



Report

**City of Merritt
REGULAR Council Meeting
August 13, 2019**

File Number: 3900.2187

To: Scott Hildebrand, Chief Administrative Officer

From: Greg Lewis, UVic Law Co-op Student

Date: August 2, 2019

Subject: Zoning Bylaw Amendment – Retail Cannabis Cap

RECOMMENDATION:

THAT Council read City of Merritt Zoning Amendment Bylaw No. 2267, 2019 a first time;

THAT Council read City of Merritt Zoning Amendment Bylaw No. 2267, 2019 a second time;

THAT Council direct staff to schedule a public hearing for City of Merritt Zoning Amendment Bylaw No. 2267, 2019.

Executive Summary:

The City of Merritt Zoning Bylaw currently restricts retail cannabis stores to a total of four in the City. Staff have investigated alternative models of regulating retail cannabis stores in interior BC communities, and consulted with the local RCMP detachment for their views. Staff recommends that the amendment bylaw be read in order to proceed to Public Hearing so that Council may hear from residents of Merritt, prior to deciding whether to maintain the cap at its current level.

Reviewed by:			
Director, Corp. Services Not yet approved	Director, Finance & IT Not yet approved	Director, Engineering & Development Approved - James Dinwoodie	Other:

Background:

On June 25th, 2019, Council requested that staff prepare for discussion and debate an amendment to Zoning Bylaw No. 2187, 2015 (the "Bylaw"), removing the maximum cap of four (4) retail cannabis dispensaries in the City. The amendment would not change minimum distance requirements. Retail cannabis stores must be at least 100m away from any other retail cannabis store and 150m from any property zoned P1 (park, cemetery, daycare, school).

Merritt currently has four applications for retail cannabis stores at various stages in the application process. This means that unless one or more is refused or withdraws from the application process, no more applications will be brought forward. Although BC Cannabis as a Crown Corporation are not bound to obey our zoning bylaw, they have chosen to adhere to municipal regulation, and are therefore similarly unable to open a store in the City of Merritt.

Royal Canadian Mounted Police were asked for their input on the proposed bylaw and indicated that they currently have no concern about the impact of increasing the number of retail cannabis stores allowed in Merritt.

Community Comparisons

Following the initial applications for retail store locations that came after legalization, many municipalities across BC have altered their regulations in order to address concerns that arose through the licensing process. Of those municipalities researched by staff that have tightened their restrictions in recent months, all have done so with an explicit caveat that it is a temporary arrangement, either with an enumerated expiry date, or with a deadline by which the policy must be reconsidered. By comparison, Cities such as Revelstoke and Castlegar began with less restrictive policies than Merritt and do not appear to be changing them.

Among southern interior BC communities, Merritt was unusual in adopting a municipal-wide cap on numbers when cannabis was legalized in October 2018. Most municipalities decided to prohibit retail stores outright (eg Hope, Logan Lake), enact a limit in specific areas of the municipality (eg Salmon Arm), or to have no initial cap at all (eg Vernon, Penticton, Revelstoke). Among municipalities which decided to allow stores, buffer zones are more common than limits, but are not universal (eg there were no initial distance limits in Salmon Arm, Vernon, Castlegar). Larger buffer zones can create a de facto cap by limiting the number of stores which can physically exist within the municipality with all buffer zones observed.

When asked, Salmon Arm indicated that they had no intention of removing their Core Commercial downtown area cap, which has been filled in the same way as Merritt's overall cap. Salmon Arm does not have an overall limit beyond the downtown core.

In April 2019, Vernon voted to restrict the number of retail cannabis stores to 6 in their Primary and Secondary Business Improvement Areas. In May 2019, Penticton established a limit of 14 in the City, of which no more than 7 could be in the downtown.

On a per capita basis, most of these communities are establishing caps which would be equivalent to a city the size of Merritt limiting to 1-4 in the downtown core area. Of the four proposals currently going through a Merritt application process, three are in the downtown core, and the fourth is near exit 290 of Highway 5 (map attached).

Council is not restricted to a binary choice of either removing the cap of four or retaining it as is. For example, Council could choose to consider alterations to the Bylaw to replace or supplement the overall cap on the number of stores with a cap on the number which may be opened in specific areas of Merritt. Similarly, Council could raise the overall number without removing it altogether, change the buffer zones, or any combination of these options.

Crime impacts

As part of staff research, the Merritt detachment of the Royal Canadian Mounted Police were asked for their input. Members at the detachment indicated that they did not feel that increasing the number of retail outlets would not cause any concerns. They added that since legalization, the detachment has not seen any significant increase in crime or other issues with relation to cannabis use.

