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## **Recreational Cannabis Staff Report**

Report Number: 2019-5

Department(s): Legal Services and Planning & Building Services

Author(s): Ted Horton

Meeting Date: January 7, 2019

### **Recommendations**

1. That the report entitled Recreational Cannabis dated January 7<sup>th</sup>, 2019 be received;
2. That Council direct staff to prepare amendments or new by-laws as required and return with recommendations as to how the smoking and vaping of cannabis in public places should be regulated in Newmarket;
3. That Council direct the Town Clerk to notify the Alcohol and Gaming Commission of Ontario that the Town will opt in to hosting private retail cannabis stores;
4. That Council express to the Ontario government its position that municipalities should be given greater planning authority over the location of private retail cannabis stores;
5. That Council direct the Commissioner of Corporate Services to develop a policy and process to respond to private retail cannabis licence requests from the Alcohol and Gaming Commission of Ontario based on the findings of this report; and,
6. That staff be authorized and directed to do all things necessary to give effect to this resolution.

## Executive Summary

Legislation passed by the Federal Government has legalized recreational cannabis. Legislation passed by the Provincial Government has created a distribution model in Ontario that allows persons 19 years of age or older to purchase cannabis from a government monopoly online store, which is the Ontario Cannabis Store. Beginning in April 2019, the Provincial Government, through the Alcohol and Gaming Commission of Ontario (AGCO), will license a first group of 25 private retail cannabis stores spread through the province, with additional licences to follow.

Municipalities have one opportunity to notify the AGCO by January 22, 2019 whether they are willing to have cannabis retail stores located in their municipality. If a municipality decides to 'opt out', no cannabis retail licences will be issued in that municipality. If a municipality 'opts in' or fails to 'opt out' by the January 22, 2019 deadline, the AGCO will issue licences for cannabis retail stores in that municipality subject to certain regulations such as a 150-metre setback from any school. If a municipality opts in, it cannot otherwise control the location of cannabis retail stores although it can provide comments to the AGCO based on specific criteria. A municipality that opts out can opt in at a later date, but the reverse choice cannot be made.

Opting in to cannabis retail stores entitles the Town to some funds from the Provincial Government for expenses related to cannabis. Opting out will mean the Town forgoes receiving some of these funds, even if the Town opts in later.

It is legal to smoke or vape cannabis in public subject to limits under the *Smoke-Free Ontario Act* that closely mirror the existing restrictions on where one can smoke or vape tobacco. It is illegal to smoke or vape tobacco or cannabis on or near many places frequented by children such as sports fields, schools, daycares, and playgrounds. If Council so chooses, the Town can add additional restrictions on this through the *Municipal Act* to outright prohibit smoking or vaping tobacco or cannabis in any public place such as a park except roadways or sidewalks.

Many of the effects of the legalization of cannabis are inevitable; as a legal substance residents can purchase it online and grow it at home and the Town cannot prevent this. As a legal substance residents can consume cannabis regardless of whether stores are located in Newmarket. The Town has two decisions: (1) whether to allow recreational cannabis retail stores in Newmarket, and (2) whether to impose additional restrictions on where cannabis can be smoked or vaped.

Based on an analysis of potential negative and positive effects of recreational cannabis retail stores staff conclude that allowing cannabis retail stores better serves the public policy goals of promoting public health, supporting economic development, and reducing profits to criminal enterprise. Staff recommends that the Town 'opt in'.

Staff further recommends that work be undertaken to ensure that by-laws related to smoking or vaping of cannabis be created or amended to impose restrictions similar or greater to those that exist related to tobacco.

## Purpose

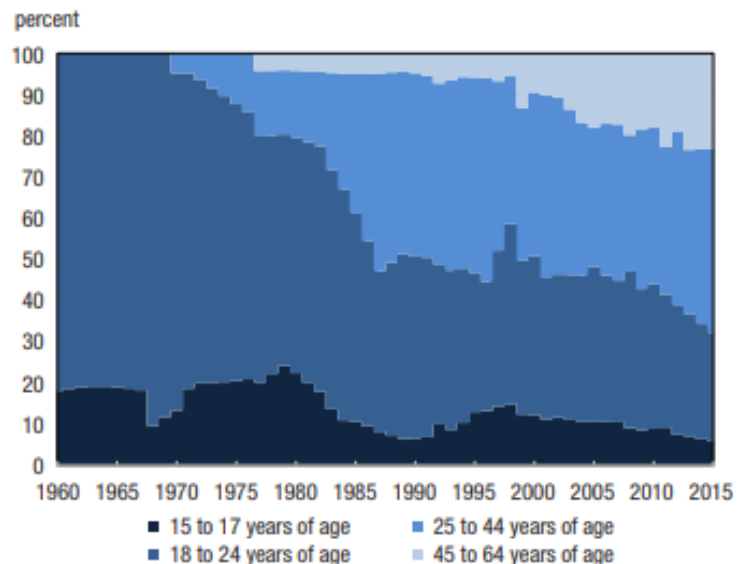
This report serves to inform Council of the legislative changes regarding recreational cannabis and provides recommendations for how the Town should respond to these changes. This report focuses on Council's decision of whether to opt in or opt out of allowing recreational cannabis retail stores under the *Cannabis Licence Act* and whether to impose restrictions on the smoking and vaping of cannabis under the *Municipal Act*.

## Background

Cannabis has been illegal in Canada since 1923. It has gained popularity in use and has been the subject of ongoing public debate. Efforts to bring change to the status of cannabis proceeded in the ensuing decades through public pressure, public health advocacy, and parliamentary studies such as the Royal Commission of Inquiry in the Non-Medical Use of Drugs in 1972 which recommended the decriminalization of cannabis.

Social support for cannabis legalization has increased over time as successive generations have encountered the substance and higher proportions of older demographic cohorts have continued to consume cannabis. Figures from Statistics Canada shows that increased rates of cannabis consumption by older groups such as the 'baby boomer' generation have changed the demographic patterns of use of the substance. While once predominantly popular with younger age groups, it is now consumed by a broad range of age groups, as can be seen in the figure to the right.<sup>1</sup>

**Age composition of estimated cannabis-consuming population, 1960 to 2015**



<sup>1</sup> Economic Insights, no. 077, December 2017 • Statistics Canada, Catalogue no. 11-626-X

This section of the report lays out the history of medical cannabis, the recent changes to federal and provincial law related to cannabis, and the new role for municipalities under provincial legislation related to cannabis.

## **Medical cannabis**

The use of cannabis for medical purposes was legalized in 2001 following a ruling by the Ontario Superior Court that a blanket prohibition on cannabis was unconstitutional due to no provisions for its use for medical purposes. Access to cannabis for medical purposes is a fundamentally different process than recreational cannabis. Medical cannabis is available by prescription solely by mail from licensed federal producers. Municipalities have no jurisdiction to regulate the sale of medical cannabis, and as such this report does not address this subject in detail.

## **Federal law**

Recreational cannabis became legal in Canada on October 17, 2018 following the passage of the *Cannabis Act*. This follows consultation by the Federal government and an election promise to legalize the recreational use of cannabis in order to remove cannabis profits from the black market, license the product to reduce access by youths, and regulate cannabis to ensure safe access for adults.

The federal *Cannabis Act* regulates and licenses the production and processing of cannabis, sets a minimum age for possession and consumption of cannabis, and sets a maximum amount of cannabis that can be possessed by an adult (30 grams) or grown in a home (four plants).

Edible cannabis products are not currently legal for sale in Canada. Health Canada has advised that cannabis edibles will be approved for sale under federal rules approximately one year after the *Cannabis Act* came into force, namely on or about October 17, 2019. It is expected that information will be made available as these regulations are developed, and that consultations will take place to inform their development.

## **Provincial law**

Each province and territory has the authority to pass their own legislation to further control the distribution model for cannabis within their jurisdiction and impose greater controls on the minimum standards set by the federal government. In Ontario, the Provincial government has passed its *Cannabis Statute Law Amendment Act*, along with the *Ontario Cannabis Retail Corporation Act*, *Cannabis Control Act* and the *Cannabis Licensing Act*. The effect of these pieces of legislation is to set a minimum age for possession of cannabis in Ontario of 19 years of age, and to maintain the federal limits on possession and personal cultivation.

These pieces of legislation also create the framework for cannabis distribution in Ontario. The sale of cannabis in Ontario is to take place in two ways – online, and

through privately-owned but provincially-licensed physical retail stores. In both cases, all cannabis legally sold in Ontario will be obtained from federally-licensed cannabis producers and not from individual growers or the black market.

### **Online sales**

Online sales of cannabis in Ontario take place through the Ontario Cannabis Store (OCS). The OCS is a Crown Corporation that acts both as the single legal online retailer of cannabis in Ontario, as well as the monopoly wholesaler for cannabis – that is, the single purchaser of cannabis in Ontario from federally-licensed cannabis producers for recreational consumption.

For online cannabis sales, the Province requires the OCS to:

- Sell only to individuals 19 years of age or older;
- Keep records of its activities in relation to the cannabis that it possesses, including records related to the Federal National Cannabis Tracking System, monthly sales and inventory records, and any records related to product recall; and
- Take measures to reduce the risk of its cannabis being diverted to an illicit market or activities.

Cannabis products sold online by OCS must be purchased by credit card, along with the provision of personal information to ensure the individual is of legal age. Customers receive their products by Canada Post.

### **Physical retail sales**

The Province of Ontario has created a legislative framework that will allow recreational cannabis to be sold in private cannabis retail stores, within strict guidelines, in Ontario beginning on April 1, 2019. All physical cannabis retail stores must obtain their products from only the OCS, and not from individual growers or the black market.

Under the new *Cannabis Licence Act*, the Alcohol and Gaming Commission of Ontario (AGCO) is solely responsible for administering, licensing and regulating private cannabis retail stores in Ontario, including approving their locations. This role builds on the AGCO's decades-long experience in licensing and managing the sale and distribution of alcohol along with the gaming and horse-racing industries. In addition to the other regulatory restrictions on recreational cannabis use, there are many additional regulations in place for private retail cannabis stores.

All private retail stores must be licensed by the AGCO. The AGCO Registrar will have the authority to issue three classes of permissions for private cannabis retail, namely:

1. A retail operator licence;
2. A retail store authorization for specific cannabis retail stores; and
3. A cannabis retail manager licence, for those individuals fulfilling specific functions within the operations of the retail store.

The new private licensing regime also prohibits the transfer of licences between holders, and limits the concentration of ownership for private retailers. An individual or a corporation (and its affiliates) cannot hold more than 75 retail store authorizations. The AGCO will review each licence application and consider it against the requirements of the *Cannabis Licence Act* and the AGCO's own standards.

The deadline to inform the AGCO of whether a municipality is willing to host cannabis retail stores is January 22, 2019.

The *Cannabis Licence Act* provides that all municipalities have one opportunity to, by resolution, "opt out" of hosting cannabis retail stores. The deadline for notifying the AGCO of this decision is January 22, 2019. Municipalities that do not notify the AGCO of a decision to opt out are automatically opted in. Any municipality that opts out can opt back in, but once a municipality is opted in at any time they cannot subsequently opt out again. The AGCO will not issue a licence for a store located in a municipality that has opted out. There are financial implications to opting out that are discussed later in this report.

Prior to issuance of a licence/authorization, an applicant's financial history and past conduct will be reviewed to confirm that the applicant will be financially responsible, will carry on the business lawfully, and is not carrying on activities that are in contravention of provincial or federal cannabis laws. Similar reviews of the applicant's landlord, as well as the owner of the premises, the applicant's mortgagee or anyone having an interest in the assets of the retail store may also occur.

Further restrictions are also established by the Province for private cannabis store operators:

- The AGCO will not issue a licence for a store within 150 metres of a public or private elementary or high school.
- No cannabis or cannabis-related products will be visible from the street.
- Individuals under the age of 19 will be prohibited from entering the store.
- Only in-person, on-site transactions for recreational cannabis are permitted. No other type of purchase is allowed (e.g., online sales by private stores).
- Only cannabis legally obtained from the Ontario Cannabis Retail Corporation may be sold in a cannabis retail store.
- All sales must be recorded.
- A maximum of 30 grams of dried cannabis or an equivalent amount of other authorized forms of cannabis may be sold to an individual in a single visit.
- Only individuals 19 years of age or older may be employed at the store.
- Cannabis cannot be sold to an intoxicated person.
- The retailer cannot sell cannabis at a price that is lower than the price prescribed by the Province.
- Authorized retailers will need to display an official Ontario Cannabis Retailer Seal.
- Stores may be open from 9 am to 11pm on any day.

Provincial legislation creates additional law enforcement tools for the regulation of cannabis stores that are licensed under this regime, including the ability for police to close a store involved in illegal activities. Legislation provides for fines up to \$100,000 or imprisonment of up to one year for individuals, while corporations face fines up to \$250,000, with increased fines for continuing offences.

If the Town opts in, the Town and the public will be able to respond to each AGCO licence request within 15 days. As discussed earlier, the AGCO will only have regard to comments on whether the proposed licence is “in the public interest”. The public interest in this sense is defined by provincial regulation to relate solely to:

1. Protecting public health and safety.
2. Protecting youth and restricting their access to cannabis.
3. Preventing illicit activities in relation to cannabis.

The potential role of the Town in commenting on cannabis retail store licence applications is further discussed under the Municipal Role section of this report.

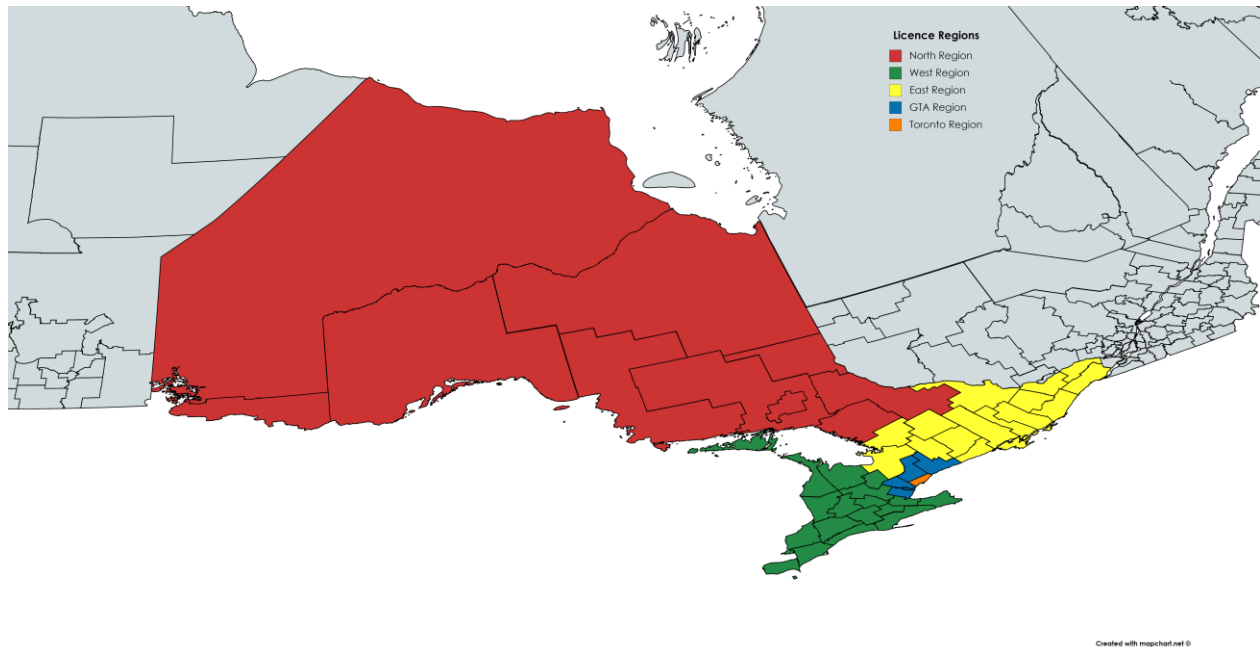
The Provincial government announced on December 13<sup>th</sup>, 2018, that the Ontario Cannabis Store was facing supply shortages from federally-licensed producers who were still building capacity for the recreational supply market. Due to this shortage, the Provincial government announced Regulation 497/18 under the *Cannabis Licence Act* that restricts the AGCO to only licence up to 25 retail cannabis locations in Ontario to open on April 1<sup>st</sup>, 2019. Licences in this first wave of approvals will only be granted in municipalities with a population greater than 50,000.

