To: Mayor and Council

From: Corporate Services Department

Date: October 25, 2017

Legalized Non-Medical Cannabis in BC – Delta’s Submission to the BC Government

The following report has been reviewed and endorsed by the City Manager.

• RECOMMENDATIONS:

A. THAT Delta’s submission entitled, Legalization and Regulation of Non-Medical Cannabis in BC (Attachment A) be approved and sent to the Provincial government prior to the November 1, 2017 deadline.

B. THAT staff be authorized to prepare amendments to Delta’s bylaws related to cannabis as described in this report.

C. THAT letters be sent to the Federal and Provincial governments seeking a prohibition on the commercial growth of cannabis in private residences substantially in the form of Attachment B.

• PURPOSE:

The purpose of this report is to seek Council’s approval to finalize Delta’s submission to the Provincial government on regulating non-medical cannabis in British Columbia. This report also seeks consent to proceed with preparing amendments to Delta’s bylaws related to cannabis (medical and non-medical) for Council’s consideration, in preparation for the anticipated enactment of the Cannabis Act.

• BACKGROUND:

Federal legislation legalizing and regulating non-medical cannabis in Canada will come into force July 2018: (1) Bill C-45, The Cannabis Act, which addresses the regulation, sale and cultivation of non-medical cannabis; and (2) Bill C-46 An Act to Amend the Criminal Code, which focuses on strengthening its approach to alcohol and drug impaired driving.

The Federal government’s decision to legalize non-medical cannabis creates a corresponding need for Provincial and Territorial governments to regulate it, which will in turn affect municipalities who will be required to appropriately respond to the new legislation. This will
require updating of bylaws and policies, the provision of compliance enforcement and deterring negative impacts related to public safety (i.e. impairment) and health.

In response to the Provincial government’s requirement to develop a legal framework for regulating non-medical cannabis, the Minister of Public Safety and Solicitor General announced the initiation of a consultation process, seeking local government and public feedback on the impending legalization. A corresponding Discussion Paper was issued by the Ministry to assist local governments on the key policy areas that the Provincial government is seeking input on and is enclosed as Attachment C of this report.

The current Federal legislation for authorized medical cannabis users, referred to as the Access to Cannabis for Medical Purposes Regulations (ACMPR), will continue under the new Cannabis Act. It is anticipated that in approximately five years, the Federal government will review the ACMPR medical legislation and determine if both non-medical and medical cannabis can be combined under one Act.

**DISCUSSION:**

At the October 16, 2017 Executive Meeting, Council received a presentation on Delta’s draft submission to the Provincial government regarding the legalization of non-medical cannabis in BC. The input submitted by local governments such as Delta, is intended to assist the Province in the development of a legal framework to regulate non-medical cannabis.

In addition, Mr. Sukh Manhas of Young Anderson Barristers and Solicitors, presented information and responded to questions regarding the anticipated Provincial framework to regulate non-medical cannabis.

Staff have reviewed all of Delta’s current bylaws and identified four that Council may wish to amend, pending the forthcoming Provincial regulations:

1. **Delta Zoning Bylaw No. 2750, 1977.** This bylaw currently prohibits medical marihuana production and medical marihuana research and development in all zones outside the Agricultural Land Reserve (ALR) and needs to be amended to include a prohibition on the production and sale of non-medical marihuana/cannabis in all zones outside the ALR.

2. **Business Licence Bylaw No. 7670, 2017.** Reviewing options to add regulations and fees specific to cannabis businesses to assist in covering administrative and enforcement costs associated with the legalization of non-medical cannabis.

3. **Delta Smoking Regulation Bylaw No. 7481, 2015.** Staff is reviewing options to strengthen the definition of “smoke” to ensure it includes cannabis and vaping, thereby treating cannabis and vaping the same as other types of smoking. Staff will also make amendments to ensure that regulations related to smoking apply to cannabis smoking or vaping.
4. **Delta Controlled Substance Property Bylaw No. 6200, 2004.** Staff is reviewing whether this bylaw will require updating to continue its provisions related to cannabis following the forthcoming Federal and Provincial government regulations.

It is important that bylaw amendments are adopted prior to July 1, 2018, but also that the amendments are completed taking into account the forthcoming Provincial regulations. Therefore, the timing of the bylaw amendments in spring 2018 will be important.

Staff will work with Mr. Manhas to ensure the bylaw amendments offer legal protection to Delta ahead of the enactment of the Federal and Provincial legislation on non-medical cannabis, while avoiding implementing changes that could lead to future legal challenges. Once complete, the proposed bylaw amendments will be presented to Council for consideration.

**Delta's Submission**

An updated version of Delta's submission to the Provincial government is enclosed as Attachment A of this report. The first eight sections provide Delta's response to each of the key policy areas the Province requested feedback on. As well, additional local issues are included in the last section to address Delta's concerns related to (1) the commercial production of cannabis on agricultural land; and (2) taxation to support the regulation of non-medical cannabis, including ensuring equal funding to both municipal police forces and the RCMP, both of which fall under Provincial jurisdiction. Additionally, Attachment D provides an overview of the key policy areas identified by the Provincial government and Delta's proposed position and comments.

Delta's Police Department, like all police departments across Canada, will be faced with challenges associated with the Cannabis Act. Accordingly, the Chief Constable has provided the BC Association of Municipal Chiefs of Police submission to the BC Cannabis Regulation Engagement Process (Attachment E).

**Update – Proposed New Criminal Offences in Bill C-46**

Recently, the Federal government released a draft of its planned legal limits for drivers under the influence of drugs, referred to as Blood Drug Concentration Regulations, and is included as Attachment F of this report. Also included as Attachment G, is a story by CBC on the proposed three new criminal driving offences. In regards to cannabis, the Blood Drug Concentration level proposed is less than five nanograms of THC per milliliter of blood. Staff will continue to monitor this situation and report back as new information on this legal framework becomes available.

**Other Considerations**

**Growing cannabis in private residences** – for many years, Delta has opposed the commercial growing of cannabis for medical use in private residences due to first responders' concerns with regards to public safety. These concerns include the presence of excess moisture in homes creating a risk of mould, electrical hazards creating a risk of fire, and exposure to toxic chemicals like pesticides and fertilizers. Despite these concerns, such growing practices are allowed under licences issued through the ACMPR. With the forthcoming legalization of non-
medical cannabis the time is right to revisit this issue and seek support from the Federal and Provincial governments to prohibit all commercial growing of cannabis in private residences.

**Quality control and enforcement** – it is imperative that Health Canada set quality control regulations and safe standards relative to the commercial production of cannabis. It is also essential that Health Canada have sufficient resources to conduct enforcement to ensure compliance with these standards.

In much the same way that liquor is regulated by the Liquor Control and Licensing Branch in British Columbia, the production of cannabis requires oversight for public safety. In the context of the current opioid overdose epidemic, regulatory oversight of the production of cannabis is essential so that people who choose to consume cannabis can be confident that they are consuming what they mean to consume, free from other toxins such as pesticides. Any commercial production of cannabis should be regulated in the same way that liquor is regulated in British Columbia.

**Agricultural Land Reserve** – Delta remains extremely concerned that the production of cannabis on agricultural land will reduce the arable land available to grow food. With some of the best agricultural land in British Columbia, Delta will be especially impacted by the growing of cannabis on agricultural land. Furthermore, Delta is concerned that the production of commercial cannabis on agricultural land will increase agricultural land values, making this land less viable for food production.

**Implications:**

Financial Implications – There are no financial implications associated with this report. The tax allocation scheme for non-medical cannabis has not been determined, but it is essential that local governments and police forces receive an appropriate share of tax dollars to fund all requiring training, equipment, enforcement and public safety initiatives.

**CONCLUSION:**

The Provincial government is seeking local government feedback to help determine a legal framework for the regulation of non-medical cannabis in BC. In response to this, Delta has prepared a submission related to the Discussion Paper issued by the Ministry of Public Safety and Solicitor General.

Staff is seeking approval to submit Delta’s comments to the Ministry of Public Safety and Solicitor General. Additionally, to prepare for the impending legalization of non-medical cannabis, staff is seeking authority to proceed with all necessary bylaw updates related to both medical and non-medical cannabis.