There is an increasing amount of academic literature available on the effects that retail stores of cannabis have on the surrounding area. However, it is far from clear how much of this is directly applicable to Merritt's situation. Most of the research to date comes from the United States, where cannabis remains illegal under Federal law.

Studies in Colorado, which legalized cannabis at a State level in 2014, have suggested that there are some increases in property and personal crime in response to a cannabis store operating in an area¹. By dividing the State into census tracts and analyzing where crimes occurred in relation to stores' opening, researchers were able to determine that the immediate area around the store itself did not see an increase in crime, although there was a slight raise in the surrounding area. This was postulated to be the result of a variety of factors, predominantly:

1. An unsavoury element was attracted to the stores, but the stores themselves had security, which dissuaded criminals from acting in the immediate vicinity
2. The business was likely to be heavily cash-based, meaning an increase in physical currency being carried by customers, suppliers, workers, etc, meaning an increase in opportunistic crime.
3. Tourists would be brought into the area to attend the store, also bearing cash. Tourists would be less likely to be aware of local danger-areas for crime, and so could suffer an increased risk which was not directly connected to the store, but was merely the result of more people not knowing the area being present, and unable to assess the risks

¹ For example, *From Medical to Recreational Marijuana Sales: Marijuana Outlets and Crime in an Era of Changing Marijuana Legislation*, Bridget Freisthler, Andrew Gaidus, Christina Tam, William R. Ponicki, Paul J. Gruenewald, Springer Science+Business Media, 2017

4. Even with Statewide legalization, the stores were still operating on the edge of legality, due to the Federal drug control laws, meaning they were more likely to locate themselves in less appealing locations, which could be cheaper, and more out of the way.

None of these factors are likely to be particularly relevant in the Merritt context.

The fourth factor is entirely irrelevant in Canada as cannabis has been legalized under Federal law. Stores must still comply with Federal, Provincial, and Municipal Regulations, but do not face the threat of criminal prosecution simply for being a cannabis store

The third factor may have some impact, given Merritt's position as a highway community, though these effects will likely be diminished as more retail cannabis stores open throughout BC.

The second factor exists in the US again because of the Federal criminal illegality of cannabis operations, which limits stores' access to traditional bank and card infrastructure. As retail cannabis is legal in Canada, this effect is unlikely to apply. Although some people may choose to use cash for purposes of not being tracked in the future as having purchased cannabis, the industry as a whole does not have a reason to be cash-based in Canada as it does in the US.

Only the first factor has any potential to be an issue in Merritt, but even that involves making unwarranted assumptions about the characteristics of people drawn to cannabis stores. There is a strong argument that if people are criminally inclined, they will be so whether or not a cannabis store is in the area.

In total, although there is American research suggesting that in certain contexts, an increase in retail cannabis stores can correlate with an increase in property crime, it does not appear that these factors would play a significant role in Merritt. There is little relevant Canadian data available from which to draw any inference.

Price

Statistics Canada report that the price difference between legal and illegal cannabis is currently growing, as illegal cannabis gets cheaper and legal cannabis gets more expensive². It is difficult to quantify the effect that price differences have on consumers' choices to participate in the legal or illegal markets. Typical supply & demand economic logic would suggest that an increase in stores and therefore competition would reduce the price of legal cannabis. However, the licensed retail stores do face restrictions which are not common in the general economic marketplace. For example, Retail stores in BC

²<https://www150.statcan.gc.ca/n1/daily-quotidien/190710/t001c-eng.htm> Quarterly figures from StatsCanada show legal cannabis going from \$9.82/g to \$10.65/g 2018-19. Over the same time, illegal cannabis went from \$6.81/g to \$5.93/g.

may only purchase their supply from the Liquor Control Board (*Cannabis Distribution Act* s 7(2)(ii)). The terms and conditions of having a licence includes that the store may not sell the product any cheaper than they purchase it wholesale, nor may they operate any kind of a loyalty program³. This places a floor on the price of legal cannabis from private stores which cannot go any lower than the wholesale price. BC Cannabis Stores are not subject to the same terms and conditions as licensed stores, but it is unlikely that they would choose to operate at a loss.

As a result, increasing the number of cannabis stores in Merritt may lead to a reduction in price towards the wholesale price. However, the price of legal cannabis will not approach the current price of illegal cannabis without a substantial change in wholesale production of legal cannabis. Council may have their own views on whether choice to participate in the legal or illegal markets is driven by price, accessibility, or other factors.

