

Cannabis Guide for Municipalities



The Ministry of Government Relations has prepared this guide to outline the legislative powers municipalities have available to them for regulating cannabis in their communities.

The ministry is able to provide non-legal advice to municipalities upon request.

Disclaimer

This guide is intended for informational purposes only. Where provisions in this guide are found to be in conflict with provisions in the various Acts and Regulations referenced herein, provisions of the Acts, and Regulations take precedence.

Municipalities are encouraged to seek legal advice when drafting bylaws and when determining their responsibility in enforcement processes.

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Introduction

The Ministry of Government Relations has developed this guide to assist municipal officials in understanding their roles and responsibilities once the legalization of cannabis in Canada is complete. It is intended to identify provisions under the current legislative and regulatory frameworks that will help municipalities to act within the law.

This guide is intended as a source of information for municipalities, municipal officials, those involved in cannabis industries, and residents of Saskatchewan.

Background

The Federal Government has committed to legalizing cannabis in Canada by October 17, 2018. Federal, provincial/territorial, and municipal governments all have a role and responsibility in this process.

Table 1
Regulatory Responsibility by Activity and Level of Government

| Activity | Federal | Provincial | Municipal |
|--|---------|------------|-----------|
| Possession limits | ✓ | ✓ | |
| Advertisement & packaging | ✓ | ✓ | |
| Impaired driving | ✓ | ✓ | |
| Medical cannabis (production, sale, etc.) | ✓ | | |
| Seed-to-sale tracking system | ✓ | | |
| Production (cultivation and processing) | ✓ | | |
| Age limits | ✓ | ✓ | |
| Public health | ✓ | ✓ | ✓ |
| Public education | ✓ | ✓ | ✓ |
| Non-Commercial cultivation (growing plants at home) | ✓ | ✓ | |
| Workplace/occupational safety | | ✓ | ✓ |
| Distribution and wholesaling | | ✓ | |
| Retailing model | | ✓ | |
| Retail store location, licensing, operations and other rules | | ✓ | ✓ |
| Building / Fire safety standards | | ✓ | ✓ |
| Consumption in public places | | ✓ | ✓ |
| Land use/zoning (including location of facilities) | | | ✓ |

In Saskatchewan, *The Cannabis Control (Saskatchewan) Act* (the CCS Act), introduced in March 2018, outlines the minimum legislative requirements for cannabis related activities. This legislation is guided by several overarching objectives:

- Protecting health and safety;
- Restricting the black market;
- Keeping cannabis out of the hands of children and youth; and
- Promoting safety on roads, in workplaces and in public spaces.

The CCS Act sets the minimum legal age for purchase and consumption of cannabis at 19, restricts minors from entering retail cannabis stores, and prohibits the consumption of cannabis in public spaces, schools, daycares, and vehicles. The CCS Act also adopts federal minimum standards around non-commercial home production, including a limit of four plants per household, and allows the Cannabis Authority (Saskatchewan Liquor and Gaming Authority) to establish restrictions for retail permits.

The CCS Act provides that no retail cannabis permit will be issued in any municipality that has prohibited the commercial sale or production of cannabis. It is important to note that while a municipality can ban the commercial production or sale of cannabis within their jurisdiction, it cannot ban the consumption of cannabis or the non-commercial production (i.e., growing cannabis plants in a private home) within its jurisdiction.

Role of Saskatchewan Municipalities

Municipalities already have a number of existing tools to deal with the legalization of cannabis. These include adopting bylaws relating to:

- business operations;
- zoning standards and development permits;
- building and accessibility standards, (including building permits); and
- fire protection and emergency response.

Municipalities have the authority to regulate certain aspects of cannabis cultivation, production, sale, and consumption, including:

- the location of production facilities and retail outlets;
- the minimum separation distances to other retail outlets or other sensitive uses;
- businesses and business activities;
- nuisances;
- public safety;
- building and accessibility standards; and
- fire safety standards.

As municipal bylaws cannot contravene federal or provincial law, the *Charter of Rights and Freedoms*, or the *Criminal Code*, it is imperative that municipalities ensure bylaws conform to both federal and provincial requirements regarding cannabis. Municipalities may need to update their bylaw definitions and regulations to ensure compliance with all requirements.

Municipal Authority in Regulating Cannabis

In Saskatchewan, the authority for municipalities to regulate the retail sale and production of cannabis is provided under the following provincial statutes:

- *The Cities Act (CA), The Municipalities Act (MA), and The Northern Municipalities Act, 2010 (NMA);*
- *The Planning and Development Act 2007 (PDA);*
- *The Uniform Building and Accessibility Standards Act (UBAS Act); and*
- *The Fire Safety Act (FSA).*

Municipal bylaws relating to the regulation of cannabis may include: prohibiting or regulating cannabis businesses; issuance of business licences for cannabis producers or retailers; and, nuisance abatement.