Sean McGill
Director of Corporate Services
ATTACHMENTS:

A. Delta’s Cannabis Feedback Submission to the Provincial government
B. Letters to the Federal and Provincial governments
C. Provincial government Discussion Paper: *Cannabis Legalization & Regulation in BC*
D. Chart of BC’s Non-Medical Cannabis Discussion Paper Guidelines
E. Cannabis Regulations: BC Association of Municipal Chiefs of Police Submission to BC Government
F. *Blood Drug Concentration Regulations.* Canada Gazette, October 14, 2017
G. Government releases legal limits for drugged driving but can’t say how much pot is too much. CBC, October 13, 2017
LEGALIZATION AND REGULATION OF NON-MEDICAL CANNABIS IN BC

The legalization of non-medical cannabis in Canada could have profound social, economic, health and cultural impacts on our society. In the interest of public health and safety, Delta urges the Provincial government to use its legislative authority to increase the minimum age of consumption to 19 years. Additionally, Delta is seeking measures to ensure farmland is reserved for food crop production, specifically lands located in the Agricultural Land Reserve, to deter the proliferation of cannabis on agricultural lands.

INTRODUCTION
The following submission is in response to the request from the BC Minister of Public Safety and Solicitor General for local government input regarding the development of a provincial regulatory system for non-medical cannabis. The City of Delta's submission represents the policy views of Delta Council, Delta Police Department, and Delta Fire & Emergency Services, and is organized as per the guidelines provided in the Ministry of Public Safety and Solicitor General's Discussion Paper.

As a local government with a unique mixture of residential, agricultural, industrial and commercial areas, Delta has concerns regarding the use of farmland located in the Agricultural Land Reserve for cannabis production. As well, it is essential that a fair taxation revenue distribution stream is established to provide local governments with funding required to train and appropriately equip Police and Bylaw Officers on how to respond to the Cannabis Act and corresponding amendments to Delta's bylaws. Delta urges the BC Government to include the following policy measures in its regulatory regime for non-medical cannabis:

MINIMUM AGE
Delta requests that the BC Government use its legislative authority to increase the minimum age to buy and possess non-medical cannabis to 19 years of age. This measure will harmonize the ability to purchase, grow and possess cannabis with the minimum age to buy alcohol and tobacco in BC, and is the BC age of majority when a minor becomes an adult. Furthermore, Delta’s recommendation mirrors the minimum age of consumption being established by the Governments of Ontario and New Brunswick.

PERSONAL POSSESSION - ADULTS
Delta supports the BC Government imposing a 30-gram possession limit for adults possessing dried cannabis in public. A 30-gram possession limit is consistent with the Cannabis Act, as well as the Task Force recommendations and possession limits in other jurisdictions (i.e., Colorado, Washington, California and Alaska). Furthermore, establishing a 30-gram adult possession limit across Canada will create consistent rules and help simplify the enactment of the Cannabis Act.

PERSONAL POSSESSION - YOUTH
Delta requests that the BC Government use its legislative authority to prohibit the possession of any form of non-medical cannabis by persons under the age of 19 years. Such a law would in turn treat cannabis possession similar to how BC deals with alcohol – persons under 19 years are prohibited from possessing alcohol, and a law enforcement officer can confiscate it and has the option of issuing a ticket.
Additionally, to develop greater awareness and support for youth and families regarding the health risks related to cannabis consumption, it is recommended the BC Government:

- Develop preventative-based youth engagement campaigns and programs;
- Invest in school-based programs and provide funding to support school liaison officer programs to manage cannabis related issues in school environments; and
- Develop and fund formal diversion programs for youth found in possession of cannabis, including education, counselling and social/emotional support.

PUBLIC CONSUMPTION
Delta requests that the BC Government ban all forms of cannabis consumption in public places, including smoking and vaping, similar to tobacco smoking, in the interest of public health. Banning the public consumption of cannabis will also help towards reducing odour-related nuisance issues.

The Task Force is recommending that cannabis consumption lounges be established. In view of this, Delta requests that the BC Government establish a licensing scheme to limit the number of cannabis lounges, and give local governments authority over the location and hours, as well as restrictions within residential zones and near schools, daycares, churches or treatment centres.

Given the complexity of the new legislation, the need to educate the public on health risks, and the uncertainty around supply and demand, it is recommended that the BC Government delay the establishment of cannabis consumption lounges for at least two years.

OTHER FORMS OF CONSUMPTION – EDIBLES
Cannabis edibles have received growing media attention due to the increasing number of children and adults experiencing adverse reactions from the accidental or intentional consumption of edibles. In view of this, Delta requests that the BC Government implement a prohibition on the production and sale of all cannabis edibles, until such time as the Federal government establishes regulations for their manufacturing and production.

Furthermore, Delta requests the BC Government advocate for a national prohibition of cannabis edible products which are deemed appealing to children, such as candy or cookies. Additionally, it is essential that strict regulations are put in place around the production, packaging, labelling, and sale of edibles including, child-proof or child-resistant packaging, along with setting a maximum amount of tetrahydrocannabinol (THC) per each edible serving that is well marked on the package.

DRUG-IMPAIRED DRIVING
With the key objective of promoting road safety, Delta requests that the BC government:

- Similar to Ontario, set a zero-tolerance standard in respect of blood THC content for drivers in the Graduated Licensing Program (drivers with an “L” or “N” designation), drivers under the age of 19 years and for commercial drivers;
- Expand the Immediate Roadside Prohibition and Administrative Driving Prohibition programs to include cannabis drug-impaired driving;
- Invest in Drug Recognition Expert training and Standard Field Sobriety Testing training for at least one-third of front line police officers to increase capacity for managing cannabis impairment and enforcement; and
- Launch a public education and awareness campaign to inform British Columbians about the health risks associated with cannabis consumption and potential consequences of cannabis-impaired driving.
PERSONAL CULTIVATION
Delta accepts the proposed allowance for adults to grow up to four cannabis plants per household for non-medical use to a maximum height of 100 centimetres, as per the Cannabis Act. Delta also urges the BC Government to use its legislative authority to set restrictions on cultivation, such as a requirement that any indoor/outdoor plants be secured against exposure to children and/or theft and by also ensuring cannabis plants are not visible from outside the property. As an additional measure to reduce the risk of exposure to children, Delta requests a prohibition on the personal cultivation of non-medical cannabis in a home where a licenced childcare service facility is located.

While Delta supports the limited growing of non-medical cannabis for personal use, Delta urges the BC Government to pursue all available avenues to request that the Federal Government no longer allow the growing of medicinal cannabis in residential households. With the increased supply that will be available through commercial and recreational cannabis growers, the commercial production of medical cannabis in households under existing Federal licenses is no longer warranted. This situation creates health and safety concerns for first responders as well as neighbouring residents.

DISTRIBUTION MODEL
BC has an established and well-functioning government alcohol distribution network, providing a secure and reliable means to distribute product. This system has proven effective as a means to prevent diversion and also maintain control over supply and product quality. Delta seeks a government controlled non-medical cannabis distribution model where a certified government distributor facilitates the warehousing and distribution of cannabis. Additionally, it is incumbent on the BC government to ensure that whatever system is ultimately established includes a secure, quality controlled supply system of rigid standards and that the BC Government pushes Health Canada to ensure that sufficient resources are established and available to set quality control standards and ensure enforcement.

RETAIL
Delta requests that the BC Government establish a public retail system similar to Ontario’s plans to facilitate the sale of non-medical cannabis through stand-alone government operated cannabis stores and an online order service. Delta also requests that the BC Government provide local governments with the power of regulatory oversight regarding the issuance of building permits, zoning (including location control), and business licences.

ADDITIONAL DELTA ISSUES & CONCERNS:

COMMERCIAL PRODUCTION – ENSURING A RESPONSIBLE SUPPLY CHAIN
As a local government, the City of Delta seeks to ensure that cannabis production facilities are located only in appropriately zoned commercial or industrial areas, as approved by Council. To this end, Delta Council amended its Zoning Bylaw in 2014 to prohibit the production and the research and development of medical cannabis on Delta lands, excluding the Agricultural Land Reserve. Since the adoption of this bylaw, Council has approved a limited number of commercial medical cannabis production facilities on a case-by-case basis, with each facility being located in appropriately zoned industrial areas.

Agriculture is vital to Delta’s economic, environmental and social sustainability, rendering significant value, including total gross farm receipts of almost $170 million in 2010 (latest figure available). With farming and specifically food crops being a vital contributor towards Delta’s economy, Council also tried to amend its Zoning Bylaw in 2014 to prohibit the production of medical cannabis on lands
within the Agricultural Reserve, but the bylaw failed to receive approval from the Ministry of Agriculture.

Growing cannabis on prime agricultural land is a significant concern for Delta Council, as it has the potential to create a proliferation of cannabis production on lands located within the Agricultural Land Reserve, thereby displacing traditional food crop production. Furthermore, allowing cannabis production within the Agricultural Land Reserve could adversely affect the value and land prices for agricultural properties, subsequently impacting the long-term viability of farmland for food production.

Delta Police also share concerns regarding the cultivation of cannabis on Delta’s agricultural lands and identified the potential for increased risk around the presence of organized crime, robbery and commercial break and enters.