Buffer zones

Simple numerical limits are not the only way that municipalities – including Merritt – have controlled the location of retail cannabis stores. Buffer zones, where implemented, are a powerful mechanism to force stores into and out of certain locations.

Although not all communities use buffer zones, Merritt's buffer zones are on the lower end of municipalities that have chosen to implement them. Maps have been generated and are attached to his report showing the effects that different municipalities' rules would have on blanking out certain parts of Merritt for the retail cannabis trade. This is mainly connected to the locations of schools and parks. Although most of the rules are similar and would have little impact on the retail environment that the private marketplace is requesting in Merritt, had Merritt adopted the 500m buffer zone around schools that Salmon Arm adopted, the location at 1937 Quilchena would be within the Merritt Central Elementary School exclusion zone, and would not be available for use.

Potentially of more impact than absolute buffer zones (defined by static locations such as parks and schools) are variable buffer zones (where the presence of a retail cannabis store that could have gone in any one of various locations then blocks other locations from being available). In Merritt, there must be a minimum of 100m between stores. The current proposed retail environment features two stores that are exactly 100m apart in downtown, and three of the four proposals have clustered in a block on either side of Voght Street, within two blocks of Nicola Avenue.

If Council are concerned about the impact of having multiple stores in proximity, it would be possible to increase the buffer zones required between stores. Although this would not affect stores that have already been granted their approvals, no future store would be able to open within the buffer, until or unless one of the existing stores closed. This

³ <https://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/liquor-regulation-licensing/guides-and-manuals/cannabis-retail-store-licence-handbook.pdf> at 16.

would serve to de facto limit the number of retail stores available in certain areas of the city, without restricting the numbers that could operate elsewhere. Implementing this would be the opposite of Penticton's recent move, who until May 2019 had a buffer zone of 300m between stores in the downtown core and 750m elsewhere in the city. These were abolished and replaced with caps of 14 overall, 7 of which could be in the downtown core.

Economic Development

The retail cannabis industry is currently the only business type that the City places a maximum cap on. While staff has no preference on whether Council maintains this cap, staff has received consistent inquiries from businesses interested in opening a cannabis retail store in Merritt.

In addition to 2-3 private businesses that have expressed serious interest, BC Cannabis Stores recently expressed a strong desire to open a government run store in Merritt. They have a location tentatively selected but are waiting on the outcome of this proposed bylaw.

Finally, without knowing what the Provincial revenue sharing model may look like if it is implemented in the future, it is difficult to determine whether maintaining the maximum cap may have an impact on future revenue through that stream.

Popular opinion

As any change to the retail cannabis situation in Merritt would involve a change to the Zoning Bylaw, there would need to be a public hearing where the public could express their views. Council will need to listen to the public hearing with an open mind, and judge after hearing it how they wish to interpret and weigh the submissions received.

Staff do not have any knowledge of public views, which is why the recommendation is to proceed to a Public Hearing. If Council believe that they know from their interactions with residents that this would be strongly opposed, they may not feel a need to go to this stage.

OPTIONS

1. THAT Council give first and second reading to City of Merritt Zoning Amendment Bylaw No 2267, 2019, and advance the Bylaw to public hearing without further amendment.
2. THAT Council give first and second reading to City of Merritt Zoning Amendment Bylaw No 2267, 2019, making any amendments Council deems necessary, and advance the Bylaw to public hearing.

3. THAT Council give first and second reading to City of Merritt Zoning Amendment Bylaw No 2267, 2019, and direct staff to bring back further information or make substantial amendments.

4. THAT Council decline to give the Bylaw first and second readings

Financial Implications:

As a zoning bylaw amendment, there are no direct financial implications.

Attachments:

Appendix A: City of Merritt Zoning Amendment Bylaw No. 2267, 2019

Appendix B: Maps of store locations in Merritt & other municipalities' buffer zone rules applied to Merritt

Respectfully submitted,

Greg Lewis

UVic Law Co-op Student

CITY OF MERRITT

**BYLAW 2267
A BYLAW TO AMEND ZONING BYLAW NO. 2187, 2015**

WHEREAS the City of Merritt Zoning Bylaw restricts the total number of retail cannabis stores to four (4) in the City of Merritt;

AND WHEREAS Council is desirous of reconsidering this absolute cap on retail cannabis stores;

NOW THEREFORE the Municipal Council for the City of Merritt, in open meeting assembled, **ENACTS AS FOLLOWS:**

1. Citation

This Bylaw shall be cited as the “**City of Merritt Zoning Amendment Bylaw No. 2267, 2019**”.

