

Legal update

Update on the proposed framework for distribution and sale of recreational cannabis in British Columbia

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In anticipation of the July 2018 legalization of non-medical cannabis by the federal government, on February 5 British Columbia released policy guidelines that will inform the development of the province's regulatory framework for the distribution and sale of non-medical cannabis within the province. Presumably in order to simplify and promote compliance with the provincial regulations, these preliminary policy guidelines are closely modelled after the existing tobacco and alcohol regimes. They also reflect the results from a public engagement initiative the province completed in fall 2017.

Proposed distribution and retail framework

The retail framework proposed will rely heavily on British Columbia's existing Liquor Distribution Branch (LDB) and Liquor Control and Licensing Branch (LCLB). Non-medical cannabis will be available for purchase at private retail stores, which will be licensed and monitored by the LCLB, and at LDB-operated retail and online stores. Online sales or delivery services of non-medical cannabis will not be permitted from private retail stores and the province has further stated that the sale of medical cannabis will not be permitted from private retail stores or from LDB-operated retail and online stores, as medical cannabis will continue to be sold online by federally licensed producers only.

Licensed non-medical cannabis retailers in urban areas will only be allowed to sell cannabis and cannabis accessories — they will be prohibited from selling any other products. As non-medical cannabis retail stores must be self-contained businesses, non-medical cannabis may not be sold as part of another business such as a liquor store or pharmacy. Exceptions may be made to this prohibition for retailers in rural areas. However, it appears no exceptions will be made to the prohibition that non-medical cannabis cannot be sold in the same locations as tobacco or alcohol. All retailers will also be required to ensure cannabis products are not visible from outside the store. Unlike alcohol retailers, minors will not be permitted to enter a retail cannabis store in urban areas — exceptions for rural retailers are under development.

Further restrictions will be placed on retail licences where the licence holder has a close association (financial or otherwise) with a licensed producer — in this situation, the retailer will be prohibited from selling any products from the related producer. According to the government application guide, "This restriction ensures the market remains diverse and larger participants do not consolidate and control the market." That being said, these proposed rules could also prove problematic for small-scale growers in the province that were hopeful for a permitted sales model similar to that currently in place in the province for wineries and craft distilleries. The province has advised that exceptions to this restriction may be made in future to support micro-producers; however, the timing for the consideration and implementation for such exceptions remains unclear at this time.

Retail licence holders will only be able to sell cannabis, cannabis oils and seeds that are purchased from the LDB and comply with federal requirements as well as cannabis accessories that comply with the federal requirements and

restrictions. Retailers will not be permitted to purchase any cannabis products directly from licensed producers or from any non-licensed suppliers or producers. The LDB will only distribute pre-packaged products in ready-to-sell formats. Retailers will not be allowed to sell bulk products or to re-package product with their own branding. Further information about retail packaging formats will be confirmed at a later date. Finally, the province will develop a mandatory training program for non-medical cannabis retail employees that will be developed in collaboration with industry and implemented over time. The province intends to develop a registration requirement for employees of non-medical cannabis retail locations, which will include background checks.

Non-medical cannabis retailers will not be permitted to operate under names that imply the retailer is providing medical cannabis, so terms such as “pharmacy,” “apothecary” and “dispensary” cannot be used in association with a non-medical cannabis store. Subject to any further restrictions imposed by local government, stores will be permitted to operate between 9 a.m. and 11 p.m. No consumption of non-medical cannabis will be permitted in non-medical cannabis retail stores and the provision of samples will not be permitted. In addition, the province will not be licensing consumption or “vape” lounges initially, although consideration will be given to other types of licences at a later date.

Role of local government

The province has also given local governments the authority to make further regulations related to where non-medical cannabis retailers may be located and to limit how many retail licences may be issued for their jurisdiction. Local governments may also be able to make regulations to prohibit any licences from being issued for their jurisdiction.

Application process

The application process for non-medical cannabis retail licences will open in spring 2018. The province will not be capping the number of non-medical cannabis retail licences it issues; however, there may be restrictions imposed by various local governments who will have the authority to make local licensing decisions. Application and licensing fees will apply but have yet to be established. Similarly, the application process will be online but the “application portal” has yet to be launched. The application will require, among other information: a background check, and in the case of a corporation, partnership, society or other operating entity, names of the partners, shareholders, directors, officers and/or senior management; proof of ownership or an executed lease for the proposed retail application; and evidence of local government support. The province is currently working with the Union of BC Municipalities to develop the application process for obtaining local government support. However, public consultation regarding a proposed retail location will be a requirement.

Restrictions regarding use and possession

Along with proposed guidelines regarding non-medical distribution and retail sales, the government also announced rules for non-medical cannabis use and possession following recreational legalization.

Like alcohol and tobacco, the minimum age for the possession and purchase of non-medical cannabis will be 19 years old. Similar to but more stringent than the analogous tobacco regulations, using cannabis will be prohibited in public areas frequented by children—these areas will include parks, playgrounds, and community beaches. Using cannabis will also be banned for all occupants in vehicles.

In accordance with the federal recommendations, adults over 19 years of age will be allowed to possess up to 30 grams of non-medical cannabis in a public place. The province’s announcement did not indicate if there would be any limits to non-public possession. However, personal cultivation will be limited to four plants per household and these plants “must not be visible from public spaces off the property.”

Although the specifics of BC's legislative framework for non-medical cannabis regulation have yet to be established, the policy information released should provide retailers and licensed producers with some indication of what is to come in the months to follow.

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