In response to these concerns, Delta requests that the BC Government prohibit the production of cannabis on lands within the Agricultural Land Reserve as a measure to guarantee food security and public safety.

**TAXATION**
Delta urges the BC Government to ensure local governments are appropriately recognized in the tax regime and allocated a fair portion of federal and provincial tax collected through the distribution and sale of non-medical cannabis. The legalization of non-medical cannabis will require local governments such as Delta to invest in additional training and resources for local police, fire and bylaw officers to ensure the production, distribution, sale and consumption of this product occurs safely and in accordance with both federal and provincial regulations. To this end, it is essential that taxation revenue from non-medical cannabis sales be allocated equally to Municipal Police Forces and the Royal Canadian Mounted Police.

In conjunction with Delta’s concerns regarding the production of cannabis on lands located in the Agricultural Land Reserve, Delta requests that cannabis production facilities located on farmland in the Agricultural Land Reserve be taxed at the same rate as cannabis production facilities located on industrial-zoned lands.

**CONCLUSION**
Prior to the implementation of the Cannabis Act, it is essential that the BC Government ensure municipalities play a key role in designing the regulatory framework, including the development of local plans for the production, distribution and consumption of cannabis within municipal boundaries. It is also critical that local governments be allocated a fair portion of tax collected through cannabis sales and distribution in order to invest in the resources required to support legalization and public health and safety.
October 25, 2017

The Honourable Ginette Petitpas Taylor
Minister of Health
Ottawa, ON

Dear Minister,

RE: Growing Cannabis in Private Residences

We appreciate that the City of Delta has been given the opportunity to provide input and commentary regarding the development of Provincial regulations in preparation for the enactment of the Cannabis Act next July. The City of Delta has provided a comprehensive report on this issue through the BC Government's consultation website; however, there is an issue of concern that I feel must be addressed at the same time as the new cannabis regulations come into effect.

The City of Delta has long opposed the commercial growing of cannabis for medical purposes in residences due to a variety of concerns including, health concerns related to mould and toxic substances, and fire hazards as well as the potential exposure of children to cannabis. Home-based cannabis production is currently allowed under the Access to Cannabis for Medical Purposes Regulations (ACMPR), and the upcoming regulatory changes with respect to recreational cannabis presents an opportunity to prohibit all commercial growing of cannabis in private residences.

Commercial cannabis production does not belong in homes and residential areas where this activity not only presents a physical hazard to first responders and people living in those houses, but exposes the most vulnerable children and young adults to cannabis use. I would strongly urge the Federal government to take this opportunity to revoke the authority under the ACMPR to grow medical cannabis in homes and to ensure that provincial regulations include a similar prohibition on the commercial growth of non-medical cannabis in private residences.

Yours truly,

Lois E. Jackson
Mayor

cc.
October 25, 2017

The Honourable Mike Farnworth
Minister of Public Safety & Solicitor General
Room 128 Parliament Buildings
Victoria, BC V8V 1X4

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Yours truly,

Lois E. Jackson
Mayor

cc.
Cannabis Legalization and Regulation in British Columbia
Discussion Paper

BRITISH COLUMBIA Ministry of Public Safety and Solicitor General
Introduction

In 2015, the federal government committed to legalizing non-medical cannabis in Canada. On June 30, 2016, it established the Task Force on Cannabis Legalization and Regulation (the Task Force) to consult and advise on the design of a new legislative and regulatory framework. The Task Force report was released on December 13, 2016, and provides a comprehensive set of recommendations for governments to consider.

On April 13, 2017, the federal government introduced Bill C-45, the Cannabis Act and Bill C-46 (the Act to amend the Criminal Code), in the House of Commons. The Bills are currently making their way through the parliamentary process. Bill C-46 amends the Criminal Code to simplify and strengthen its approach to alcohol and drug impaired driving, and the federal government plans to move quickly to bring the amendments into force once the Bill receives Royal Assent.

The federal government plans to bring Bill C-45 into force in July 2018; this will make non-medical cannabis legal in Canada as of that date. Bill C-45 is largely based on the recommendations of the Task Force. It seeks to balance the objectives of providing access to a regulated supply of cannabis, implementing restrictions to minimize the harms associated with cannabis use, and reducing the scope and scale of the illegal market and its associated social harms.

The federal government’s decision to legalize cannabis creates a corresponding need for provincial and territorial governments to regulate it. While the federal government intends to assume responsibility for licensing cannabis producers and regulating production and product standards, provinces and territories will be responsible for many of the decisions about how non-medical cannabis is regulated in their jurisdictions. These include, but are not limited to: distribution and retail systems; compliance and enforcement regimes; age limits; restrictions on possession, public consumption and personal cultivation; and amendments to road safety laws.

As it considers these important decisions, the BC Government wants to hear from local governments, Indigenous governments and organizations, individual British Columbians, and the broad range of other stakeholders that will be affected by cannabis legalization.

This discussion paper has been prepared to help inform this public and stakeholder engagement. It addresses a number of key policy issues for BC, including minimum age, public possession and consumption, drug-impaired driving, personal cultivation, and distribution and retail. It draws heavily from the analysis of the Task Force, and identifies policy options to consider in developing a BC regulatory regime for non-medical cannabis.

Note that this paper does not address regulation of medical cannabis. For now, the federal government has decided to maintain a separate system for medical cannabis. The Province has a more limited role in the medical cannabis system, and the policy issues and policy choices available are very different, in part because of a history of court cases related to the Canadian Charter of Rights and Freedoms.
Minimum Age

While Bill C-45 establishes a minimum age of 18 years to buy, grow, and publicly possess up to 30 grams of non-medical cannabis, provinces and territories can choose to establish a higher minimum age in their jurisdictions. This is consistent with the Task Force recommendations.

- BC could accept the federal minimum age of 18. However, the minimum age to buy tobacco and alcohol in BC is 19. 19 is also the BC age of majority, when minors become legal adults. In addition, since significant numbers of high school students turn 18 before they graduate, a minimum age of 18 could increase the availability of cannabis to younger teens.
- BC could set the minimum age at 19. This would be consistent with the minimum ages for tobacco and alcohol, and with the BC age of majority.
- BC could set the minimum age at 21 or higher. Emerging evidence suggests that cannabis use could affect brain development up to age 25. As a result, many health professionals favour a minimum age of 21.

However, as the Task Force recognized, setting the minimum age too high could have unintended consequences. Currently, persons under 25 are the segment of the population most likely to use cannabis. The greater the number of young users who cannot buy legal cannabis, the more likely that there will continue to be a robust illegal market where they can continue to buy untested and unregulated cannabis.

Finally, it’s important to note that a legal minimum age is not the only tool to discourage cannabis use by young persons. As an example, public education campaigns that provide information about how cannabis use can limit academic performance and future opportunities have been found to be effective.

Personal Possession - Adults

Bill C-45 establishes a 30 gram limit on public possession of dried cannabis. Practically, this means that this is the maximum amount that an adult could buy and take home at any one time (for context, one joint typically contains between .33g to 1g of cannabis). The legislation also sets possession limits for other forms of cannabis (e.g. oils, solids containing cannabis, seeds) and the federal government intends to add other types of cannabis products (e.g. edibles) by regulation at a later date.

The 30 gram limit is consistent with the Task Force recommendation and with public possession limits in other jurisdictions that have legalized non-medical cannabis. The reason for public possession limits is that possession of large amounts of cannabis can be an indicator of intent to traffic, so a public possession limit can help law enforcement to distinguish between legal possession for personal use, and illegal possession for the purpose of trafficking.

Provinces and territories cannot increase the public possession limit, but they can set a lower limit. However, a consistent possession limit across the provinces and territories would be easier for the public to understand and comply with.
Personal Possession – Youths

While persons under 18 will not be able to buy or grow cannabis under Bill C-45, they are not prohibited from possessing up to 5 grams of dried cannabis or equivalent amounts for other cannabis products. This is consistent with the Task Force report, which took the position that youth should not be criminalized for possession of relatively small amounts of cannabis. However, provinces and territories can establish laws that prohibit possession by persons under an established provincial minimum age. Such a provincial law would not result in a criminal conviction and would be similar to how BC deals with alcohol – persons under 19 are prohibited from possessing alcohol, and a law enforcement officer can confiscate it and has the option of issuing a ticket.

Public consumption

Bill C-45 will amend the federal Non-smokers’ Health Act to prohibit cannabis smoking and vaping in certain federally-regulated places (e.g. planes, trains), but regulation of public consumption of cannabis will otherwise fall within provincial and territorial jurisdiction.

BC can restrict where non-medical cannabis can be consumed, and can place different restrictions on different types of consumption (e.g. smoked, eaten). If BC does not legislate restrictions on public consumption by the time Bill C-45 comes into force, it will be legal to smoke, vape, and otherwise consume cannabis in public, including in places where tobacco smoking and vaping are forbidden.

For the purpose of considering potential restrictions on public consumption, it may be helpful to consider cannabis smoking and vaping separately from other forms of consumption.

Cannabis Smoking and Vaping

The Task Force recommended that current restrictions on public tobacco smoking be extended to cannabis. In BC, both tobacco smoking and vaping are currently prohibited in areas such as workplaces, enclosed public spaces, on health authority and school board property, and in other prescribed places such as transit shelters, and common areas of apartment buildings and community care facilities.

BC has a number of options to consider:

- BC could extend existing restrictions on tobacco smoking and vaping to cannabis smoking and vaping – under provincial law, adults would then be allowed to smoke or vape cannabis anywhere they can smoke or vape tobacco. Depending on the regulatory scheme established by the Province, local governments may also be able to establish additional restrictions, such as prohibiting cannabis smoking and vaping in public parks.

- BC could prohibit public cannabis smoking altogether, but allow cannabis vaping wherever tobacco smoking and vaping are allowed. Compared to smoking, vaped cannabis has a reduced odour and is less likely to be a nuisance to passersby. In addition, banning public cannabis smoking could help avoid normalizing cannabis use.
• BC could also prohibit public cannabis smoking and vaping altogether and establish a licensing scheme to allow designated consumption areas, e.g. cannabis lounges. However, it is unlikely that such a licensing scheme could be implemented in time for legalization.

Other forms of consumption:
While edible, drinkable, and topical forms of cannabis will not be commercially available immediately upon legalization, the federal government intends to regulate the production and manufacturing of these products for sale at some point. In addition, adults will be allowed to make their own edible and other products at home.

Public consumption of non-inhaled forms of cannabis would be very difficult to detect and enforce. While BC could legislate restrictions on public consumption of these forms of cannabis, it may be more practical to rely on public intoxication and disorderly conduct laws to manage intoxication issues related to public consumption.

Drug-impaired Driving

With 17% of British Columbians reporting cannabis use within the previous year, we know that it’s very likely that a number of British Columbians are already driving with cannabis in their system, whether they are impaired or not. In 2016, drugs (cannabis or otherwise) were a contributing factor in fewer than 8% of BC road fatalities; however, legalization raises legitimate concerns about the potential for cannabis-impaired driving to increase, and make our roads less safe.

Drug-impaired driving is already prohibited under the Criminal Code, but Bill C-46 would overhaul existing impaired driving provisions and specifically address cannabis impairment. The amendments will provide authority for the federal government to set a blood tetrahydrocannabinol (THC) limit beyond which a person can be criminally charged with cannabis-impaired driving. This is similar to the blood alcohol limits in place for alcohol-impaired driving.

The proposed federal criminal penalties for drug-impaired driving range from a minimum of a $1,000 fine to up to a maximum of 10 years in jail.

In BC, police who stop an alcohol-impaired driver can charge the driver criminally, but they also have the option of issuing an Immediate Roadside Prohibition (IRP) or an Administrative Driving Prohibition (ADP) under the BC Motor Vehicle Act. Sanctions can include licence prohibitions, monetary penalties, vehicle impoundment, and license reinstatement fees. These programs have been very effective in reducing the number of road fatalities on BC roads.

While the IRP and ADP schemes do not currently apply to drug-impaired driving, police officers in BC do have the option to issue a 24-hour roadside prohibition to a suspected drug-affected driver, with or without a criminal charge.

1 Canadian Tobacco, Alcohol and Drugs Survey, 2015
One key challenge is that unlike with blood alcohol, there is not enough scientific evidence to link a particular blood THC level with impairment. In fact, it is known that THC can remain in the blood after any impairment has resolved, particularly for frequent users. An IRP or ADP-type scheme would therefore have to rely on other ways to assess impairment, such as a Standard Field Sobriety Test (SFST) conducted by a trained police officer, or evaluation by a Drug Recognition Expert (DRE). The approval of oral fluid screening devices and/or the setting of per se limits by the federal government could also influence the introduction of an administrative regime for drug-impaired driving.

BC could consider one or more of the following to address the risk that cannabis legalization could lead to increased impaired driving:

- BC could launch a public education and awareness campaign to inform British Columbians about the risks and potential consequences of cannabis-impaired driving.
- BC could set a zero-tolerance standard in respect of blood THC content for drivers in the Graduated Licensing Program (drivers with an “L” or “N” designation) and/or for drivers under a specific age threshold.
- BC could invest in SFST and ORE training for more police officers.
- BC could expand the IRP and/or ADP programs to include drug-impaired driving.

**Personal Cultivation**

Bill C-45 allows adults to grow up to 4 cannabis plants per household, up to a maximum plant height of 100 centimetres. Bill C-45 does not place restrictions on where plants can be located (indoor vs. outdoor) and does not require home growers to put any security measures in place, but it is open to provinces and territories to establish such restrictions.

In considering personal cultivation, the Task Force acknowledged concerns about risks such as mould, fire hazards associated with improper electrical installation, use of pesticides, and risk of break-in and theft. However, it noted that these concerns were largely shaped by experience with large scale illegal grow operations, and found that on balance, allowing small-scale home cultivation of up to four plants was reasonable.

The Task Force recognized the need for security measures to prevent theft and youth access, and for guidelines to ensure that cannabis plants are not accessible to children. The Task Force also suggested that local authorities should establish oversight and approval frameworks, such as a requirement that individuals be required to notify local authorities if they are undertaking personal cultivation.

In thinking about possible restrictions on personal cannabis cultivation, it may be helpful to keep in mind that it is legal in Canada to grow tobacco and to produce wine or beer at home for personal use with
very few restrictions. In particular, the law does not require specific security measures to prevent theft, or access by children and youth.\(^2\)

BC has several options to consider regarding restrictions on home cultivation of non-medical cannabis:

- BC could adopt a lower limit than 4 plants per household for non-medical cannabis cultivation.
- BC could set restrictions regarding where and how non-medical cannabis can be grown at home. For example, it could: prohibit outdoor cultivation; allow outdoor cultivation but require that plants not be visible from outside the property; and/or require that any outdoor plants be secured against theft.
- BC could establish a registration requirement for persons who want to grow non-medical cannabis at home. However, there would be significant costs associated with administering a registration requirement, and the benefits may be questionable, since those who do not plan to comply with laws on home cultivation may be unlikely to register in the first place.
- If BC decides not to implement one or more of the above measures, local governments could be authorized to do so.

**Distribution Model**

Under Bill C-45, each province or territory will decide how cannabis will be distributed in its jurisdiction. Distribution is the process by which goods are supplied to retailers that sell to consumers. Distributors are often called wholesalers.

There are three basic models for the warehousing and distribution of cannabis to retailers in BC: government, private, or direct.

- **Government distribution** – In this model, government would be responsible for warehousing and distribution of cannabis. Licensed producers would send cannabis products to a government distributor, which would then fill orders from cannabis retailers. Government distribution allows for direct control over the movement of cannabis products, but requires significant up-front investment and set-up. The Task Force heard strong support for government distribution, noting that it has proven effective with alcohol.

- **Private distribution** – In this model, one or more private businesses could be responsible for the physical warehousing and distribution of cannabis. However, significant government oversight would be required in the form of licensing, tracking and reporting requirements, as well as regular audits and inspections.

- **Direct distribution** – In this model, the province would authorize federally licensed producers to distribute their own products directly to retailers. This model would also require significant

\(^2\) Parents have a general legal duty to supervise and keep their children safe, but the law does not create specific requirements to protect children from all of the potential dangers that may be present in a home (e.g., alcohol, prescription drugs, and poisons).
government oversight and could make it challenging for smaller producers to get their products to market.

Retail

Under Bill C-45, each province or territory will decide the retail model for cannabis in its jurisdiction. Recognizing that the July 2018 timeline may not give provinces or territories enough time to establish their retail regimes before legalization, the federal government will implement an online retail system as an interim solution.

BC has a number of options for retail:

- BC could establish a public or private retail system, or potentially a mix of both, as currently exists for alcohol. A public system would require significant up-front investment in retail infrastructure, but there could also be additional revenue generated from retail sales. A private system would require a more robust licensing, compliance and enforcement system, but the associated costs could be recovered through licensing fees.

  In a private retail system, it could be possible to allow some existing illegal dispensaries to transition into the legal system; in a public system such as that planned in Ontario, this would not be possible.

- BC could require that cannabis be sold in dedicated storefronts, or it could allow cannabis to be sold out of existing businesses such as liquor stores or pharmacies.

  One public health concern about co-locating cannabis with other products is that it could expose significant numbers of people to cannabis products who might not otherwise seek them out; this could contribute to normalization or more widespread use. In addition, the Task Force strongly recommended against allowing co-location of alcohol or tobacco sales with cannabis, but recognized that separating them could be a challenge in remote communities where a dedicated cannabis storefront might not be viable.

- BC could establish a direct-to-consumer mail-order system. This could help provide access to legal cannabis for those in rural and remote locations and persons with mobility challenges.

Conclusion

Cannabis legalization presents complex policy challenges for the Province. We expect that, as in other jurisdictions that have legalized, it will take several years to develop, establish, and refine an effective non-medical cannabis regime that over time eliminates the illegal market. The information gathered through this engagement will inform the Province’s policy decisions. We appreciate your interest and feedback.
## Non-Medical Cannabis – Proposed BC Government Regulations

<table>
<thead>
<tr>
<th>Issues Identified by the BC Government for Feedback:</th>
<th>Delta’s Submission</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Minimum Age</strong></td>
<td>Request that the minimum age be increased to 19 years to harmonize non-medical cannabis with the minimum age to buy alcohol and tobacco in BC.</td>
</tr>
<tr>
<td>Minimum age of 18 years to buy, grow, and publicly possess non-medical cannabis.</td>
<td></td>
</tr>
<tr>
<td>Provinces &amp; Territories can establish a higher minimum age in their jurisdictions.</td>
<td>Supports the proposed 30 gram limit for consistency with other provinces and simplification of enforcement.</td>
</tr>
<tr>
<td><strong>Personal Possession – Adults</strong></td>
<td>Request that the BC Government take a zero-tolerance approach to youth possession and prohibit possession by persons under the age of 19 years. Law enforcement officers must have the authority to confiscate cannabis from youth and have the option of issuing a ticket as methods of deterrence.</td>
</tr>
<tr>
<td>Maximum 30 gram limit on public possession of dried cannabis.</td>
<td>Request the BC Government develop preventative-based youth engagement campaigns and programs.</td>
</tr>
<tr>
<td>Provinces and Territories cannot increase the public possession limit, but they can set a lower limit.</td>
<td>Request a prohibition on the public consumption of cannabis, in turn limiting consumption to private residences.</td>
</tr>
<tr>
<td><strong>Personal Possession – Youth</strong></td>
<td>Delta wants to ensure local governments can establish additional restrictions, such as prohibiting cannabis smoking and vaping in public parks.</td>
</tr>
<tr>
<td>Persons under 18 will not be able to buy or grow cannabis, but they are not prohibited from possessing up to 5 grams of dried cannabis or equivalent amounts for other cannabis products.</td>
<td></td>
</tr>
<tr>
<td>Provinces and Territories can establish laws that prohibit possession by persons under an established provincial minimum age.</td>
<td>If the BC Government seeks to establish a licensing scheme to allow designated consumption areas such as lounges, Delta is seeking a two-year delay in the development of such lounges, along with the ability to charge appropriate business license fees.</td>
</tr>
<tr>
<td><strong>Public Consumption – Cannabis Smoking &amp; Vaping</strong></td>
<td>Delta requests that the BC Government implement a prohibition on the production and sale of all cannabis edibles, until such time as the Federal government establishes regulations for their manufacturing and production.</td>
</tr>
<tr>
<td>Bill C-45 will amend the Federal Non-Smokers Act to prohibit cannabis smoking and vaping in certain Federally-regulated places (e.g. planes, trains), but regulation of public consumption of cannabis will otherwise fall within provincial and territorial jurisdiction.</td>
<td>Requests a zero-tolerance standard be implemented in respect of blood THC content for:</td>
</tr>
<tr>
<td>BC can restrict where non-medical cannabis can be consumed. Both tobacco and vaping are currently prohibited in areas such as workplaces, enclosed public spaces, on health authority and school board property, and in other prescribed areas such as transit shelters, and common areas of apartment buildings and community care facilities.</td>
<td>(1) drivers in the Graduated Licensing Program (drivers with an “L” or “N” designation)</td>
</tr>
<tr>
<td><strong>Drug-impaired Driving</strong></td>
<td>(2) drivers under the age of 19 years and (3) commercial drivers.</td>
</tr>
<tr>
<td>Drug-impaired driving is already prohibited under the Criminal Code, but Bill C-46 would overhaul existing impaired driving provisions and specifically address cannabis impairment. The amendments provide authority for the Federal government to set a blood tetrahydrocannabinol (THC) limit beyond which a person can be criminally charged with cannabis-impaired driving (similar to the blood alcohol limits in place for alcohol-impaired driving).</td>
<td>Expand the Immediate Roadside Prohibition and Administrative Driving Prohibition under the BC Motor Vehicle Act to include drug-impaired driving.</td>
</tr>
<tr>
<td>Invest in Drug Recognition Expert and Standard Field Sobriety Test training for more police officers, to increase capacity for managing cannabis impairment and</td>
<td></td>
</tr>
</tbody>
</table>

*Delta’s Submission continues on the next page.*
Non-Medical Cannabis – Proposed BC Government Regulations

**Personal Cultivation**
Adults can grow up to 4 cannabis plants per household, up to a maximum plant height of 100 centimetres.

No restrictions on where plants can be located (indoor vs. outdoor) and no requirement for home growers to put any security measures in place, but Provinces and Territories have the authority to establish such restrictions.

**Distribution Model**
Under Bill C-45, each Province or Territory will decide how cannabis will be distributed in its jurisdiction. There are three basic models for the warehousing and distribution of cannabis to retailers in BC:
1. Government
2. Private
3. Direct

**Retail**
Under Bill C-45, each Province or Territory will decide the retail model for cannabis in its jurisdiction. Recognizing that the July 2018 timeline may not give Provinces enough time to establish their retail regimes before legalization, the Federal government will implement an online retail system as an interim solution.

**Additional Delta Concerns:**

1. **Commercial Production**
   In 2014, the BC Agricultural Land Commission and the BC Ministry of Agriculture determined cannabis production to be a farm use which local governments may regulate but not prohibit.

2. **Taxation**
   Provinces and local governments will need resources to address extra costs related to the legalization of non-medical cannabis, whether through tax revenue or specific federal support.

- Requests that the BC Government implement measures to protect farmland for food crop production, to help deter the proliferation of cannabis production facilities on farmland located in the Agricultural Land Reserve (ALR). Concerns that allowing cannabis production in the ALR will also affect the value of farmland in turn, threatening the viability of farmland for food production.

- Urges the BC Government to ensure local governments are appropriately recognized in the non-medical cannabis tax regime and allocated a fair portion of Federal and Provincial tax collected through cannabis sales and distribution.

- Requests that cannabis production facilities located on farmland in the Agricultural Land Reserve be taxed at the same rate as cannabis production facilities located on Industrial zoned lands.
To: Mayor and Council  
Mr. George Harvie, City Manager  

From: Neil Dubord, Chief Constable  

Date: October 24, 2017  

Subject: Cannabis Regulations: Delta Police Board support of the BCAMCP Submission to BC Government  

At the October 17, 2017 meeting, the Delta Police Board voted unanimously to support the BC Association of Municipal Chiefs of Police (BCAMCP) submission to the BC Government engagement process regarding the legalization of cannabis. Included in the recommendations are key themes including:

- Cannabis and Youth,
- Enforcing the Cannabis Act and related provincial legislation,
- Enforcing Impaired Driving Laws and Driver Education,
- Cannabis and Organized Crime, and
- Personal Cultivation/Possession Within a Dwelling.

Attached please see the document in its entirety.

The BCAMCP represents approximately 2,500 police officers who are responsible for the public safety of over 1.3 million British Columbians. The Delta Police Board hopes that a united voice will resonate with the BC Government as they develop public policy for the legal cannabis regime.

Thank you,

Neil Dubord, M.O.M.  
Chief Constable  
President, BCAMCP
Cannabis Regulations
Submission by the BC Association of Municipal Chiefs of Police
To Whom It May Concern,

On behalf of the BC Association of Municipal Chiefs of Police (BCAMCP), thank you accepting our submission to the BC Cannabis Regulation Engagement process. The BCAMCP is a united voice for all municipal independent police agencies, representing approximately 2,500 police officers who are responsible for the public safety of over 1.3 million British Columbians.

Police leaders across Canada have similar public safety concerns that may arise from a legalized cannabis regime, namely increases in impaired driving, youth access to cannabis and the infiltration of organized crime. The Canadian Association of Chiefs of Police addressed the Federal Standing Committee on Justice and Human Rights regarding details of the Cannabis Act and delivered similar messaging, the nature of which is reflected in this submission including:

- Cannabis and Youth,
- Enforcing the Cannabis Act and related provincial legislation,
- Enforcing Impaired Driving Laws and Driver Education,
- Cannabis and Organized Crime, and
- Personal Cultivation/Possession within a Dwelling.