2. Repeal

“City of Merritt Zoning Bylaw No. 2187, 2015” section 5.9.4 is hereby repealed.

READ A FIRST TIME THIS _____ day of _____, 2019

READ A SECOND TIME THIS _____ day of _____, 2019

READ A THIRD TIME THIS _____ day of _____, 2019

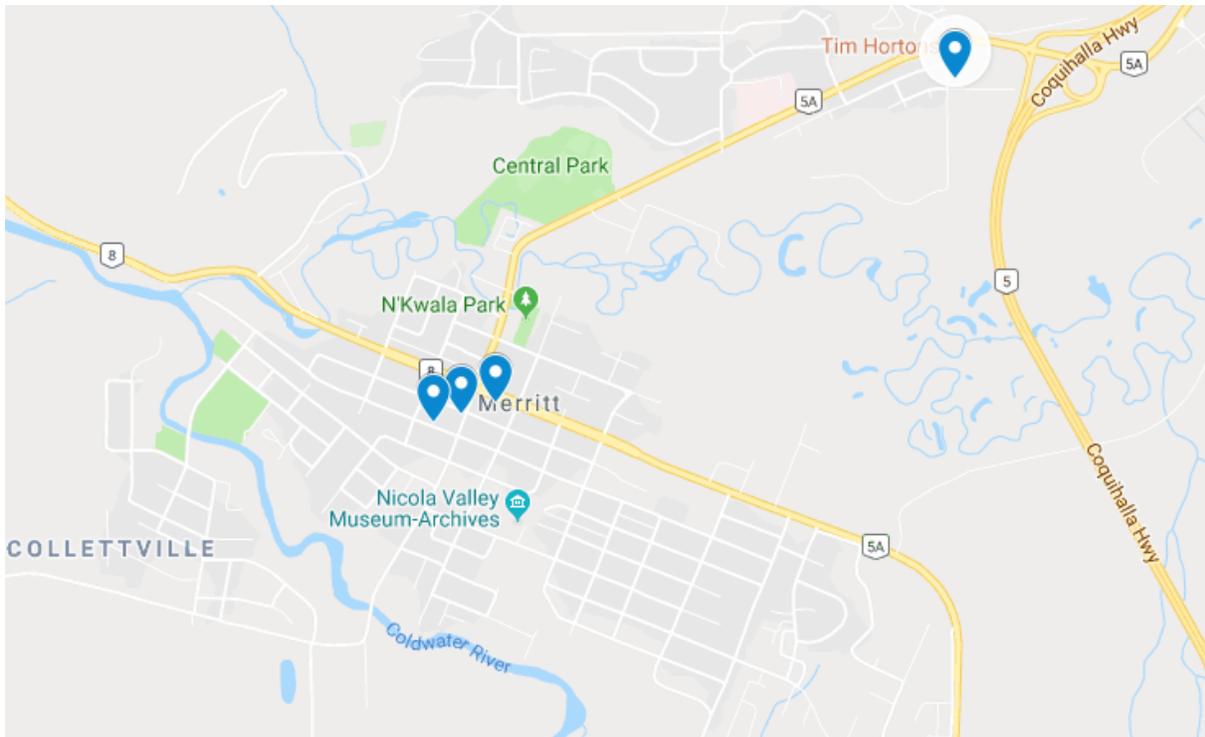
ADOPTED THIS _____ day of _____, 2019

Linda Brown,
MAYOR

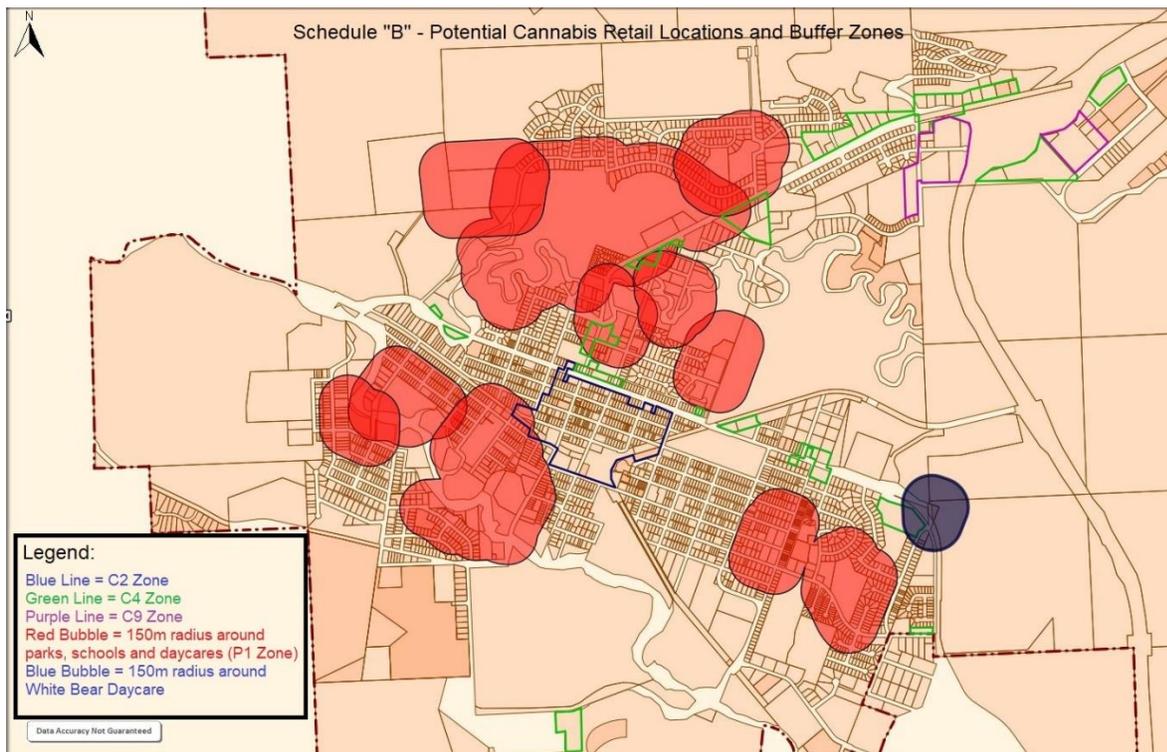
Sean Smith,
CORPORATE OFFICER