Only 25 cannabis retail stores will be licensed in Ontario to open by April 1<sup>st</sup>, 2019.

These first 25 locations would be selected through a lottery system following expressions of interest being submitted online from January 7<sup>th</sup> to 9<sup>th</sup> 2019. The Provincial government has, through Ontario Regulation 497/18, allocated these 25 licences by geographic regions in Ontario. The 25 licences are allocated as follows:

- Toronto Region – Five stores
- GTA Region – Six Stores
- East Region – Five stores
- North Region – Two stores
- West Region – Seven stores

A map of the regions by licence allocation is below, with the GTA Region of which Newmarket is a part (and Toronto is not) indicated in blue.



Across all of York Region, Halton Region, Durham Region, and Peel Region only six stores will be licensed in the first wave of licensing. While it remains to be seen exactly which municipalities in these areas opt in or out, it can be reasonably assumed that this 25-licence cap will mean no significant concentration of multiple recreational cannabis retail stores will occur under the first wave of licences.

As a result of this change, the AGCO has indicated that applications for cannabis retail stores will not be accepted as of December 17<sup>th</sup> as had previously been stated. The Provincial government has not yet indicated when the limits on the number of stores will be modified or when future batches of licences will be available for application.

### Restrictions on Consumption

The *Smoke-Free Ontario Act* (“Act”) is the principal legislation that restricts where tobacco and cannabis can be smoked or vaped. The Province has amended the *Act* to include prohibitions on where cannabis can be smoked or vaped that are generally in line with where the smoking or vaping of tobacco are prohibited.

The *Smoke-Free Ontario Act* generally restricts cannabis smoking locations in the same manner that tobacco smoking is currently restricted.

There are further restrictions where and how an individual of legal age can consume cannabis, including not being able to smoke or vape cannabis in:

- Indoor common areas in condos, apartment buildings and university/college residences;
- Enclosed public places and enclosed work places;
- Schools and places where children gather;



- At school, on school grounds, and all public areas within 20m of these grounds;
- On children’s playgrounds and public areas within 20m of playgrounds;
- In child care centres, or where an early years program is provided;
- In places where home child care is provided — even if children aren’t present;
- hospitals, hospices, care homes and other facilities or within 9m from the entrance or exit of hospitals (public/private), psychiatric facilities, long-term care homes, independent health facilities;
- On outdoor grounds of hospitals (public/private) and psychiatric facilities;
- In non-controlled areas in long-term care homes, certain retirement homes, provincially-funded supportive housing, designated psychiatric or veterans’ facilities, and residential hospices;
- In publicly-owned sport fields (not including golf courses), nearby spectator areas and public areas within 20m of these areas;
- In a vehicle or boat that is being driven or is at risk of being put into motion;
- In restaurants and on bar patios and public areas within 9m of a patio;
- In reserved seating areas at outdoor sports and entertainment locations; or
- On grounds of community recreational facilities, and public areas within 20m of those grounds.

## **Responsibilities**

The new legislative regime for recreational cannabis spreads responsibilities through various levels of government and their agencies. Generally speaking, the production of cannabis is the responsibility of the federal government and its agencies such as Health Canada. The sale of recreational cannabis is the responsibility of the provincial government and its agencies such as the AGCO. The prosecution of criminal activities is the responsibility of the police, and in Newmarket, the York Region Police.

The prosecution of smoking cannabis (both medicinal and recreational) where it is prohibited under the *Smoke-Free Ontario Act* is the responsibility of Regional Tobacco Enforcement Officers.

The role of the local municipality is largely limited to deciding whether to opt in or out of recreational cannabis retail, and whether to further restrict the ability to smoke cannabis on Town-owned property. The table below provides a breakdown of responsibilities at a glance.

Areas of Activity:	Who is responsible?
Medical cannabis use and distribution	→ Health Canada
Recreational cannabis <b>production licence</b>	→ Health Canada
Recreational cannabis <b>cultivation &amp; processing</b>	→ Health Canada & Licenced Producers
Recreational cannabis <b>wholesale</b>	→ Ontario Cannabis Store
Recreational cannabis <b>online retail sales</b>	→ Ontario Cannabis Store
Recreational cannabis <b>consumption</b>	→ Municipal by-law powers under the Smoke Free Ontario Act
<b>Investigations</b> of criminal activity related to cannabis and illegal dispensaries	→ Police

### Provincial revenue commitments

The Province has committed certain funds to municipalities to assist with the costs related to the legalization of cannabis and the new private retail model. This funding is principally from the Ontario Cannabis Legalization Implementation Fund (OCLIF), a \$40 million dollar fund. The amount of funds for which Newmarket will be eligible varies depending on whether Council opts in or out of hosting recreational cannabis retail stores. The use of the funds is restricted solely to costs directly related to the legalization of recreational cannabis and no other purpose.

Examples of permitted costs include increased enforcement (e.g., police, public health and by-law enforcement, court administration, litigation); increased response to public inquiries (e.g., customer service calls); increased paramedic and fire services; and by-law/policy development (e.g., police, public health, workplace safety).

Generally, the funds available to municipalities are as follows:

- A first payment of \$15 million divided between all municipalities on a per household basis (with a minimum payment of \$5,000) to help pay for planned legalization activities. For Newmarket, this amount totals \$37,608 and has been received by the Town.
- A second payment of \$15 million will be distributed after the January 22, 2019 deadline for municipalities to opt-out of recreational cannabis retail storefronts, as follows:
  - Municipalities that have not opted-out will receive funding on a per household basis (again, with a minimum \$5,000 payment). It is expected that Newmarket's portion would be \$37,608 or slightly higher if other municipalities opt out and the Provincial Government divides the full funding amount among opted-in municipalities.

- Municipalities that have opted-out will each receive a second \$5,000 only.

The Province is setting aside the remaining \$10 million of the OCLIF to address costs for unforeseen circumstances related to the legalization of recreational cannabis, and priority will be given to those municipalities that have not opted out.

In addition, if the Province of Ontario’s portion of the revenue from the federal excise tax on recreational cannabis exceeds \$100-million in the first two years of legalization, the Province will provide 50 per cent of the surplus to be divided only amongst municipalities that have opted-in to hosting private retail stores.

These figures are also provided in a table below for greater clarity.

Funding	If Newmarket Opt In	If Newmarket Opt Out
OCLIF* \$15M Payment No. 1	\$37,608	\$37,608
OCLIF* \$15M Payment No. 2	Anticipated to be \$37,608 or greater	No more than \$5,000
*OCLIF Remaining \$10M Unforeseen Circumstances Fund	Remaining \$10M available to address costs from unforeseen circumstances. No further details provided.	Municipalities that opt in will receive priority access to this funding.
Share of Federal Excise Duty	50% of provincial revenue above \$100 million to be shared among all opt-in municipalities in Ontario	Newmarket would not be eligible for this revenue if Council opts-out of retail cannabis
Totals	\$75,216, or greater  Plus an unknown amount of additional excise tax revenue from the Province, and possibly something from the Unforeseen Fund if applicable.	\$42,608
* OCLIF is the Ontario Cannabis Legalization Implementation Fund of \$40M		
Notes:	1. The CRA indicates that excise taxes will apply to both online and retail sales, but staff are confirming that this is the case.	
	2. At this time we are unable to locate anyone that has estimated what the excise tax revenue may be.	