Recognizing that the legalization of cannabis brings with it a breadth of issues from a variety of stakeholder perspectives, it is the hope of the BCAMCP that the feedback and recommendations outlined in this submission are given due consideration from a public safety standpoint.

The BCAMCP recognizes that significant resources have been committed to ensuring that British Columbia is prepared for the legalization of cannabis, and we appreciate the opportunity to be involved in the research and development of provincial regulations and laws that will help keep our communities safe.

Sincerely,

Neil Dubord, M.O.M, PhD, CPHR
Chief Constable, Delta Police Department
President, British Columbia Association of Municipal Chiefs of Police
Cannabis and Youth

Upon the announcement of the legalization of cannabis, the federal government indicated a key rationale of restricting youth access to cannabis. However, the Cannabis Act allows youth to possess and social share up to five (5) grams of cannabis. The federal government also permits individuals to grow four marijuana plants in a dwelling house, which may put youth at risk of easy access to cannabis and exposure to unsafe building conditions.

According to the Canadian Center on Substance Use and Addiction cannabis use is associated with experiencing psychotic symptoms and abnormal brain development in youth and young adults up to the age of 25. Fortunately, the federal government has granted autonomy to provincial governments to prohibit the possession of any amount of cannabis by youth, which is an opportunity for British Columbia to protect its youth.

Recommended Actions

That the provincial government:

1. Create provincial legislation prohibiting youth under the age of 19 from possessing or social sharing any amount of cannabis.

2. Create a meaningful penalty strategy for youth found in contravention of provincial possession limits. For example, restrictions placed on a youth’s driver’s license and/or ability to apply for a license. In Colorado in addition to driver’s license restrictions, youth face fines and public service sentences.

3. Develop and fund formal diversion programs for youth found in possession of cannabis including education, counselling and social/emotional support.

4. Immediately commence with a public awareness campaign to educate the public, parents and youth about the dangers of youth marijuana consumption, dangers of drug impaired driving and an overview of the new legislation.

5. Invest in school based programs and provide funding to support school liaison officer programs to manage cannabis-related issues in school environments.

6. Ensure proper consideration is given to storefront locations in proximity to schools, recreation centers, parks and other places children and youth may gather.

7. Develop language in legislation similar to the Liquor Control Act that prohibits the sale or supply to minors, in order to give police better tools in dealing with large public demonstrations, such as ‘4-20’.

8. Develop labelling for all cannabis products that remind adults of the penalties for supplying to youth.
Enforcing the *Cannabis Act* and related provincial legislation

Over the past decade, police agencies have eliminated cannabis enforcement teams, instead focusing on opiates and synthetic drugs such as methamphetamine and cocaine. With these shifting priorities, the ability to enforce the *Cannabis Act* may reduce capacity in other drug enforcement initiatives. The Act brings with it complex enforcement requirements including possession amounts, personal cultivation and the need for drug-impaired driving enforcement capacity. In addition, clandestine drug labs will continue to produce illegal cannabis by-products including ‘shatter’ which involves a highly volatile and dangerous process.

With respect to provincial legislation, police resources will be required to enforce public consumption laws, particularly where children are present. Recognizing that cannabis products can be toxic and/or carcinogenic, the issue of public consumption will require input from public health stakeholders.

The federal government key mandates are to keep cannabis out of the hands of youth and to interrupt organized crime in the cannabis market. While notable, the enforcement of these mandates will become the responsibility of local police, which will require resources. Consideration must be given to this cost download when developing a revenue sharing strategy between all levels of government, including the development of a provincial inspection strategy that enforces legal seed-to-sale production of cannabis.

**Recommended Action**

That the provincial government:

1. Fund cannabis enforcement strategies for municipal police agencies including the re-creation of cannabis enforcement teams.

2. Develop clear legislation on public consumption, including explicitly banning consumption in public spaces such as parks, beaches and other public areas frequented by children and youth.

3. Create a penalty structure for public consumption similar to that under the *Liquor Control Act*, with enhanced penalties where children or youth are present.

4. Add cannabis to the *Smoking and Vapour Products Control Act*

5. Factor the cost download of enforcement to local police when developing a revenue sharing structure.

6. Ensure that sufficient resources be created to develop an inspection strategy for the seed-to-sale supply chain of cannabis for all producers, suppliers and retailers including granting inspectors the authority to immediately shut down illegal operations.
Enforcing Impaired Driving Laws and Driver Education

With fewer than nine months remaining until the Cannabis Act comes into effect, the need to prepare police officers in Standard Field Sobriety Testing (SFST) and Drug Recognition Expert (DRE) training has become a top priority for all agencies. Since cannabis was legalized in Colorado and Washington, both states experienced an upward trend of serious and fatal motor vehicle accidents in which a driver was impaired by cannabis. In order to ensure safety for all motorists and pedestrians that use BC roads, strict and effective enforcement under this new regime is required.

The Canadian Association of Chiefs of Police addressed the Standing Committee on Justice and Human Rights to highlight concerns for law enforcement regarding language in Bill C-46. Impaired driving remains a leading criminal cause of death in Canada, and the introduction of legal cannabis will exacerbate this issue, as is evidenced in Washington and Colorado. While the federal government works through the development and potential amendments to Bill C-46, it is incumbent on the provincial government to ensure police officers in British Columbia have the capacity to enforce the law. Training and equipping police forces throughout the province will need to be a top priority, including ensuring sufficient resources and personnel are released from regular duties to guarantee the effective implementation and execution of a provincial training strategy.

By supporting a provincial training strategy, and investing in enhanced Standard Field Sobriety Testing and Drug Recognition Expert training, the government will send a clear message to the public that impaired driving by drugs or alcohol will not be tolerated. In order to meet the legislated requirements post-legalization, training must begin immediately.

According to the Canadian Centre on Substance Use and Addiction, the economic impact of cannabis related collisions is an estimated $1 Billion per year. The Immediate Roadside Prohibition legislation positively impacted the rate of serious and fatal motor vehicle accidents and has yielded a reduction of impaired drivers on BC roads. BC is a leader in impaired driving enforcement and cannabis impairment can be integrated into the established and successful IRP framework.

In addition to police training and tough penalties, significant investment in public education will be required in order to drive home the message that alcohol and/or drug impaired driving is a key public safety issue. In a number of studies conducted through the Canadian Centre on Substance Use and Addiction, there is an increasing trend of young drivers driving under the influence of cannabis. Young drivers do not view driving under the influence of cannabis in the same way they view driving under the influence of alcohol. According to CCSA, an “analysis of fatality data revealed that among drivers who tested positive for drugs following their death in a car crash, almost 70% of those under the age of 19 tested positive for cannabis.”

It has taken decades to change driver behavior regarding impaired driving, and it is imperative that the government continues to push messaging regarding all impaired driving, including cannabis. Until such time as scientific and medical evidence can properly inform cannabis impaired driving laws, the message that ‘no amount is a safe amount’ will be required to safeguard BC roads from impaired drivers.
Recommended Action:
That the provincial government:

1. Create an integrated management team consisting of RCMP and Municipal police to administer the framework, training, and overall Provincial Training Strategy to ensure that the Province is prepared for cannabis legalization in 2018.

2. Amend the Immediate Roadside Prohibition legislation to include drug-impaired driving.

3. Amend the Motor Vehicle Act so that a Section 215 (24 Hour) prohibition for Drugs has the same remedies for review as the 24 hour prohibition for alcohol as detailed in Section 215 of the Act. In such cases as it is necessary, the Attorney General will defend challenges against drug impaired driving suspensions in the same fashion as alcohol-impaired challenges, as per s. 215(2) of the Act.

4. Fund Drug Recognition Expert and Standardized Field Sobriety Test training for RCMP & municipal police agencies.

5. Create a zero tolerance policy for ‘New’ and ‘Learner’ Drivers.

6. Develop provincially based public education training on the dangers and strict penalties involved with drug impaired driving, including a ‘no amount is a safe amount’ campaign with respect to cannabis consumption and driving.

Cannabis and Organized Crime

Upon the announcement of the legalization of cannabis, the federal government indicated a key rationale of deterring and reducing organized crime and criminal activity in the cannabis industry. Interrupting the black market will required a strategy that includes consideration for cost, quality and convenience that meets consumer demand. It is known that organized crime has infiltrated the medical marijuana regime, and criminals will look for opportunities to exploit the legal retail market. If the public does not have reasonable access to legal cannabis, organized crime with fill the void.

Whether government allows for independently operated storefronts or chooses to control the sale of cannabis to consumers, a clear and effective strategy should be communicated to the public.