Appendix B: Maps of store locations in Merritt & other municipalities' buffer zone rules applied to Merritt

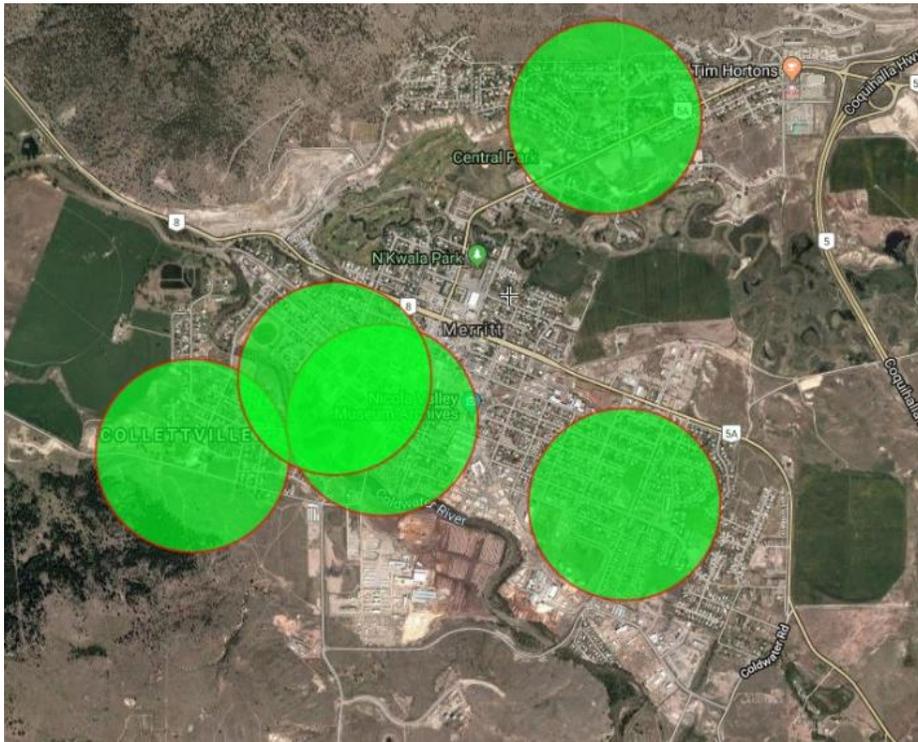
Proposed cannabis stores in Merritt as of August 2019:



What Merritt's buffer zones currently look like:



Indicative map of what Merritt's buffer zones would look like under Salmon Arm's rules:



Indicative map of what Merritt's buffer zones would look like under Penticton's rules:

