

ADMINISTRATIVE REPORT

TO: Planning Committee
FROM: Administration
DATE: October 3, 2022
RE: Public Hearing Report – 2220 2nd Avenue Zoning Amendment

ISSUE

An application to amend the zoning of 2220 2nd Avenue from CS – Service Commercial to CSx – Service Commercial (modified) to allow for a Retail Service, Restricted premise on the site located more than 100 m from a school.

REFERENCE

- [2002 Education Act](#)
- [2018 Cannabis Control and Regulation Act \(Territorial\)](#)
- [2018 Cannabis Control and Regulation Act – General Regulation \(Territorial\)](#)
- [2018 Cannabis Act \(Federal\)](#)
- [2019 Decision of the Cannabis Licensing Board](#)
- [2040 Proposed Official Community Plan \(August 2022\)](#)
- Proposed 2022 OCP Adopting Bylaw 2022-40
- Proposed Zoning Amendment Bylaw 2022-27
- [Zoning Bylaw 2012-20](#)

HISTORY

The proponent has applied to rezone the property from CS – Service Commercial to CSx – Service Commercial (modified) to allow for a Retail Service, Restricted (cannabis retail store) premise on the site located more than 100 m from a school.

Under section 11(1) of the Territorial *Cannabis Control and Regulation Act – General Regulation*, a cannabis retail store must be located more than 150 m from a building that is, or is part of, an elementary or secondary school. The proposed cannabis retail store does not meet this requirement as it is located within 150 m of the Whitehorse Individual Learning Centre (ILC) building, which is considered a school by the Government of Yukon.

Under section 11(2), a provision of a municipal bylaw however prevails over the requirements of section 11(1). The proponent is therefore seeking to amend the City's Zoning Bylaw to allow a cannabis retail store located more than 100 m from a school.

The proponent originally applied for a City-wide zoning amendment to allow restricted retail services located more than 100 m from all schools within the City of Whitehorse. However, City staff recommended the amendment relate only to 2220 2nd Avenue, where the cannabis retail store is proposed, as a City-wide zoning amendment would require a comprehensive assessment which is better suited for the Zoning Bylaw review. This review will occur in 2023 following the adoption of the proposed Official Community Plan currently going through the bylaw process.

Bylaw 2022-27 received First Reading on July 25, 2022. Public Hearing notifications were sent out in accordance with the Zoning Bylaw 2012-20, including:

- Notices were published in the Whitehorse Star and Yukon News on July 29 and August 5, 2022;
- The Kwanlin Dün First Nation, Ta'an Kwächän Council, and the Government of Yukon's Land Management Branch, Department of Education, Department of Health and Social Services, and Yukon Liquor Corporation (YLC) were notified by letter;
- One notice sign was placed on the subject site; and
- Property owners within 100 metres were notified by mail.

A Public Hearing was held on September 12, 2022. Fifty-two written submissions were received, with 33 voicing support and 19 voicing opposition and/or concerns, and eight submitters spoke to the item at the public hearing.

ALTERNATIVES

1. Proceed with the second and third readings under the bylaw process; or
2. Do not proceed with the second and third readings.

ANALYSIS

The below issues were raised in the written and verbal submissions:

- proximity to the Individual Learning Centre;
- consistency between regulations;
- adequacy of information;
- safety; and
- other issues

Proximity to the Individual Learning Centre

In 2019, the Yukon Cannabis Licensing Board issued a decision determining that the Individual Learning Centre meets the definition of a “secondary school” for the purposes of the *Cannabis Control and Regulation Act*, as it operates under the *Education Act*, ILC staff are employees of the Department of Education, and the ILC is administered by the Yukon Department of Education.

Comments in support of the amendment noted that the Individual Learning Centre should not be considered a school in the traditional sense. However, comments in opposition highlighted that the ILC is a school and should be considered as such. Although the ILC provides an alternative to regular secondary schools, it still provides services to young persons as it offers programs for youths aged 15 to 21. Of particular note, the ILC seeks to offer an alternative schooling option to youths who were not experiencing success in the mainstream system.

