



Municipal Regulation of Federally Licensed Medical Marijuana Production Facilities

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Introduction

The authority to license and directly regulate the production of medical marijuana belongs to the federal government and is administered by Health Canada through the *Marihuana for Medical Purposes Regulation*. AUMA formed an Administrative Taskforce on Marijuana Production in 2015 to identify municipal concerns and develop recommendations to address concerns regarding the increasing number of medical marijuana production facilities and continuing prevalence of illegal grow operations. This taskforce developed a number of recommendations along the following themes:

- Formalizing and improving lines of communication between all provincial, federal, and municipal governments as well as police with regard to both illegal and medical grow operations.
- Improving access to information with regard to properties that have been used for illegal grow operations or may be used for medical production facilities.
- Ensuring that municipalities are enabled to take action regarding the siting and regulation of medical production facilities.
- Ensuring that medical production facilities are adequately suited to proposed locations through measures such as impact assessments and consultation.

A summary of municipal issues associated with marijuana production as well as the recommendations of AUMA's Taskforce on Marijuana Production are available in the taskforce report, available at http://www.auma.ca/sites/default/files/news/solutions_re_marijuana_production.pdf.

In addition to the recommendations for new powers and inputs for municipalities, the taskforce identified that there already exist effective tools that municipalities possess to regulate medical marijuana facilities. Specifically, there are at least three significant tools available to municipalities to further regulate already federally licensed medical marijuana production facilities: zoning, business licensing, and community standards.

Zoning

Zoning legislation may be used to regulate the location of production facilities within the municipality. This requires the creation of a specific land use for this sort of production facility. The land use should be carefully defined (*legal advice is highly recommended*) to accurately reflect the use to be regulated. Once an appropriate land use has been defined the use may be included as either a 'permitted' or 'discretionary' use within the particular zones (for example residential, commercial or industrial) where the municipality is content to have production facilities located. If the use is not listed as either a permitted or discretionary use in any particular zone then there is no possibility of a production facility in that zone.

In addition to regulating the location of production facilities within the municipality zoning regulation may also be used to impose ancillary restrictions such as setbacks, fencing and even a limitation on the number of such production facilities in any given zone.

A weakness in the use of zoning regulation is that it may not be used retroactively against an otherwise valid use already in existence before the specific zoning regulations are put in place. Therefore a municipality anticipating the possibility of a production facility in the future will need to have its zoning legislation in place beforehand. If the production facility is in place before the specific land use has been defined then it

will generally be considered a 'legal' non-conforming use and allowed to remain in place (subject to a number of other factors).

Examples of Land Use Bylaws regulating medical marijuana production facilities:

[City of Calgary Bylaw 7P2014](#)

[Mountain View County Bylaw 14/13](#)

[Ponoka County Bylaw 7-08-LU](#)

[Rocky View County Bylaw C-7358-2014](#)

[City of St. Albert Bylaw 22/2014](#)

[Town of Taber Bylaw 9-2014](#)

[Wheatland County Bylaw 2014-13](#)

[Town of Olds Bylaw 01-23](#)

[Kneehill County Land Use Bylaw](#)

[Town of Vulcan Bylaw 1437-15](#)

Business Licensing

Business licensing legislation may be used to regulate the conduct of production facilities within the municipality. This requires the creation of a specific definition (*legal advice is highly recommended*) for the business carried on by this sort of production facility. The municipality may then attach a license fee to the particular business. This fee may be set in an amount that recovers any cost to the municipality from having the production facility operating within its boundaries, or in an amount that exceeds any such costs as long as it is reasonably related to a regulatory scheme operated by the municipality. In certain cases the fee may even be set in an amount that is intended to discourage the operation of the business within the municipality.

In addition to any license fee a municipality may include conditions pertaining to the operation of the production facility. These conditions form part of the license and a failure on the part of the business to comply with the conditions can lead to the license being revoked. Further, the number of licenses for any particular business to be carried on within the municipality may be capped.

An advantage in the use of business licensing is that it need not be in place prior to the business commencing operation. Even if a particular type of business is in operation prior to being specifically defined as requiring a certain license that license will be required on a go-forward basis.

Example of business licensing bylaw regulating medical marijuana-related businesses:

[City of Vancouver Bylaw 4450](#)



Community Standards

Community standards legislation may also be used to regulate the conduct of production facilities within the municipality. Unlike zoning or business licensing there is no requirement for specific definitions for the land use or the type of business. Instead, the legislation may set out standards for matters such as noise, odours, unsightly property or other such 'nuisance' conditions. These requirements may be enforced through warnings, ticketing, compliance orders or in significant cases even a court application for an injunction requiring compliance. The municipal bylaw may include specific provisions for compliance orders or use may be made of the order provisions set out in sections 545 and 546 of the Municipal Government Act.

As with business licensing these regulatory provisions may be created after a production facility is already in operation and apply on a go forward basis. They may be used to ensure the operation of the business meets the standards required by the community.

Examples of a community standards bylaws

[City of Edmonton Bylaw C14600](#)

[City of Kelowna Nuisance Controlled Substance Bylaw 9510](#)

Conclusion

There are many available tools for municipalities to regulate siting and other issues relating to medical marijuana production facilities, and as the sample bylaws linked above indicate, there are even many approaches available within the context of land use bylaws. Because of the complex nature of this issue, municipalities are encouraged to seek legal advice in creating bylaws intended to regulate the siting and operation of medical marijuana production facilities.