Taxing Cannabis

Municipal authority for taxing any cannabis-related operation relates solely to property taxation, similar to other commercial activities. Municipalities in Saskatchewan do not have the ability to tax the sale of cannabis products.

Provisions in the CCS Act prohibit the indoor cannabis production in greenhouses or other artificial environments from being classified as an agricultural property class in rural municipalities for the purposes of property taxation.

Business Licensing

Saskatchewan Liquor and Gaming Authority's licensing framework requires that cannabis retail stores operate in accordance to municipal bylaws and requirements. Cannabis retailers or producers should be treated similarly to other retailers or producers who have been issued a similar licence. Municipalities may want to consult legal counsel to determine if separate licence classifications for cannabis retailers or producers should be established in licensing bylaws.

Regulating a cannabis business (producer or retailer) is accomplished through a municipality's existing licensing framework. This includes:

- Definitions
Terms and definitions must be consistent with federal and provincial legislative requirements. In order to charge an appropriate licensing fee, specific definitions may be required to distinguish between different types of cannabis-related activities, such as a retail store, a cultivation facility, a testing facility, or a cannabis transporter.
- Cost of a business licence
The cost of the business licence can cover the reasonable costs to the municipality for regulating the activities of a business, including enforcement of licensing conditions.¹

¹ Subsection 8(4) of the MA and the CA; subsection 8(5) of the NMA

- Requirements to hold a licence
Other than the requirement of holding a cannabis permit issued by the appropriate federal or provincial authority, a municipality may add further terms and conditions to the licence holder prior to a business licence being approved or renewed.²
- Additional Matters
A municipality can use its licensing bylaw to regulate operating requirements within provincial and federal legislation, including:
 - signage for advertising;
 - outdoor activities (e.g., storage, garbage, loading docks);
 - security requirements;
 - store hours; and
 - building façade.

Nuisance Abatement

Municipalities have the authority to establish bylaws which regulate behavior in public spaces and on private property. Issues such as noise, odours, unsightly property, or other such ‘nuisance’ conditions can be addressed through nuisance abatement bylaws; these may need to be amended to account for cannabis related activities. These bylaws can be enforced through existing mechanisms, including: warnings, compliance orders, or a court application for an injunction requiring compliance.

Zoning

Municipalities have the authority to regulate the location of cannabis-related facilities through their Official Community Plan (OCP) and zoning bylaws under the PDA. Zoning bylaws generally contain several tools that municipalities may use to help regulate the location of cannabis-related facilities including:

- Definitions
Terms and definitions must be consistent with federal and provincial legislative requirements. A retail cannabis facility licensed by the province would be considered a legal, commercial use – like other licensed retail businesses. If council wants to manage a cannabis related facility’s location within the community, it must provide an appropriate definition as a separate land use.
- Permitted or Discretionary Use
Municipalities have the ability to determine the location of cannabis retail facilities through their zoning bylaw. For example, a municipality may decide to make a cannabis retail outlet a permitted use in certain commercial or industrial zones, discretionary in others, and prohibited in residential zones.

² The authority provided to municipalities regarding licence terms and conditions can be found under subsection 8(3) of the MA and CA, and 8(4) in the NMA

Discretionary use applications require the approval of a municipal council where the council uses predetermined criteria in the zoning bylaw to evaluate the suitability of an application. All discretionary use applications require public consultation before a decision is made.³ After evaluating an application, council⁴ may:

- approve the application;
- approve the application subject to development standards or conditions;
- approve the application for a limited time; or
- reject the application.

Any development standards or conditions applied by a municipality may be appealed by the applicant. If council refuses a discretionary use application as a policy decision, there is no appeal mechanism granted to the applicant.

- Development Standards and Minimum Separation Distance

A zoning bylaw can be used to regulate the location of a building on a site and/or the building's dimensions or size. Municipalities may also establish a minimum separation distance between any land use and potentially sensitive land uses. For example, municipalities may choose to restrict cannabis facilities from being established within a specified distance of schools, daycares, community centres, recreational facilities, residential uses, or other cannabis facilities.

- Additional Matters

A municipality can also use its zoning bylaw to regulate:

- outdoor storage;
- landscaping of land or buildings;
- signage;
- lighting;
- noise and odours; and
- access and parking.