Submissions in opposition also considered the school buffer as a critical piece of youth protection as the increased proximity to a cannabis retail store increases its normalization and exposure. Submitters consider the opening of a cannabis store in proximity to the ILC would therefore contradict the goal of protecting youth, as outlined in the *Cannabis*

Control and Regulation Act, particularly since ILC students are considered at-risk youth. School buffer provisions should therefore apply to the ILC just as any other school.

School buffers are considered one regulatory mechanism, among others, to ensure the protection of young persons and discourage their access to, and consumption of, cannabis. A reduction in the school buffer around the ILC therefore has the potential to negatively impact young persons enrolled as students at the ILC.

Sight lines

Comments in support noted that there are no sight lines from the proposed restricted retail operation site to the school, which is located in a large multi-use building. Concerns raised however noted that the current Marble Slab sign is within view of the ILC.

It was observed during a site visit undertaken by City staff on June 16, 2022 that the Individual Learning School entrance and windows are located along the northern side of the multi-use building, along Ray Street. Part of the restricted retail operation building can be seen from the entrance and windows, although it is mostly screened by parked cars, structures in the road and buildings on adjacent sites.

Nevertheless, the buffer distance is also about diminishing ease of access, not just visibility of the store. While the proposed store may be designed to avoid any visible advertisement, ease of access will still be increased due to its proximity.

Measurement

The proponent raised in their public hearing submission that the proposed location for the cannabis shop would be approximately 198 m door-to-door from the ILC, much further than the 150 m required from lot line to building under the *Cannabis Control and Regulation Act*.

It is, however, a preferred practice by City Administration to consider the distance from lot line to lot line as buffer distances are measured in both directions, so any location changes from either use (i.e. either the school or the cannabis retail store) would impact the distance between the two uses.

As such, measuring from a building wall or door could restrict any future additions or alterations of the ILC or its relocation within the same building that could potentially reduce the buffer distance. Measuring from door to door would therefore restrict the ILC to their existing space or automatically create an encroachment into the buffer distance. Measuring from lot line to lot line allows flexibility for future additions and alterations within a site.

Consistency between regulations

Comments in support noted that there is a lack of alignment between the City and the Government of Yukon, which results in unnecessary costs, confusion, inefficiencies, disincentives, and is overall burdensome for new start-ups. Of particular note, the Whitehorse Chamber of Commerce provided a letter encouraging the City of Whitehorse and the Government of Yukon to improve and align cannabis licencing regulations from both levels of government.

As previously noted, the City's Zoning Bylaw will be reviewed following the adoption of the proposed Official Community Plan. As part of the Zoning Bylaw review, the

appropriateness of the current specific use regulations for restricted retail services, including the various buffer distances, and their alignment with territorial cannabis regulations will be reviewed. Examining the appropriateness of these requirements City-wide and determining the appropriate distances between uses, if any, is considered to be better suited as part of the comprehensive review of the Zoning Bylaw.

It is also noted that section 4(1) of the *Cannabis Control and Regulation Act* requires a comprehensive review at least once every five years. Since the *Cannabis Control and Regulation Act* was adopted in 2018, it is expected YG will commence a comprehensive review of the legislation in 2023. It is anticipated that the appropriateness of the current school buffers will be considered as part of this comprehensive review.

In addition, section 151.1 (1) of the Federal *Cannabis Act* requires a legislative review after three years of its adoption. The review must examine the administration and operation of the *Cannabis Act*, including a review of its impact on public health and, in particular, on the health and consumption habits of young persons in respect of cannabis use. On September 22, 2022, the Minister of Health and Minister of Mental Health and Addictions and Associate Minister of Health, announced the launch of this legislative review. Any changes to the *Cannabis Act* has the potential to require changes to the *Cannabis Control and Regulation Act* and municipal bylaws.

Adequacy of information

Comments both for and against the amendment referenced municipalities and studies that either support or oppose a 100 m or 150 m school buffer zone. Comments in opposition raised concerns with the limited information provided to support a reduction in the buffer distance and that any review should occur, as previously noted, through a City-wide process or the required comprehensive review of the *Cannabis Control and Regulation Act*.

