Date March 10, 2020 Report No. 2020-12

To Chair and Members
Committee of the Whole – Community Development

From Paul Moore
General Manager, Community Development

1.0 Type of Report

Consent Item [ ]
Item For Consideration [X]

2.0 Topic Course of Action for the Municipal Enforcement of Cannabis Legislation [Financial Impact - None]

3.0 Recommendation

A. THAT Report 2020-12, Course of Action for the Municipal Enforcement of Cannabis Legislation, BE RECEIVED; and

B. THAT the Building Department of the City of Brantford INVESTIGATE the required Provincial designations required to assist in the enforcement of both the Cannabis Licence Act, 2018 and the Cannabis Control Act, 2017; and

C. THAT the Building Department REPORT back on the costings for the Provincial designation of municipal by-law enforcement officers to enforce Cannabis legislation.

4.0 Purpose and Overview

The purpose of this report is to provide Council with information relative to the enforcement of Provincial Cannabis legislation through both the Brantford Police
Service and the Municipal By-law Enforcement Officers of the Building Department.

5.0 **Background**

On February 26, 2019 City Council passed the following resolution:

WHEREAS, on October 17, 2018, the Government of Ontario passed Bill 36, the Cannabis Statute Law Amendment Act, 2018 which enacted the Cannabis Licence Act, 2018 and amended the Cannabis Act, 2017 to establish the Cannabis Control Act, 2017; and

WHEREAS the Cannabis Licence Act, 2018 establishes a scheme for the retail sale of cannabis by licensed retail operators; and

WHEREAS enforcement of the Cannabis Licence Act, 2018 is the responsibility of the Alcohol; and Gaming Commission of Ontario; and

WHEREAS, pursuant to subsection 27(1) of the Cannabis Licence Act, 2018, the Registrar under the Alcohol, Cannabis and Gaming Regulation and Public Protection Act, 1996 may designate persons employed by the Commission or other persons as inspectors for the purposes of carrying out inspections to ensure compliance with the Cannabis Licence Act, 2018 and the regulations thereunder; and

WHEREAS the purpose of the Cannabis Control Act, 2017 includes establishing prohibitions relating to the sale, distribution, purchase, possession, cultivation, propagation and harvesting of cannabis, as well as deterring illicit activities in relation to cannabis through appropriate enforcement and sanctions; and

WHEREAS the Brantford Police Service is responsible for the enforcement of the Cannabis Control Act, 2017 within the geographic boundaries of the City of Brantford; and

WHEREAS subsection 21(1) of the Cannabis Control Act, 2017 provides that the powers exercised by a police officer (other than a power set out in section 19) may be exercised by any other person or class of persons designated in writing by the Minister; and

WHEREAS it is prudent for Council to ensure that a robust enforcement plan is in place for enforcement of offences pursuant to the Cannabis Licence Act, 2018 and the Cannabis Control Act, 2017, which plan may include the designation of
Municipal By-law Enforcement Officers as enforcement authorities and inspectors for the purpose of assisting the Police in enforcing these Acts;

NOW THEREFORE IT BE RESOLVED THAT Staff BE DIRECTED to report back to Council in four Committee Cycles, with a recommended course of action whereby City staff may assist the Brantford Police Service in the enforcement of the Cannabis Licence Act, 2018 and the Cannabis Control Act, 2017, including, without limitation, the designation of Municipal By-law Enforcement Officers for that purpose.

This report recommends a possible course of action whereby Municipal By-law Enforcement Officers may assist the Brantford Police Service in the enforcement of both the Cannabis Licence Act, 2018 and the Cannabis Control Act, 2017.

6.0 Corporate Policy Context

This Report was reviewed within the context of the Municipal Strategic Plan. Goal #2 – Long Term Desired Outcomes, states that Brantford will be recognized as a safe, healthy community – one that promotes and enables the well-being of its citizens.

7.0 Input From Other Sources

Consultation was held with the Brantford Police Service, Legal and Real Estate Department, Human Resources, representatives from the City of Guelph and the City of Toronto, representatives from the Association of Municipal Clerks and Treasurers of Ontario (AMCTO), Association of Municipalities of Ontario (AMO) and the Ministry of the Attorney General, Legalization of Cannabis Branch.

