
- (b) the "one responsible person in charge" who has responsibility for supervising the activities with respect to cannabis (s.22(1)(b));
- (c) an alternative responsible person in charge;
- (d) if a producer's license is issued to an individual, that individual; and
- (e) in the case of a corporation, each officer and director.

No security clearance or criminal background check is required for employees of the grow-op.

This information can only be used in an investigation for compliance with the Controlled Drug and Substances Act and the MMPR.

A licensed producer is also required to produce this information to the licensing authority responsible in a Province for licensing health care practitioners for the purpose of an official investigation by a provincial licensing authority.

Transition from the Old Regulations

The phasing-out of personal production licences under the MMAR creates an issue regarding remediation of residential properties that were previously used to grow medical marihuana. Given that the location of these residences is not required to be shared with the City (and the federal government is unlikely to assume responsibility for enforcement), no mechanism exists for ensuring that such properties are properly remediated after residential production of medical marihuana ceases to be authorized. In the absence of any notification to the City, future purchasers of such residential properties in Surrey could be placed at risk by inhabiting a former medical marihuana grow location without any assurance that it was properly remediated to protect the health and safety of its inhabitants.

Legality of the New Regulations

The legality of the New Regulations will likely be challenged on the basis that it denies patients reasonable access to their medication (due to the higher cost associated with purchasing medical marihuana under the MMPR as opposed to personal production under the MMAR). Opponents of the MMPR's ban on personal production could challenge the New Regulations as unconstitutional and simultaneously seek an injunction pending the constitutional challenge.

CONCLUSION

Based upon the above discussion, it is recommended that Council:

- request that the Mayor on behalf of Council forward a letter to Health Canada:
 - a. expressing concern that the new Marihuana for Medical Purposes Regulations ("MMPR") include nurses as health care practitioners who may prescribe medical marihuana to other individuals, a circumstance which is not typical of the conventional approach to most prescription-related medical treatments in Canada that are only available to individuals based on a prescription issued by a medical doctor and further that the new MMPR do not identify reasons for which medical marihuana may be prescribed, all of which appears to leave significant risk for illicit activity to take place under the guise of medical treatment;
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CRAIG MacFARLANE
City Solicitor