It was noted by submissions in support and opposition that there are few studies specific to the proximity of cannabis stores to schools. Submissions in opposition therefore noted that the City should take a precautionary approach until further research is conducted to ensure harms are minimized.

Cannabis Buffer Map

Comments in support noted the inadequate amount of information on cannabis retail regulations provided by the permitting authorities. Specifically, information is lacking, unclear and inaccurate. This is in addition to limited retail space and strict zoning, legislation, and access regulations. As such, flexibility should be given to support small businesses.

Of particular note, the proponent raised in their public hearing submission that a Cannabis Buffer Map published by the City was inaccurate and showed the proposed cannabis store location as being outside of the school buffer. The proponent also raised that they had discussed the inaccuracy with City staff who acknowledged the error. The error was however raised with City staff after the proponent had entered into a lease agreement on the subject site and been told by YLC that they were non-compliant. The map has since been revised to show the proposed site as being within the school buffer.

The City's Private Retail Cannabis webpage notes that the map is for reference purposes only and that any potential applicants should contact the permitting authorities (City of Whitehorse Land and Building Services and Government of Yukon Liquor Corporation) to ensure accurate information. In addition, the map notes that buffers from schools are not regulated through City of Whitehorse zoning and as such, the information on the map may be incomplete. The note advises any potential applicants to contact the Government of Yukon Liquor Corporation for complete information on school buffers.

The purpose of the map is to facilitate the understanding of the Zoning Bylaw requirements for cannabis shops. It is an interpretative aid that cannot be regularly updated as uses change over time. It is not a policy or regulation, or intended to be used to determine compliance with the Zoning Bylaw requirements. In addition, the City is not always informed of changes in building uses, such as schools, which would be required to maintain an up to date and accurate map. Notwithstanding that the City does not regulate school buffers as well and therefore is not the permitting authority authorized to confirm compliance with this requirement.

The City issues development permits to confirm that a proposed development conforms to the applicable regulations of the Zoning Bylaw. The proposed cannabis retail operation received a development permit from the City as it met the City's Zoning Bylaw requirements against which the development permit application was assessed. The City is not responsible for ensuring businesses adhere to other government regulations, such as YG's *Cannabis Control and Regulation Act*, which restricts cannabis retail stores from locating within 150 m of a school.

Nevertheless, it was recommended during the development permit stage that any information contained in the Cannabis Buffer Map should be verified independently and any information regarding compliance with other legislation should be obtained and confirmed by the appropriate permitting authority, being the YLC in this instance.

Safety

Comments in support noted that there are other protections in place by the *Cannabis Control and Regulation Act* that ensure access and consumption are discouraged and public health and safety are protected. Namely, cannabis retail stores are required to verify a customer's identity. Students of the ILC would therefore not be able to purchase goods from the business. Submitters noted that lawfully purchased cannabis eliminates the black market and that there is a clear correlation between safe, responsible use and legal access.

Comments in opposition noted that youth are more likely to experience harm from cannabis use. Cognitive and mental health problems were raised as potential impacts. As previously noted, some submitters consider the increased proximity to a cannabis retail store increases its exposure and normalization. Submissions therefore consider important that the City rigorously enforces its provisions with regards to school buffers to ensure the protection of youth, per the purpose of the *Cannabis Control and Regulation Act*.

It is also noted that safety is not just related to the legal purchase of cannabis. Even if youth cannot obtain cannabis from a store, the store will still advertise to the public and

maintaining the existing buffer distance will minimize passive advertising of cannabis products to youth.

Other issues

Other matters raised in the written and verbal submissions, such as on-site parking, over-saturation of the cannabis market, due diligence, preferential treatment, process integrity and proximity to other uses are not considered to relate to this zoning amendment application to rezone the subject site.

Concerns relating to on-site parking and proximity to Shipyards Park and other uses and how they do not relate to the zoning amendment are however further explained below for clarity.