As an example, a municipality may specify that all uses in a particular zone have no outdoor storage, be landscaped to a particular standard, minimize signage, restrict sound and lighting that can be emitted from the site, provide suitable parking and loading facilities, and where the access to and from a public street or lane will occur.

Municipalities may choose a combination of these tools to manage cannabis facilities in their community. In the event the operator of a cannabis facility does not comply with the provisions in a municipality's zoning bylaw or the conditions of a development permit, the municipality may pursue enforcement.⁵

Municipalities that want to amend their zoning bylaw to account for cannabis production or sale must follow the public notice provisions outlined in the PDA, their zoning bylaw, and any public notice policy council may have adopted.

³ Section 55 of the PDA

⁴ Clause 15(2)(b) of the PDA allows an approving authority to delegate decision-making on discretionary use applications to the development officer.

⁵ Section 242 of the PDA

The PDA also provides municipalities with additional zoning options. Municipalities must have policies in their OCP before the following can be implemented:

- Direct Control District
A direct control district is a type of specialized zoning district that allows a developer and council to negotiate the details, design, and uses of a development based on a concept plan for a specific part of the community, as outlined in the municipality's OCP.⁶
- Contract Zoning
Contract zoning allows a municipality to enter into an agreement with a developer to rezone a property for a specific development. The agreement rezones a property to an existing zoning district in order to accommodate a particular use, with added restrictions limiting the use of that property to only the one specified in the agreement. The agreement is then registered against the title of the property and if the development is found to be in breach of the agreement, the zoning reverts to the original zone.⁷

Building and Accessibility Standards

In Saskatchewan, the National Building Code (NBC) as amended by Saskatchewan, is the minimum standard for building construction and accessibility requirements and is adopted by provincial regulation, including:

- *The Uniform Building and Accessibility Standards Act;*
- *The Uniform Building and Accessibility Standards Regulations;* and
- The Administration Requirements for Use with the National Building Code 1985.

The UBAS Act assigns responsibility for compliance with the requirements of the NBC to building owners including the design, construction, erection, placement, alteration, repair, renovation, demolition, relocation, removal, use or occupancy of a building. Municipalities are responsible for the enforcement of the UBAS Act through the application of a building bylaw by licensed building officials.

Building Bylaw and Permits

In order to satisfy its obligation for enforcement of the NBC under the UBAS Act, a municipality should have: a building bylaw; a building permit process; and, the appointment of a licensed Building Official(s). The UBAS Act allows a municipality to make regulations concerning the construction, renovation, repair, demolition, or change in occupancy of buildings as part of their building bylaw.

The UBAS Act allows local authorities to prescribe building and accessibility standards greater than the requirements found in the NBC in their building bylaw, where these additional standards are considered necessary for the health, safety, or welfare of persons.⁸

⁶ Sections 63-65 of the PDA

⁷ Section 69 of the PDA

⁸ Section 8.1 of the UBAS Act

A municipality needs to appoint a licensed building official in order to enforce building and accessibility standards requirements found in both the UBAS Act, and the municipality's building bylaw. The UBAS Act provides authority to a building official to enter onto land or into buildings for the purposes of ensuring compliance with the municipality's bylaws.

Under provisions of the UBAS Act, greenhouses and other buildings used for the primary production of agricultural products are designated as "farm buildings" and exempt from building standards. The application of building standards to buildings which are used to grow cannabis is still being determined. Government Relations continues to work with stakeholders, other ministries and regulators to develop a common position which aligns with the Government of Saskatchewan's goal of maintaining public safety.

Fire Safety

The FSA provides measures a municipality may use if fire and life safety concerns are raised pertaining to an in-home cannabis growing operation. Municipalities should first attempt to get the home owner/resident to voluntarily comply with the requirements of the National Fire Code as this is often the most successful approach.

While fire inspection work can best be accomplished through education and working with property owners, there is likely to be situations of non-compliance. If necessary, a fire inspector can apply for a warrant to enter the residence and conduct an inspection. If violations are found, inspectors have the authority to enforce regulations by issuing of an "Order to Remedy Contravention".

Firefighter Training

Fighting a fire in cannabis production or retail buildings has the potential to present special risks to firefighters. Municipalities should consider making additional training available for their firefighters to deal with these scenarios. Emergency Management and Fire Safety Branch can help arrange this training.