Recommended Action
That the provincial government:

1. Ensure an appropriate taxation and licensing scheme is designed to deter consumers from the illegal cannabis market.

2. Ensure pricing is competitive with black market cannabis.

3. Ensure appropriate funding and resources are in place for law enforcement to investigate organized crime activities associated to the cannabis industry.
4. Identify a legal mode of sale that provides reasonable access to legal marijuana, including mail order and appropriate storefront hours, to ensure consumers are not directed to the black market and dial-a-dopers.

5. Conduct stringent vetting of owners, operators and all employees on an ongoing basis to ensure there is no nexus to organized crime.

6. Develop strict penalties for cannabis producers, suppliers or retailers that have a nexus to organized crime or sell to youth.

7. Create strict penalties, including storefront shut-down and fines, for any operator that breaches the regulatory mechanism.

**Personal Cultivation/Possession within a Dwelling**

The BCAMCP echoes the sentiment of the Canadian Association of Chiefs of Police in its opposition to in-home production. While seemingly benign, the issue of home production brings with it a host of issues.

The risk of exposure to youth as well as concerns regarding diversion of cannabis into the hands of youth will continue to be a risk, if persons are able to grow cannabis within a residence. In order to ensure consistency in cannabis products, including THC content, responsible pesticide use and to avoid potential contamination in homes including mold spores, it may be necessary to restrict cultivation to licensed producers.

Additionally cultivation within a dwelling house has the potential to create problems if police attend a residence on an unrelated call, and observe illegal amounts or sizes of plants. As is evidenced in Colorado, police departments have been held liable for the destruction of seized cannabis products when the seizure was overturned by the courts.

Enforcing a legal cannabis regime will add pressure to police departments in both operational and administrative capacities. The cost of additional time required by police to process, investigate and potentially charge an individual will be borne by local government and will squeeze already maximized police resources. Discourse at all levels of government regarding the cost of policing has put pressure on police agencies to cut costs wherever practicable, however cannabis enforcement will undoubtedly create additional costs.

**Recommended Action:**

That the provincial government:

1. Prohibit home-grown and personally cultivated cannabis in British Columbia.

2. Approve only licensed producers to cultivate cannabis in a commercial environment.

3. Indemnify law enforcement agencies if a court decision requires the return of product that has been lawfully seized and destroyed.

**End.**
Blood Drug Concentration Regulations

Statutory authority

Criminal Code

Sponsoring department

Department of Justice

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations.)

Issues

As part of its initiative to strengthen the criminal law approach to drug-impaired driving in advance of the legalization and regulation of cannabis, the Government has proposed new criminal offences in Bill C-46, An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts. These offences would prohibit individuals from having certain levels of impairing drugs in their blood within two hours of driving. As proposed in Bill C-46, the drugs to be included under these offences as well as their prohibited levels would be established in regulations adopted by the Governor in Council. The Government is publishing the draft regulatory text in Annex A in order to seek public input on the development of offence levels for drug-impaired driving.

Background

The Criminal Code currently prohibits driving while impaired by a drug or alcohol or a combination of both (the impaired driving offence). This offence requires proof of impairment but does not require evidence of the level of drugs or alcohol in the body. The Criminal Code also currently includes a blood alcohol concentration (BAC) offence for alcohol that specifically prohibits driving with a BAC that is more than 80 milligrams (mg) of alcohol per 100 millilitres (ml) of blood (the “over 80” offence). This offence does not require proof of impairment, rather the offence requires proof that an individual had a BAC over 80. There is currently no similar offence for other drugs.

Bill C-46 proposes to create three new criminal driving offences of being at or over a blood drug concentration (BDC) level within two hours of driving: (1) a summary conviction offence for low drug levels; (2) a hybrid offence (see footnote 1) for higher/impairing drug levels; and (3) a hybrid offence for a combination of low BAC and low BDC. The proposed BDC offence level for tetrahydrocannabinol (THC, the primary psychoactive component of cannabis) under the summary conviction offence is not directly linked to impairment, but is, rather, based on a precautionary or a crime prevention approach. This is in contrast to the legal drug offence levels for the hybrid offences, which are based on two principles: the BDC levels that are expected to
cause some driving impairment; and the fact that these are illicit drugs which are commonly found in drivers and have impairing effects. In addition to motor vehicles, the offences would also apply to the operation of vessels (boats), aircraft and railway equipment.

The penalties for the proposed hybrid offences would mirror the penalties for the current hybrid offences for alcohol-impaired driving. They would be punishable by mandatory penalties of $1,000 for a first offence with escalating penalties for repeat offenders (e.g., 30 days’ imprisonment on a second offence and 120 days on a third or subsequent offence). The penalty for the separate summary conviction offence for a low BDC would be punishable by a maximum fine of $1,000.

Objectives

The BDC levels set out in the draft regulatory text in Annex A would give effect to the proposed new criminal driving offences in Bill C-46, and are intended to make it easier to prosecute drug-impaired drivers and to send a clear message to the public about the dangers of using impairing drugs while driving.

Description

As set out in Annex A, the proposed regulatory text would establish BDC offence levels, within two hours of driving, for THC, THC in combination with alcohol, cocaine, gammahydroxybutyrate (GHB), methamphetamine, lysergic acid diethylamide (LSD), psilocin/psilocybin (magic mushrooms), phencyclidine (PCP), 6-monoacetylmorphine (6-MAM), (see footnote 2) and ketamine.

With respect to LSD, psilocin/psilocybin, PCP, 6-MAM, ketamine, cocaine and methamphetamine, it is proposed that any level of these drugs, detectable in blood within two hours of driving, be prohibited under the new hybrid criminal offence. It is anticipated that the three government laboratory systems [one federal (RCMP), one in Ontario, and one in Quebec] will determine the detectable level at which the laboratory has the ability to measure the presence of the particular drug. With respect to THC and GHB, specific blood concentrations are proposed as the BDC offence level.

In particular, the BDC offence level for THC under the proposed hybrid offence would be set at ≥5 nanograms (ng) per millilitre of blood. For the proposed summary conviction offence, a BDC level of ≥2 ng and <5 ng/ml of THC would be established. In addition, the BDC level for THC and alcohol in combination would be set at ≥2.5 ng/ml and ≥50 mg/ml, respectively. Given the unique properties of THC, in lieu of making a recommendation, the Drugs and Driving Committee (DDC) outlined the pros and cons of two different THC levels. It indicated that 2 ng of THC per millilitre of blood would reflect a public safety/crime prevention approach, whereas a 5 ng level of THC could be associated with some impairment.

It should be noted that THC is a more complex molecule than alcohol and the science is unable to provide general guidance to drivers about how much cannabis can be consumed before it is unsafe to drive or before the proposed levels would be exceeded. It is equally challenging to provide general advice as to how long a driver should wait to drive after consuming cannabis. In this context, the safest approach for anyone who chooses to consume cannabis is to not mix their consumption with driving.
The proposed “any detectable BDC level” for LSD, magic mushrooms, PCP, 6-MAM, and ketamine corresponds with the recommendations of the DDC, which indicated that any presence of these drugs in the body is inconsistent with safe driving.

The proposed BDC levels for GHB, cocaine, and methamphetamine are lower than those recommended by the DDC. For these drugs, the DDC based their recommended BDC levels on the levels of the drugs that would have a negative impact on driving skills (rather than recommending a BDC of “any detectable level”). The proposed lower BDC levels for these drugs set out in Annex A (“any detectable level” for cocaine and methamphetamine, and 5 mg/L for GHB) would reflect the Government’s position that these are impairing illicit drugs and drivers should not consume them and drive. The proposed BDC level for GHB reflects the fact that GHB can be produced naturally by the body and, as such, a BDC of “any detectable level” would not be appropriate for this drug.

“One-for-One” Rule

The “One-for-One” Rule does not apply to this proposal, as there is no change in administrative costs to business.

Small business lens

The small business lens does not apply to this proposal, as there are no costs for small business.

Consultation

With respect to the proposed drug BDC offence levels, except for THC, cocaine, GHB and methamphetamine, the Government’s proposals would adopt the recommendations of the DDC. Although the DDC did not make a recommendation with respect to THC, the Government proposes to adopt both of the THC levels that were considered by the DDC, with the lower level corresponding to a less serious offence and the higher level being subject to a more serious offence.

Although not specifically consulted on the BDC levels, the Provinces and Territories have been consulted on drug-impaired driving through the Coordinating Committee of Senior Officials (CCSO) Working Group on Impaired Driving and the Federal-Provincial-Territorial (FPT) Senior Officials (Assistant Deputy Ministers) Working Group on Cannabis Legalization and Regulation. Additionally, the Government has considered the views of groups such as Mothers Against Drunk Driving (MADD) and the Canadian Association of Chiefs of Police, which have long called for legal drug limits to simplify investigation and prosecution of drug-impaired driving.