On-site parking

Comments in opposition note that parking is already congested in the area. On-site parking requirements are however considered at development permit stage. In addition, the subject site is zoned CS – Service Commercial and restricted retail services are permitted as a principal use in the zone. Parking impacts from the proposed use are therefore considered out of scope of the proposed zoning amendment as the use and its required on-site parking would otherwise be allowed on the site if compliance was achieved with territorial legislation.

Proximity to Shipyards Park

Comments in opposition note that the proposed site is too close to Shipyards Park, which has a play structure and is considered a park by many even though it is zoned PW – Public Waterfront and that buffer distances to restricted retail services do not apply to this zone. Submissions note that the zoning of the site should be reconsidered now that it has a play structure.

These submissions are not considered to relate to this zoning amendment application, being the location of a restricted retail service more than 100 m from a school. For example, a cannabis retail store could potentially be established on other surrounding properties, within a similar distance to Shipyards Park and outside of the school buffer.

It is noted that Shipyards Park was zoned PW – Public Waterfront prior to the legalization of cannabis. When the Shipyards Park play structure was built in 2021, it was not considered appropriate to rezone the site to a PR – Parks and Recreation zone, as the size of the site ensured the intent of the buffer distance from an otherwise PR – Parks and Recreation zoned site was met, being to protect youth.

Nevertheless, examining the appropriateness of the Shipyards Park zoning and determining the appropriate distance between the site and restricted retail services, if any, is considered to be better suited as part of a comprehensive review of the Zoning Bylaw, which will occur in the near future.

Proximity to other uses

Comments in support noted that the school is located within a multi-use building and that there are multiple other uses in proximity to the proposed cannabis retail store which are considered inappropriate for young persons, namely liquor stores and restaurants with

liquor licenses. As such, they consider the proposed cannabis commerce is compatible with surrounding uses and will not further impact youth.

In contrast, comments in opposition raised concerns with the increased density of these uses in a single area and other uses pertaining to youth or families located in the vicinity, namely the Aurora Virtual School and various daycare facilities and restaurants, in addition to being located where youth may congregate.

These submissions are also not considered to relate to this zoning amendment application, as a cannabis retail store could potentially be established on other surrounding properties, within a similar distance to the above mentioned uses and outside of the school buffer.

Nevertheless, it is noted that the Zoning Bylaw does not restrict the distances between a restricted retail service and daycare facilities, liquor stores, restaurants or areas youth may congregate. As previously noted, examining the appropriateness of locating restricted retail services in proximity to other uses and determining the appropriate distance between these uses, if any, is better suited as part of a comprehensive review of the Zoning Bylaw, which will occur in the near future.

Summary

Considering the above, namely:

- the status of the ILC as a school and that it is designed for at-risk youth;
- the intent of the *Cannabis Control and Regulation Act* to protect young persons and discourage their access to, and consumption of, cannabis;
- the lack of sufficient information to determine the impact the reduced buffer distance would have on the protection of youth; and
- the anticipated comprehensive reviews of the Zoning Bylaw and the *Cannabis Control and Regulation Act*, both of which are anticipated to commence next year; and
- the review of the *Cannabis Act* currently underway;

City staff consider appropriate in this instance to take a precautionary approach until further research is undertaken and information is obtained to determine the impacts a reduced buffer distance between a cannabis retail store and a school may have on the city's youth enrolled at the ILC. This examination and determination is considered better suited as part of a comprehensive review of the Zoning Bylaw, the *Cannabis Control and Regulation Act*, and the *Cannabis Act* which will occur in the near future or is already underway.

It is also considered that supporting this amendment will set a precedent where other cannabis retail stores may wish to apply for similar amendments near the same or other schools. Although each amendment is assessed on its own merits, previous precedents can be considered to justify an amendment. In addition, this precedent would need to be considered as part of the comprehensive Zoning Bylaw review as well. It is noted however that circumstances would need to be identical to be considered a legal precedent.

ADMINISTRATIVE RECOMMENDATION

THAT Council direct that Bylaw 2022-27, a bylaw to amend the zoning of 2220 2nd Avenue to allow for a cannabis retail operation more than 100 m of a school, be brought forward to second reading and defeated.