Table 2
Various Activities and their Sources of Legislative Authority in Saskatchewan

The following table provides a snap shot view of cannabis-related activities that can be regulated by the municipality and the legislative authority that allows for the regulation.

| Activities | MA, CA, NMA | PDA | UBAS Act | FSA |
|--|--------------------|------------|-----------------|------------|
| Location of cannabis production and sale | ✓ | ✓ | | |
| Business Licensing – (e.g., retail sale, hours, signage, minimum employees, security requirements, etc.) | ✓ | | | |
| Building Permit and Inspections | | | ✓ | |
| Fire and Life Safety Inspections | | | | ✓ |
| Regulation of Nuisances (e.g., noise, odours, etc.) | ✓ | ✓ | | |
| Application of Development criteria (e.g., signage, storage, landscaping, parking, etc.) | | ✓ | | |
| Enforcement | ✓ | ✓ | ✓ | ✓ |

Appendix A: Questions and Answers

Municipal Jurisdiction

Q1. Under what pieces of legislation can municipalities pass bylaws for the control of cannabis-related activities?

A. The authority for municipalities to pass bylaws controlling cannabis-related activities is contained in the following legislation:

- *The Cities Act, The Municipalities Act and The Northern Municipalities Act, 2010;*
- *The Planning and Development Act, 2007;*
- *The Uniform Building and Accessibility Standards Act;* and
- *The Fire Safety Act.*

Q2. What cannabis-related aspects can be regulated by a municipality?

A. Some examples of things that can be regulated through a municipality's bylaw-making power:

- location and minimum separation distances for cannabis related facilities;
- maximum hours a standalone retail operation can operate;
- signage and look of a standalone retail operation;
- business activities relating to cannabis;
- consumption in public places;
- nuisance; and
- building and fire safety standards.

Q3. Can a municipality ban the selling or consumption of cannabis in their jurisdiction?

A The province has restricted the use of cannabis in public places, schools, and daycares for public health reasons. As with smoking legislation, municipalities would have the authority to further regulate consumption in public places or spaces as necessary. *The Cannabis Control (Saskatchewan) Act* recognizes a municipality's ability to prohibit the sale of cannabis in their jurisdiction.

A municipality cannot ban the possession or consumption of cannabis on private property.

Q4. Can store hours of standalone retail operations be regulated?

A Municipalities can regulate store hours and other business operational matters through their business licensing bylaw, as long as it doesn't conflict with provincial legislation. For example, if the cannabis authority sets a maximum number of store hours, the municipality could not allow for additional hours of operation, but they could set more restrictive hours. Municipalities are encouraged to seek legal advice to ensure bylaws conform to all legislative requirements.

Provincial Jurisdiction

Q5. Is the province willing to provide advice to municipalities regarding the authority they have to regulate cannabis?

A. The Ministry of Government Relations is available to provide assistance or advice to municipalities, through the Advisory Services and Municipal Relations, Building Standards and Licensing, Emergency Management and Fire Safety, and Community Planning branches. The ministry does not provide legal advice.

Q6. Will greenhouses or any other buildings that are used to grow cannabis plants in an artificial environment be exempt from paying property taxes?

A. Buildings which grow plants in an artificial environment (i.e., greenhouses) in rural municipalities are exempt from paying property taxes except for buildings which grow cannabis under a licence pursuant to the *Cannabis Act* (Canada). Buildings which are not in a rural municipality that grow cannabis are subject to property taxes unless the municipality chooses to grant them a local exemption.

Appendix B: Contact Information

Please contact the following for inquiries or further information:

Zoning

Community Planning Branch

Saskatoon (306) 933-6937

Regina (306) 787-2725

muninfo@gov.sk.ca

Business Licensing

Advisory Services and Municipal Relations

(306) 787-2680

muninfo@gov.sk.ca

Nuisance Abatement

Advisory Services and Municipal Relations

(306) 787-2680

muninfo@gov.sk.ca

Building and Accessibility Standards

Building Standards and Licensing Branch

(306) 787-4113

building.standards@gov.sk.ca

Fire Safety

Emergency Management and Fire Safety Branch

(306) 787-3774

safety.info@gov.sk.ca

Northern Saskatchewan Administration District

Northern Municipal Services Branch

(306) 425-4320

muninfo@gov.sk.ca

Appendix C: Acronyms

CA - *The Cities Act*

Cannabis Authority – Saskatchewan Liquor and Gaming Authority

CCS Act - *The Cannabis Control (Saskatchewan) Act*

FSA – *The Fire Safety Act*

MA - *The Municipalities Act*

NBC - National Building Code

NMA - *The Northern Municipalities Act*

OCP - Official Community Plan

PDA - *The Planning and Development Act*

UBAS Act - *The Uniform Building and Accessibility Standards Act*

UBAS Regulations - *The Uniform Building and Accessibility Standards Regulations*