8.0 Analysis

8.1 The Legislation

As referenced in the resolution noted in Section 5.0 of this report, there are two (2) specific pieces of legislation to be reviewed. Those statutes are the Cannabis Licence Act, 2018 and the Cannabis Control Act, 2017. Both of these statutes have noted specific offences that are created that will require an enforcement response.

The Cannabis Licence Act creates offences that relate to licencing of retail operators, licencing of cannabis retail managers, limits on amounts sold, obstruction, and further allows for seizure of anything found being in non-
compliance to this Act, and the ability to obtain search warrants accordingly. On January 15, 2019, Council approved the following decision as per Report CAO2018-008:

1. THAT, pursuant to the Cannabis Licence Act, 2018, cannabis retail stores shall BE PROHIBITED to locate within the City of Brantford, subject to applicable laws, and the City Clerk shall BE DIRECTED to provide notice of this resolution to the Registrar under the Alcohol, Cannabis and Gaming Regulation and Public Protection Act, 1996, within three days of the passage thereof; and

2. THAT staff BE DIRECTED to monitor the implementation of Cannabis Retail Stores throughout the Province of Ontario and present a report to Council prior to October 1, 2019 outlining the observed impact, benefits and implications for municipalities that permitted retail Cannabis stores as of April 2019, and

3. THAT in the interim the Mayor BE DIRECTED to collaborate with AMO and other municipalities who have opted out to recommend and lobby for improvements to the Cannabis Licence Act, 2018.

As per this direction, the licensing of a cannabis retail outlet was not to be permitted, therefore allowing for a prosecution should such an establishment found to be in operation within the corporate limits of the City of Brantford.

However, City Council passed the following resolution on January 28, 2020;

**Lifting the Prohibition on Cannabis Retail Stores**

WHEREAS, on October 17, 2018, the Government of Ontario passed Bill 36, the Cannabis Statute Law Amendment Act, 2018 which enacted the Cannabis Licence Act, 2018 and amended the Cannabis Act, 2017 to establish the Cannabis Control Act, 2017; and

WHEREAS the Cannabis Licence Act, 2018 established a scheme for the retail sale of cannabis by licensed retail operators; and

WHEREAS municipalities across Ontario were given until January 22, 2019 to choose if retail cannabis stores would be prohibited within their borders; and

WHEREAS City Council, at its special meeting held on January 15, 2019, resolved to prohibit cannabis retail stores from locating within the
City of Brantford, requested that staff monitor the implementation of cannabis retail stores throughout the Province of Ontario, and directed the Mayor to collaborate with the Association of Municipalities of Ontario (AMO) and other municipalities who opted out of the cannabis retail store regime in order to lobby for improvements to the cannabis retail sales regime; and

WHEREAS City Council, at its meeting of June 25, 2019, endorsed the resolution of the Large Urban Mayors’ Caucus of Ontario (LUMCO) calling for, among other things, additional local regulatory controls to be approved by the Province of Ontario around retail cannabis stores, including increasing the municipal share of excise tax collected by the Province on the sale of cannabis; and

WHEREAS the Mayor has met several times with the Honourable Doug Downey, Attorney General for Ontario, to advocate for changes to the retail cannabis regulatory scheme; and

WHEREAS the Attorney General’s office is seriously considering whether to implement some of the recommendations made in the LUMCO resolution; and

WHEREAS the Mayor has and will continue to collaborate with AMO, LUMCO, and other municipalities who chose to opt out of the retail cannabis store regime in order to continue to push for changes to the retail cannabis scheme that provide greater regulation, oversight and revenue to municipalities; and

WHEREAS the operation of legal cannabis retail stores is an important tool in counteracting the illegal sale of cannabis within our community; and

WHEREAS the Government of Ontario announced its intention to soon make retail cannabis stores more accessible as a means to combat the illicit market, protect children, and keep communities in Ontario safe; and

WHEREAS section 41(3) of the Cannabis Licence Act, 2018, provides that a municipality that has prohibited cannabis retail stores may, by resolution, lift the prohibition and permit cannabis retail stores to be located in the municipality; and
WHEREAS retailers interested in establishing legal cannabis stores in the City of Brantford will require time to prepare submissions to the AGCO in time for the expansion of Ontario's cannabis retail program;