Rationale

Setting drug offence levels by regulation provides a flexible way of adapting to the evolving science of impairing drugs. The BDC offence levels currently proposed are based on the evaluation by the DDC of the available scientific literature on impairing drugs and driving, as well as on information from other international jurisdictions that have set BDC offence levels for driving. For example, with respect to THC, scientists in England had recommended the adoption of a 5 ng offence, plus an offence at 3 ng THC in combination with 20 mg of alcohol. However,
England chose, instead, to adopt a single offence at 2 ng of THC. In the United States, both Colorado and Washington have adopted a single offence at 5 ng of THC.

The proposed Regulations would not have direct cost implications for the federal, provincial/territorial governments. Any costs relating to this initiative are related to other elements of the Government’s strategy to address drug-impaired driving, including detection and enforcement.

**Implementation, enforcement and service standards**

If Bill C-46 receives royal assent, the Government would seek Governor in Council approval of regulations to establish the new legal BDC offence levels, after consideration of public comments received on the draft regulatory text in Annex A. This would allow the offence provisions of Bill C-46 to become operative and enforceable. To facilitate the enforcement of the proposed BDC driving offences, Bill C-46 would also permit a peace officer to demand a blood sample from a driver if they had reasonable grounds to believe that a driver was committing a drug-impaired driving offence.

**Contact**

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Email: monique.macaranas@justice.gc.ca

**PROPOSED REGULATORY TEXT**

Notice is given that the Governor in Council proposes to make the annexed *Blood Drug Concentration Regulations*, if Parliament enacts Bill C-46, *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts*.

Interested persons may make representations concerning the proposed Regulations within 30 days after the date of publication of this notice. All such representations must cite the *Canada Gazette*, Part I, and the date of publication of this notice, and be addressed to Monique Macaranas, Paralegal, Criminal Law Policy Section, Department of Justice, 284 Wellington Street, Ottawa, Ontario, K1A 0H8 (fax: 613-941-9310; email: monique.macaranas@justice.gc.ca).

Ottawa, September 28, 2017

Jurica Čapkun  
Assistant Clerk of the Privy Council Office

**Annex A**

*Blood Drug Concentration Regulations*
Blood Alcohol Concentration and Blood Drug Concentration

Summary offence

1 For the purposes of the summary conviction blood drug concentration offence, proposed in Bill C-46, the limit for tetrahydrocannabinol (THC) would be prescribed at 2 nanograms per millilitre of blood.

Hybrid offence — drugs

2 For the purposes of the hybrid blood drug concentration offence, proposed in Bill C-46, each drug set out in column 1 of the table to this section would be as prescribed in column 2.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Drug</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>THC</td>
<td>5 ng/ml of blood</td>
</tr>
<tr>
<td>2</td>
<td>Lysergic acid diethylamide (LSD)</td>
<td>Any detectable level in blood</td>
</tr>
<tr>
<td>3</td>
<td>Psilocybin</td>
<td>Any detectable level in blood</td>
</tr>
<tr>
<td>4</td>
<td>Psilocin</td>
<td>Any detectable level in blood</td>
</tr>
<tr>
<td>5</td>
<td>Phencyclidine (PCP)</td>
<td>Any detectable level in blood</td>
</tr>
<tr>
<td>6</td>
<td>6-Monoacetylmorphine</td>
<td>Any detectable level in blood</td>
</tr>
<tr>
<td>7</td>
<td>Ketamine</td>
<td>Any detectable level in blood</td>
</tr>
<tr>
<td>8</td>
<td>Cocaine</td>
<td>Any detectable level in blood</td>
</tr>
<tr>
<td>9</td>
<td>Methamphetamine</td>
<td>Any detectable level in blood</td>
</tr>
<tr>
<td>10</td>
<td>Gammamethoxybutyrate (GHB)</td>
<td>5 mg/L of blood</td>
</tr>
</tbody>
</table>

Hybrid offence — combined alcohol and drugs

3 For the purposes of the hybrid combined alcohol and drug offence, proposed in Bill C-46, the blood alcohol concentration would be set at 50 mg of alcohol per 100 millilitres of blood and the blood drug concentration for THC would be prescribed at 2.5 nanograms of THC per millilitre of blood.

Coming into Force

Registration

4 If Bill C-46 is enacted, the intent is that the proposed Regulations would come into force on the day on which they are registered.
• **Footnote 1**
Hybrid offences can be prosecuted either by summary conviction (less complex procedures and lower penalties) or indictment (more complex procedures and higher penalties). The mode of prosecution is elected by the Crown.

• **Footnote 2**
6-MAM is a metabolite of heroin, and its presence is a definitive indication of recent heroin use.

Date modified:
2017-10-14
Government releases legal limits for drugged driving but can't say how much pot is too much

Federal government and experts say they expect the new offences to be challenged in court


The federal government has released a draft of its planned drug concentration levels but admits the new rules provide no guidance on how much marijuana it would take to push a driver over the legal limit.

"It should be noted that THC is a more complex molecule than alcohol and the science is unable to provide general guidance to drivers about how much cannabis can be consumed before it is unsafe to drive or before the proposed levels would be exceeded," an analysis statement released with the draft regulations said.

The government also says that it cannot provide drivers any guidance as to how long they should wait before driving, operating a boat, train or aircraft after consuming cannabis.

"In this context, the safest approach for anyone who chooses to consume cannabis is to not mix their consumption with driving," the government said.

- Canada's largest grower 'comfortable' with federal government's pot tax plan
- Federal government calls roadside drug-test device trial a success despite cold weather issues
- Ads aim to dispel myth that driving on cannabis is acceptable

The lack of clarity worries Kyla Lee, a Vancouver-based criminal defence lawyer who specializes in impaired driving cases.

"That is incredibly troubling because, as the public, we have no knowledge of what it is we can and can't do and what it is we should do."

She said that simply saying: "Don't use marijuana and drive," isn't good enough. Lee points to the differences in how each person metabolizes marijuana and how long traces of the drug can stay in someone's system.

"You can never actually know if you're complying or not complying with the law," she said.
The new offences

The government has drafted legislation that would create three new offences for drugged driving including a summary offence for people with THC in their system but not enough for them to be impaired.

The government explains that the summary offence is not directly linked to impairment but rather is "based on a precautionary or a crime prevention approach."

Drivers who have a blood drug concentration of more than two nanograms of THC (per mililitre of blood) but less than five nanograms could be found guilty of drugged driving under the proposed summary offence, which has a maximum fine of $1,000.

Drivers caught with more than five nanograms of THC in their blood would be guilty of impaired driving, while drivers with both alcohol and THC in their system would be considered impaired if they have more than 50 miligrams of alcohol (per 100 mililitres of blood) and greater than 2.5 nanograms of THC in their blood.

The government said the other two proposed offences would be similar to the offences for drunk driving. Drivers with more than five nanograms of THC in their blood would be punished with a mandatory fine of $1,000 for a first offence, 30 days imprisonment for a second offence and 120 days for a third offence.

A conviction without a crime

The summary conviction charge in particular has many lawyers concerned.

"That is a tricky and perhaps unconstitutional proposition when we're looking at criminal sanctions," said Ottawa criminal defence lawyer Michael Spratt.

Spratt's primary concern is that the summary conviction would mean a criminal record for people who aren't even considered impaired under the regulations. That can make it harder to travel internationally and create problems when volunteering or applying for a new job or housing.

"We're going to stigmatize a large number of people who are not acting — according to the regulations — in a dangerous manner," said Spratt.

Lesser penalties that wouldn't result in a criminal record would be a better option, Spratt suggests, such as a licence suspension or even impounding the driver's car.

Lee calls the proposal "absurd."

"That's incredibly concerning. Because you have the government saying we don't think this is criminal but we're going to create a criminal offence for it in order to prevent it from getting to the level where it might be criminal. That's unheard of in our legal history," Lee said.
Court challenges expected

While Justice Minister Jody Wilson-Raybould has insisted that her plan to crack down on impaired driving is constitutional, the government clearly expects it will be challenged.

Bill Blair, the Liberal point man on pot, said as much during a forum with Vice News in April.

"I'm sure they'll be subject to various court challenges. But it is, I think, in everyone's interest that we do our very best to make sure that law enforcement has the legislation, the technology, the training and the resources to keep our roadways safe."

Spratt agrees.

- With legalization a year away, experts offer tips on minimizing pot harm
- 8 burning questions about the coming federal pot report

"The bill will be challenged and these regulations will likely be challenged too."

He said the success of those challenges will likely come down to scientific questions about how the government settled on limits.

Lee also believes challenges are inevitable.

"I can speak for the impaired driving defence lawyer community as a whole that we are incredibly concerned about this legislation. If people come to me, I will be challenging this law. If people go to my colleagues, I'm sure they will be doing the same thing."