NOW THEREFORE BE IT RESOLVED THAT:

A. Pursuant to the Cannabis Licence Act, 2018, the prohibition on cannabis retail stores in the City of Brantford is HEREBY LIFTED; and that cannabis retail stores BE PERMITTED to locate within the City of Brantford, subject to applicable laws; and that the City Clerk is HEREBY DIRECTED to provide notice of this resolution to the Registrar (being the Registrar under the Alcohol, Cannabis and Gaming Regulation and Public Protection Act, 1996), within three business days of the passage hereof; and

B. That staff BE DIRECTED to bring forward a Municipal Cannabis Retail Policy in order to ensure that the interests of the public are protected, and to ensure that municipal staff have appropriate delegated authority to respond to applications to establish cannabis retail stores in the City of Brantford.

The majority of offences made out in the Cannabis Licence Act, 2018 will be regulated and enforced by agents of the Alcohol and Gaming Commission of Ontario (AGCO) and applicable store front licences will be issued by this particular agency. This licence would presumably be issued in conjunction with the Municipal Cannabis Retail Policy. Local police officers and municipal by-law enforcement officers, if so designated, may be called in to assist with restrictive regulations that could include residential searches with required search warrants and violations of cannabis sales exceeding the maximum permissible cannabis amount of 30 grams as outlined in section 21(1) of this statute.

The Cannabis Control Act, 2017 also creates offences that would require enforcement. This particular statute creates offences that relate to unlawful sale, distribution, possession, cultivation, propagation, harvesting and transporting of cannabis.

8.2 Provincial Requirements

As referenced in the resolution noted in Section 5.0 of this report, subsection 21(1) of the Cannabis Control Act, 2017 provides that the powers exercised by a Police Officer, other than the power set in section 19, may also be exercised by any other person or class of persons designated in writing by the Minister for the
purpose of this section. Section 19 refers to the powers of arrest which are to be solely exercised by a Police Officer.

Currently, the City of Toronto is the only municipality whose municipal by-law enforcement staff have been so designated. Appointed Park Wardens throughout the Province have also been so appointed for the purposes of Provincial and Federal Parks enforcement. The City of Guelph had considered having their Officers designated, however Senior Management with the City of Guelph advise that they are no longer considering such designations for their enforcement staff due to Ministry requirements for such designations. The current Provincial Ministry of the Attorney General requirements for designations includes the following:

- The purpose of the designation request including identification of which specific provisions of the *Cannabis Control Act, 2017* you are requesting to have designated persons enforce;
- A training plan and an operational plan;
- The operational plan would include details on the role of police
- A risk assessment for the proposed designated person(s);
- A commitment to provide weekly reports to the Ministry of the Attorney General, which would include charges made and powers exercised by designated persons under the *Cannabis Control Act, 2017* and any relevant staff changes;
- Proof that each proposed designated person has commercial liability insurance;
- Confirmation that criminal background checks have been completed for each proposed designated person, and each designated person meets requirements for duty;
- Contact information of the employer, including the direct supervisor of the proposed designated persons;
- Names, work addresses, birth date and job title of each of the proposed designated persons;
- Geographic jurisdiction of the area designated persons would cover
Staff from the Legalization of Cannabis Branch, Policy Division, Ministry of the Attorney General have confirmed the above-noted requirements for designation. They further advised that such designations are required for municipal by-law enforcement officers who lead or assist with the enforcement of these particular statutes. Ministry staff has also advised that they do not provide assistance or guidance with developing either training or operational plans.

Should the City wish to pursue designation of municipal by-law enforcement officers, both the City of Toronto Municipal Law Enforcement staff and the Brantford Police Department would have to be consulted on the development of both operational and training plans in the absence of Provincial assistance. Further, Brantford Police have initially advised that storage of any seized cannabis plants may be stored at their locked storage areas of their current facility. A thorough risk assessment will have to be undertaken by our municipal Health and Safety Division of Human Resources, also in consultation with Brantford Police. Increased personal protective equipment including the wearing of protective armour safety vests would be recommended. An initial costing of such devices has shown an approximate cost of $500 - $1000 per protective vest. There would also be a cost to any such training program which is currently unknown, as no other municipality outside of the City of Toronto has requested a Provincially-approved designation. A commitment to provide weekly reports to the Province would also have to be undertaken. The City’s Risk and Insurance Department has confirmed that each designated person would have adequate and sufficient commercial liability insurance. Criminal background checks would also have to be completed as required and all remaining contact and personal information can be similarly provided. Consultation with CUPE City Hall Inside Unit representatives would also have to be undertaken.

8.3 Brantford Police Service

Several conversations have been held with Senior staff at the Brantford Police Service regarding the enforcement of the Cannabis Control Act. Currently the position of the Brantford Police Service is to defer from being the lead role in these investigations and to offer assistance to municipal by-law enforcement officers as needed when enforcement issues arise. Follow up conversations with both senior staff at Brantford Police and in consultation with the City of Guelph By-law Services reveal the opportunity to reach out to the Provincial enforcement unit who have been assigned the task of assisting municipalities
with the enforcement of both the Cannabis Licence Act and Cannabis Control Act. Figures provided by Guelph By-law Enforcement for 2019 show that this Provincial Enforcement unit made 169 arrests, recovered $6.9M in seized drugs, executed 56 search warrants and laid 507 charges for violations of these Provincial statutes. The expectation from an operational perspective would be to communicate with this trained unit to assist both local Police and municipal by-law enforcement officers should an illegal dispensary operate within the City of Brantford.

8.4 Current Municipal By-law Enforcement Resources

There are currently six (6) Property Standards Officer/Municipal By-law Enforcement Officers in the By-law Division of the Building Department. These Officers are uniformed and drive marked City vehicles, and whose current mandate is to enforce several by-laws under the jurisdiction of the Building Department, which are primarily property based. These include the Property Standards By-law, Lot Maintenance and Waste By-law, Zoning By-law, Outdoor Sign By-law, Swimming Pool Enclosure By-law, Fence By-law, Noise Control By-law, Vacant Building Registry By-law, Public Nuisance By-law, the new Clean Air Smoking By-law and further miscellaneous General Inquiries. There is also one (1) contract Animal Control By-law Officer who solely enforces the Animal Control By-law and the dog barking provision of the City’s Noise Control By-law. Four of these Officers work primarily 8:30AM-4:30PM Monday-Friday and two (2) Officers are employed throughout the year sporadically on 3:00PM to 11:00PM shifts. Currently, none of these Officers are designated to enforce Provincial Cannabis legislation.

Enforcement of Provincial legislation including both the Cannabis Licence Act, 2018 and the Cannabis Control Act, 2017 are unknown entities in the area of municipal by-law enforcement. This would be evidenced in that the City of Toronto is currently the only municipality whose by-law enforcement staff has been engaged to enforce this type of legislation. Council should be aware that there is an inherent danger that is associated with this type of enforcement that typically is best left to the authorities who are trained and have the equipment to effectively handle this type of danger, being the Brantford Police Department. However, in recognition of the position of the Brantford Police Department to focus on serious crime within the City, it is incumbent of the City’s only other true enforcement body, being the By-law Enforcement Division of the Building Department, to assist as possible. Clarity should be made that the role of the Municipal By-law Officers would be to assist, rather than lead such enforcement investigations.
9.0 Financial Implications

There are no costs associated with the information provided in this report. Costs for designating the By-law Officers, training, providing additional protective equipment and setting up the enforcement regime under the By-law Enforcement Division is currently unknown and would need to be explored with the City of Toronto. Staff would report back to Council with an estimated cost to implement such an enforcement regime.

10.0 Conclusion

Due to the unknown costings and processes involved to have municipal by-law enforcement officers within the Building Department of the City of Brantford designated to enforce cannabis legislation, staff will further investigate with Ministry officials, officials with the City of Toronto and senior staff with the Brantford Police Department to establish these processes. Staff will then report back once costings and processes have been confirmed.

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Attachments (if applicable)

In adopting this report, is a by-law or agreement required? If so, it should be referenced in the recommendation section.

By-law required [ ] yes [X] no

Agreement(s) or other documents to be signed by Mayor and/or City Clerk [ ] yes [X] no

Is the necessary by-law or agreement being sent concurrently to Council? [ ] yes [X] no