## Municipal role

The Provincial government has limited municipal authority to add to the cannabis regulatory regime over and above the federal and provincial regulatory frameworks. The two roles that are principally left to the Town are to determine whether or not to ‘opt out’ of hosting recreational cannabis retail stores, and to determine whether and how to regulate the smoking and vaping of cannabis (both medical and recreational) in public places.

## Opt-in or out decision

Under the *Cannabis Licence Act* the Provincial government has prohibited municipalities from further regulating recreational cannabis retail stores by way of traditional municipal business licensing and zoning powers. Municipalities cannot employ zoning by-laws or licencing powers to in any way distinguish between a cannabis retail store and other retail stores. Accordingly, if the Town opts in it is possible that a recreational cannabis retail store could be located on any property where the zoning by-law allows for retail uses, provided the site is not within 150m of an elementary or high school. This is indicated in the map below with blue areas being where retail is permitted, and public schools (red dots) and private schools (yellow dots) being surrounded by the required 150m buffer.



As is discussed above, the *Cannabis Licence Act* provides that all municipalities have one opportunity to, by resolution, “opt out” of hosting cannabis retail stores. The deadline for notifying the AGCO of this decision is January 22, 2019.

## Licence comment process

If the Town opts in, the Town and the public will be able to respond to each AGCO licence request within 15 days. As discussed earlier, the AGCO will only have regard to

comments on whether the proposed licence is “in the public interest”. The public interest in this sense is defined by regulation to relate solely to:

1. Protecting public health and safety.
2. Protecting youth and restricting their access to cannabis.
3. Preventing illicit activities in relation to cannabis.

If the Town opts in, staff will need to respond to licence requests and it is important that these responses be consistent and based on sound principles that reflect the ‘public interest’ standard to which the AGCO will have regard. While there may be a range of uses that cause concern if a recreational cannabis store is located in close proximity, this concern may not pass the ‘public interest’ test of the AGCO.

That is to say, objections to licence requests must have a firm basis in one or more of the three matters listed above; concerns of consumption (i.e. smoking or vaping) near sensitive land uses are addressed through the *Smoke Free Ontario Act*, and objections to retail locations should be based on the effect of the location and not based on concerns of consumption. Similarly other regulations and legislation already place restrictions on advertising and visibility of cannabis products, on underage persons being able to enter recreational cannabis retail presences, and on the ability to sell cannabis between private individuals or to youth.

Some grounds that may be appropriate for offering an objection to a proposed recreational cannabis licence in Newmarket may include:

- There exists one or more other recreational cannabis retail stores in close proximity to the proposed licence, in order to prevent undue clustering or concentration of stores in one area. Good planning generally seeks to avoid the oversaturation of uses in one area and data from the effect of alcohol retail stores on youth consumption indicates that increased density of outlets may increase youth consumption rates.
- That the proposed licence is in close proximity to a health or treatment service provider (including operators of shelters, group homes, addiction counselling or other independently managed health service), as this may negatively impact the health outcomes of patients through increased ease of access to a controlled substance.

The recommendations of this report would delegate to the Commissioner of Corporate Services the authority to develop a standard commenting process based on the findings and information presented in this report.

### **Restrictions on consumption**

As discussed above, the Province has already implemented restrictions through the *Smoke-Free Ontario Act* as to where cannabis (both medical and recreational) can be

smoked or vaped. Smoking or vaping cannabis is generally prohibited where smoking tobacco is prohibited.

Section 115 of the *Municipal Act* provides municipalities with the authority to “prohibit or regulate the smoking of tobacco or cannabis in public places and workplaces”. However, subsection 3 of the same section prohibits such regulation or prohibition from applying to highways, which includes all parts of a right-of-way such as a boulevard and sidewalk. The effect of this is that municipalities cannot prohibit smoking of cannabis on roads or sidewalks.

The Town has employed this power to enact the restrictions on smoking tobacco through Parks By-law 2013-14, as amended by By-law 2015-11. This by-law prohibits smoking tobacco within Sunnyhill Park, or within 20 metres of the edge of any municipal sports surface, play structure/area, or other youth-related pilot project site, or within 20 metres of the entrance/exit to a facility. Under Section 115 of the *Municipal Act*, the Town has the ability to extend the same limits to the smoking or vaping of cannabis or to implement more stringent limits. Such limits could include an outright prohibition of smoking or vaping cannabis in parks or on all municipal property.

The enforcement of laws related to cannabis will touch on a number of levels of enforcement jurisdiction. These include municipal by-law enforcement officers, York Regional Police, Regional Public Health Officers, and the Alcohol and Gaming Commission. The Responsibilities section above discusses how the principal responsibilities for enforcement rest with other levels of government and their agencies such as York Regional Police, the AGCO, and Regional Tobacco Enforcement Officers.

This reflects in part that police services such as York Regional Police are better equipped to handle the duties of various enforcement roles, including seizure, and are the only enforcement group with authority to arrest.

The Regional Municipality of York and the local municipalities of the region have formed a Cannabis Working Group to coordinate information and responses within York Region. A sub-committee of this group has been formed to develop a model by-law for restricting where cannabis can be smoked or vaped for use by local municipalities.

## **Public input**

Staff undertook public consultation related to recreational cannabis retail stores and restrictions on the smoking and vaping of cannabis in public. This consultation took the form of outreach in several channels, including:

- Public Council Workshop on December 11, 2018
- Public Information Centre on December 12, 2018
- Online survey
- Random telephone survey
- Online web page at [www.newmarket.ca/cannabis](http://www.newmarket.ca/cannabis)
- Promotion through Town newspaper page and social media

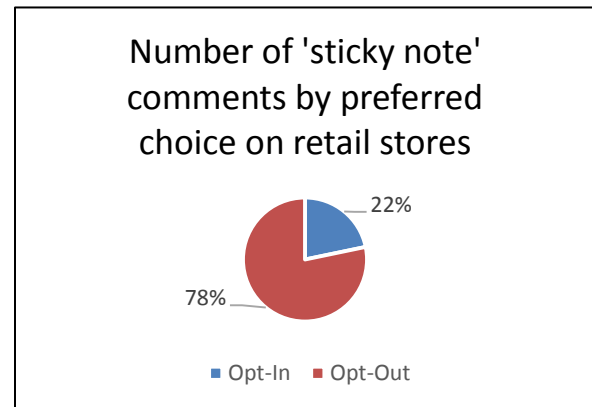


## Council Workshop

A Council Workshop was held on December 11, 2018 to present the recent changes to legislation and findings of staff on the effects of cannabis retail locations from other jurisdictions. The meeting was open for the public to attend and took the format of a presentation from Legal Services and Planning and Building Services followed by questions from members of Council.

## Public Information Centre

A Public Information Centre (PIC) was held on the evening of December 12, 2018. The PIC was advertised through the Town's web page, social media, and the local newspaper. The event took the format of a presentation similar to the one provided to the Council Workshop followed by an open engagement session in which members of the public were invited to speak with staff from various departments and partner agencies engaged in the cannabis subject. Attendees were also invited to leave written comments, complete the online survey, and leave 'sticky notes' with comments on a bulletin board.



Feedback from the public on the PIC was positive, with attendees expressing appreciation for the Town's engagement with the issue and for the event providing helpful information.

Comments from the attendees varied in their support for cannabis retail stores and restrictions on smoking locations. Where detailed written comments were provided they were generally supportive of allowing recreational retail stores, with the comments addressing issues such as quality control, the role of legal stores restricting access for youth, providing local business opportunities, and that access to cannabis has broader purposes for residents such as cannabinoid (CBD) also providing health benefits for pets. Where written comments of limited detail were provided through the 'sticky note' board with comments typically being "opt in" or "opt out", the preference was strongly in favor of opting out as can be seen in the chart above. In addition, comments related to restrictions on where cannabis can be smoked or vaped were generally supportive of applying similar or greater restrictions to those that currently exist for tobacco.

## Online survey

An online survey was available for public input until December 28<sup>th</sup>, 2018 with eight questions developed by the staff cannabis working group. In total, 2,524 submissions were made to the survey. Below the results of the survey are discussed and summarized. It should be noted that the online survey is not scientific – rather, it

represents a gauge of public input. This is due to three methodological challenges for online surveys.

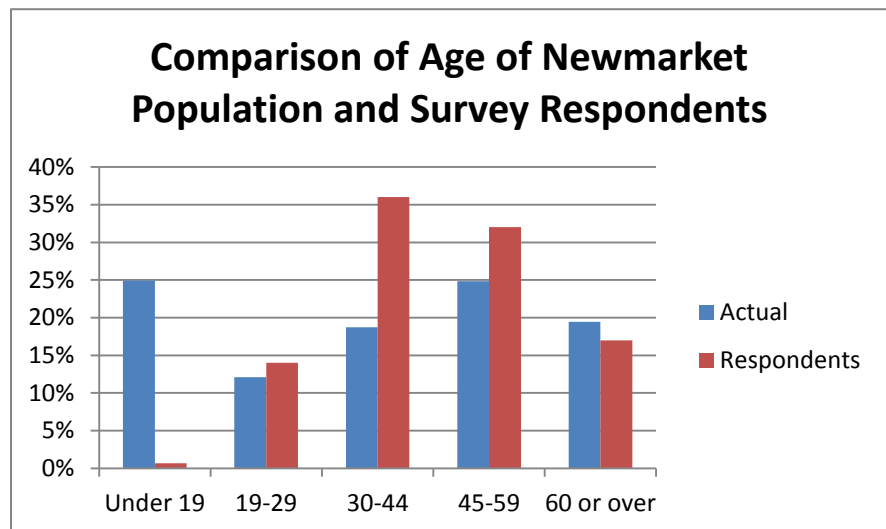
First, the online survey suffers from non-representative sampling. An online survey is open for anyone to complete and respondents can encourage others to complete the survey in an attempt to influence results. Additionally while the online software seeks to restrict each respondent to complete the survey only once this can be circumvented through means such as using a second electronic device or though preventing the website from tracking the respondent through cookies (small pieces of data stored on a user's computer used by websites to remember each user).

Second, the online survey has an inherent self-selection bias. As those taking the survey are not randomly sampled but rather are those people who have individually chosen to complete the survey due to an interest in the issue, the responses are not a representative sample of the population.

Finally, although the survey does ask respondents whether they are a Newmarket resident and only allows them to proceed if they answer in the affirmative, as an anonymous survey that does not track the IP address of respondents there is no way to validate whether the responses are from a resident of Newmarket or if they were provided by another person who resides elsewhere.

Despite its lack of statistical validity, the survey does provide interesting insights into the opinions of the respondents.

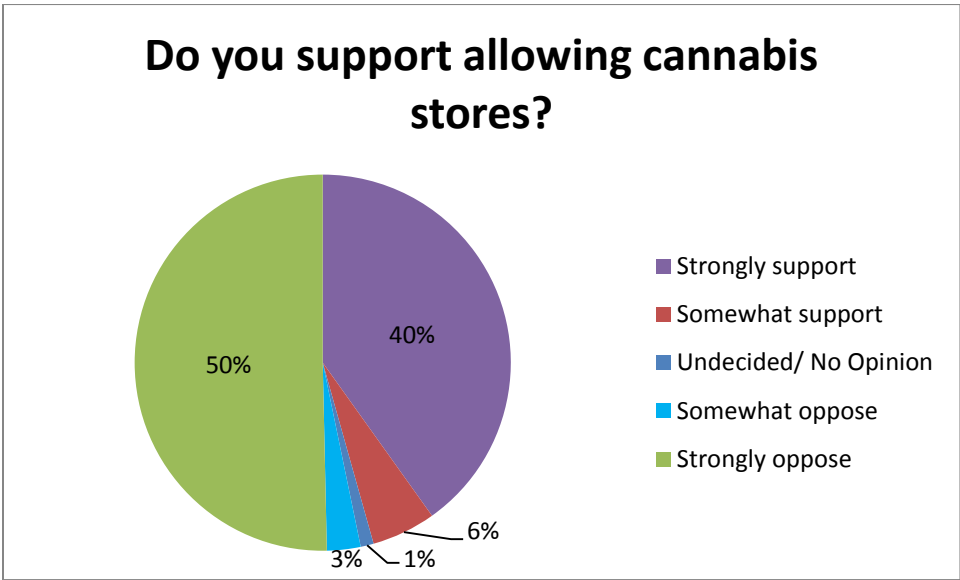
After first asking respondents to confirm that they are a resident or business-owner of Newmarket, the survey asked respondents for their age. Below is a table comparing the responses of the survey-takers and the actual age demographics in Newmarket. Survey responses were over-



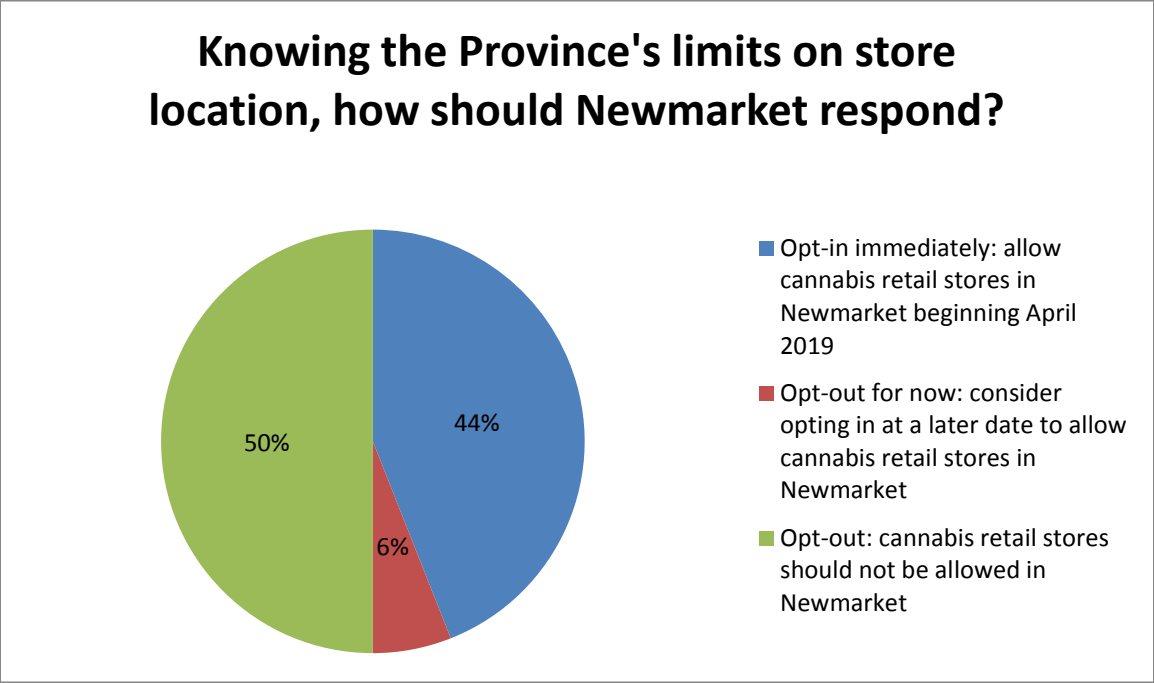
represented by persons between 30 to 59 years of age and under-represented in other age groups.

The survey then proceeded to ask respondents whether they supported or opposed allowing private cannabis retail stores in Newmarket. The responses were highly polarized which may indicate strongly divided public opinion or that supporters of each position attempted to flood the survey with like-minded responses to skew the response data.





The survey also asked what preference the respondents held toward opting in or out of hosting recreational cannabis retail stores, whether to (1) opt in immediately, (2) opt out for now and reconsider at a later date, or (3) to simply opt out. The responses to this question are below and show a similarly polarized response.

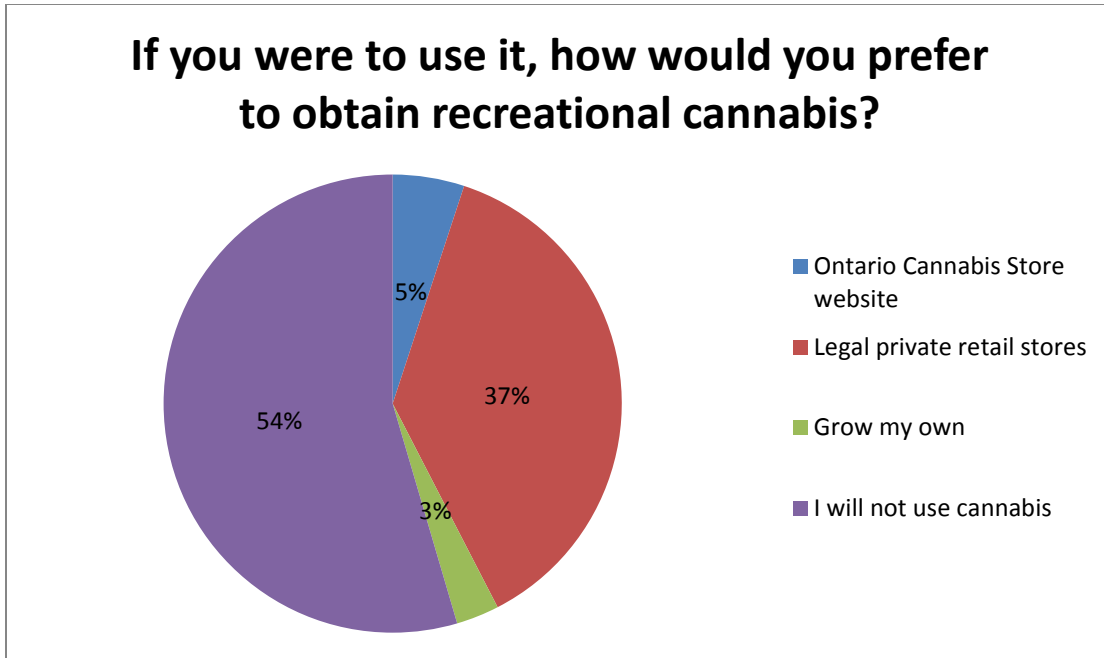


When prompted whether their response would change given knowledge that the Town may receive provincial funding if it opts in, very few respondents (5%) indicated they would be swayed by such information.

The online survey then proceeds to ask respondents to comment on whether the Town should implement additional restrictions on where cannabis can be smoked or vaped.

Among the 2,143 comments provided, responses ranged from expressing a desire for a complete prohibition on smoking or vaping cannabis in Newmarket (which is, as is discussed earlier in the report, not within the Town’s legislative authority to do), to implementing restrictions similar to tobacco, to seeing no need for additional restrictions.

The survey then concludes by asking how residents would prefer to obtain recreational cannabis (results below) followed by allowing for open-ended comments.



### Phone survey

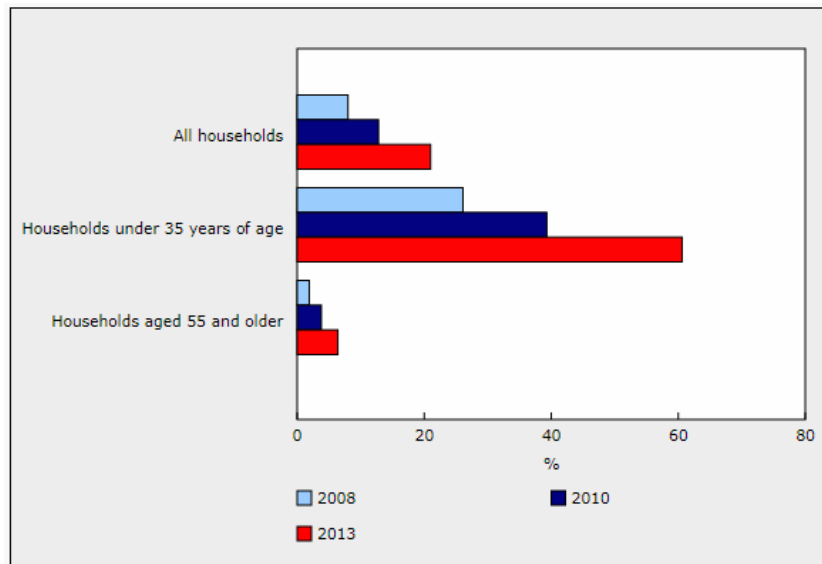
A phone survey was undertaken with the same eight questions. The survey was of 320 phone interviews from randomly-selected Newmarket phone numbers. The results of the phone survey are discussed and summarized below. Similar to the online survey it should be noted that the phone survey is not scientific – rather, it represents a gauge of public input that should be understood in the context of its respondents. This is due to methodological challenges with this phone survey.

First, the survey has sampling challenges. The phone selection process was based on the information database of the contracted surveying firm (yourvoice.co). The database is compiled from a number of data sources to determine the phone numbers of Newmarket residents including standard land-line phone directories and commercially-sourced cell phone lists. However, it appears from the response information that the data source for cell phone numbers may leave them under-represented in the survey. Statistics Canada reports that:

“Exclusive cell phone use is more pronounced in young households where all of the members are under 35 years of age. In 2013, 60% of

these households reported using a cell phone exclusively, up from 39% in 2010 and 26% in 2008.”

This trend can be seen in the chart below provided by Statistics Canada.



**Figure 1: Canadian Households using only cell phones**

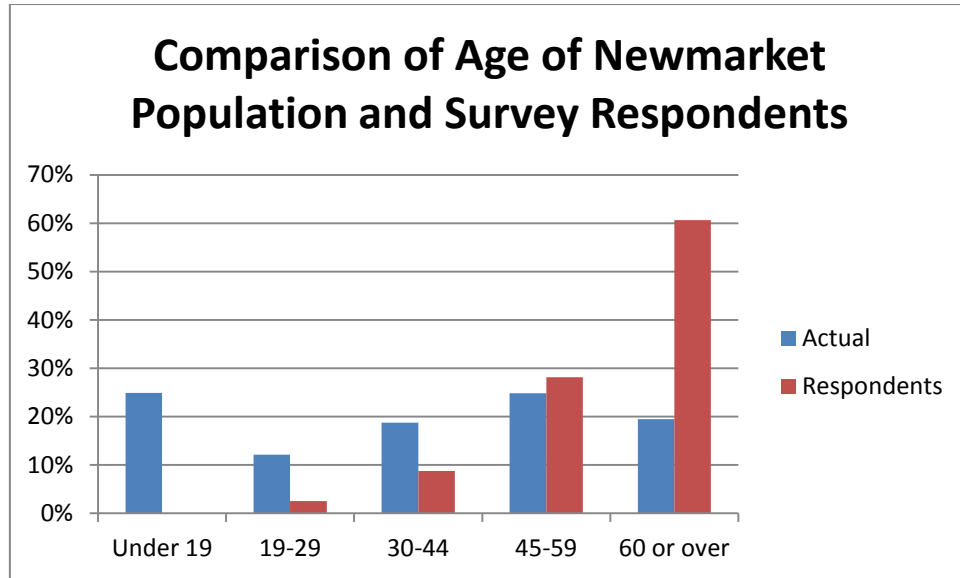
Second, it is difficult to quantify the effect of non-response bias – that is, all survey results have a number of persons who decline to take the survey and the results of they survey may have differed if these people had responded. In the case of this survey, 637 people declined to complete the survey and it is unclear what demographics they represent. Further underlining the representation concerns discussed above, fewer cell phone users tend to respond to phone surveys.<sup>2</sup>

Despite this, the survey does provide interesting insights into the opinions of the respondents.

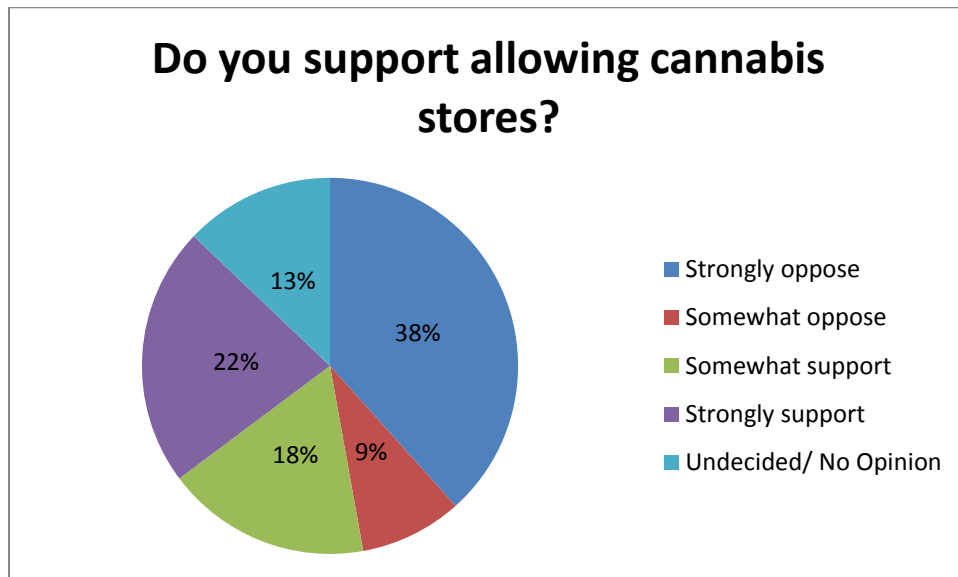
After first asking respondents to confirm that they are a resident or business-owner of Newmarket, the survey asked respondents for their age. Below is a table comparing the responses of the survey-takers and the actual age demographics in Newmarket. Survey responses were significantly over-represented by persons over 60 years of age with only 12% of responses being provided by persons under 44 years of age despite making up 56% of Newmarket’s population.

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<sup>2</sup> National Research Council. 2013. Nonresponse in Social Science Surveys: A Research Agenda. Washington, DC: The National Academies Press. <https://doi.org/10.17226/18293>.

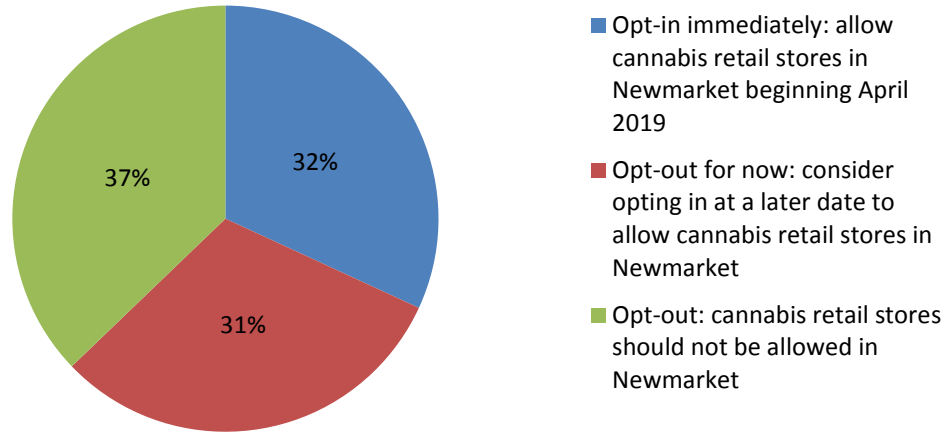


The survey then proceeded to ask respondents whether they supported or opposed allowing private cannabis retail stores in Newmarket. The responses were divided on allowing recreational cannabis retail stores, with 47% of respondents opposed to some degree and 40% in favor at least in part.



The survey also provided information related to where recreational cannabis stores can be located, and then asked what preference the respondents held toward opting in or out of hosting such stores, whether to (1) opt in immediately, (2) opt out for now and reconsider at a later date, or (3) to simply opt out. The responses to this question are below and show a similarly polarized response.

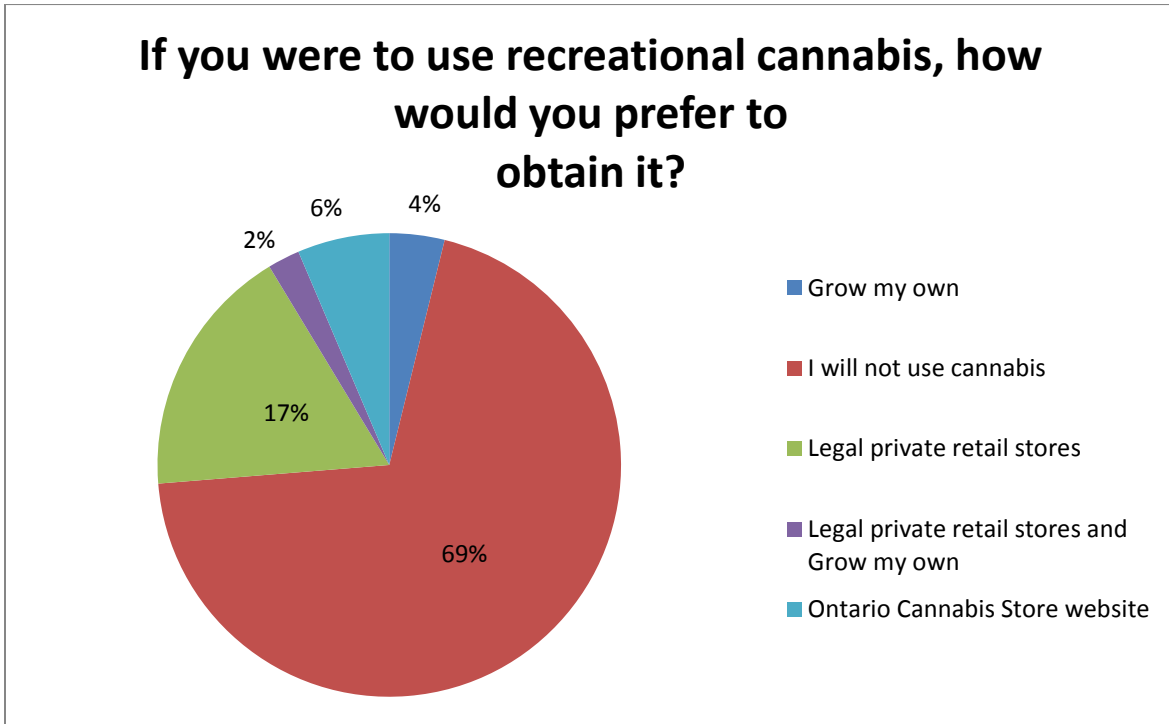
## Knowing the Province's limits on store location, how should Newmarket respond?



When prompted whether their response would change given knowledge that the Town may receive provincial funding if it opts in, very few respondents (8%) indicated they would be swayed by such information.

The survey then proceeds to ask respondents to comment on whether the Town should implement additional restrictions on where cannabis can be smoked or vaped. Among the 2,143 comments provided, responses ranged from expressing a desire for a complete prohibition on smoking or vaping cannabis in Newmarket (which is, as is discussed earlier in the report, not within the Town's legislative authority to do), to implementing restrictions similar to tobacco, to seeing no need for additional restrictions.

The survey then concludes by asking how residents would prefer to obtain recreational cannabis (results below) followed by allowing for open-ended comments.



In summary of the public input received, many of the concerns shared through the various engagement opportunities were focused on concerns with cannabis legalization itself rather than the effects of recreational cannabis retail stores. While there are valid concerns with cannabis legalization and the final outcomes will take years to become evident, it is important to separate concerns with legalization from concerns with whether to allow recreational cannabis stores. The latter issue is the only subject within the Town’s ability to control.

## Discussion

### Effects of recreational cannabis retail stores

As with any new land-use planning matter, there are potential concerns of how to ensure alignment with good planning principles and avoid negative impacts. It is important to consider these potential concerns carefully to weigh them against data and evidence.

As is noted above, if the Town decides not to opt out of hosting recreational cannabis retail outlets then no further restrictions through licensing or zoning are available. The Town will be able to provide comments to the AGCO on each licence for the Commission’s consideration but the Town will not be able to determine additional locational limits beyond where retail uses are permitted by zoning. This section of the report lays out potential concerns and benefits of allowing recreational cannabis retail stores in Newmarket.

## Potential concerns

There has been significant discussion of whether there are negative impacts due to the location of recreational cannabis retail outlets. Concerns that have been expressed include principally (1) property values, (2) crime and disruptive behaviour, and (3) youth access to cannabis.

For **property values**, it is difficult to say what impact being located near a recreational cannabis retail location might cause on either a residential or commercial use. The legalization of cannabis in other jurisdictions such as Colorado and Washington State are both relatively recent and thus data is inconclusive.

A study was conducted on this relationship by researchers from the University of Georgia, University of Wisconsin-Madison, and California State University-Sacramento. The researchers studied the City of Denver, Colorado and reviewed data on property values in proximity to a location where a recreational cannabis store opened showed that residences within 160 metres of a newly-opened store rose by 8% greater relative to houses that were located farther away.<sup>3</sup>

The longstanding criminalization of cannabis has led to it being principally accessed through the black market and thus being associated with **crime and disruptive behaviour**. The common stigma associated with substances that have been criminalized would suggest that the location of a recreational cannabis retail store will attract crime. However, the data is more nuanced. Data from counties in California suggest no relationship between where cannabis dispensaries were located and violent crime and a decrease in property crime rates.<sup>4</sup>

Concerns have also been raised that allowing recreational cannabis retail stores may encourage **consumption by youth**. In some jurisdictions there are limits on the proximity of liquor stores to schools based on concerns that proximity to alcohol retail increases the likelihood of youth consumption. The Province has issued regulations requiring a minimum separation distance of 150 metres from any school for any recreational cannabis retail locations, as is discussed above. This limit is implemented based on the intent of the Provincial Government to restrict access to cannabis by youth.

It is unclear what impact proximity of cannabis retailers to schools or other areas where young people congregate would have on access to cannabis by youth. Some research on similar relationships related to alcohol has found little relationship between distance and density of alcohol retail outlets and alcohol use among youth.<sup>5</sup> Other studies that

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<sup>3</sup> Conklin, James and Diop, Moussa and Li, Herman, Contact High: The External Effects of Retail Marijuana Establishments on House Prices (August 29, 2017).

<sup>4</sup> High on Crime? Exploring the Effects of Marijuana Dispensary Laws on Crime in California Counties. Hunt et al. IZA Institute of Labor Economics. May 2018.

<sup>5</sup> Alcohol outlets and youth alcohol use: Exposure in suburban areas. Pasch, et al. Health Place. 2009 June ; 15(2): 642–646. doi:10.1016/j.healthplace.2008.10.002

have investigated the relationship of proximity and density of alcohol retailers on alcohol consumption by various demographics have found very limited effects that are more strongly dependent on other demographic trends and variables.<sup>6</sup> What research exists on the relationship between the presence of alcohol retail stores and youth consumption rates suggests that it is a combination of both proximity (distance) and density (number in a given area) that have a significant effect on consumption rates.<sup>7</sup>

As is discussed in the Municipal Role – Licence comment process section of this report, if the Town allows cannabis retail stores it may be desirable to object to the concentration of such stores within one area to mitigate any such negative effects.

### **Potential benefits**

There are positive elements to cannabis legalization that should be considered before deciding whether to opt in or out. These include (1) reducing profits to the illicit cannabis market, (2) economic development and branding opportunities, and (3) public health benefits of access to a regulated and legal product.

Ensuring convenient access to legal recreational cannabis through retail stores is one important aspect of **reducing profits to the illicit (“black”) cannabis market**. As discussed in the report on the fiscal considerations by the Parliamentary Budget Officer, convenience is a determinant of whether residents will purchase cannabis legally or from the illicit cannabis market. Where it is more convenient to obtain cannabis from illicit sources due to recreational cannabis retail outlets being few in number of distant in location, residents will be more likely to purchase cannabis from illegal sources.<sup>8</sup> Cannabis that is purchased from illegal sources may provide profits to organized crime. Removing profits from organized crime is one of the principal purposes of creating a legal and regulated cannabis industry. Accordingly, reducing the convenience for residents to access that industry reduces the effectiveness of these goals.

Should the Town decide to opt-in to hosting cannabis retail stores, there are potential **economic development opportunities**. Cannabis is a large industry, with Canadians spending \$5.5 billion on cannabis in 2017. With a Newmarket population of legal age to consume cannabis of approximately 63,000, annual per-capita cannabis consumption in Ontario of 21 grams, and an average Ontario price for cannabis of \$7.43 per gram, Newmarket residents are estimated to spend nearly \$10 million per year on cannabis.<sup>9</sup>

Given that a number of other nearby municipalities are exercising their right to ‘opt out’, it is also probable that if Newmarket were to host recreational cannabis retail stores that residents of other municipalities would visit Newmarket to purchase cannabis from these

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<sup>6</sup> The effects of residential proximity to bars on alcohol consumption. Picone et al. *Int J Health Care Finance Econ.* 2010 December ; 10(4): 347–367. doi:10.1007/s10754-010-9084-0.

<sup>7</sup> Alcohol distribution reforms and school proximity to liquor sales outlets in New Brunswick. Slaunwhite et al. *Can J Public Health* 2017;108(5-6):e488–e496 doi: 10.17269/CJPH.108.6132

<sup>8</sup> Legalized Cannabis: Fiscal Considerations. Office of the Parliamentary Budget Officer. 2016 November.

<sup>9</sup> Cannabis Stats Hub, Statistics Canada



stores. This poses opportunities for tourism and spillover spending at other Newmarket businesses. If the Town does not host cannabis retail stores, any benefits, namely the total amount of expenditures directly attributed to local retail sales, will be either unrealized or exported outside the town.

Opting out of retail sales of recreational cannabis could also result in unrealized indirect economic development opportunities. Indirect economic development opportunities occur in industries that interact with, and supply, a primary industry. In the case of retail cannabis, indirect impacts include, for example, money spent on building upgrades, professional services like legal, accounting and e-commerce, security services, commercial leases, and tourism. If the Town chooses to opt-out of permitting the sale of retail cannabis, indirect positive impacts to the town's economy would be lost.

Similarly it may be worth considering how this decision aligns with the Town's efforts at branding itself as a progressive, innovative, urban municipality. While recreational cannabis retail stores are not directly connected to the Town's initiatives to "Market the Corridors", all decisions that the Town makes reflect on its perceived culture and fit by observers. Newmarket will be contrasted with other municipalities by the decision that it makes on this subject.

Providing convenient access to legal recreational cannabis through local retail stores also may offer **public health benefits**. While there are health concerns related to the use of cannabis, it is a legal substance that is consumed by Newmarket residents. However, when it is made more difficult to acquire legal cannabis through reduced access to stores, residents who wish to purchase and consume cannabis may be more likely to acquire it from the illicit market.

Cannabis that is acquired from the illicit market may pose additional risks to the health of residents. Cannabis from the illicit market is not subject to the stringent federal regulation and oversight of the legal market. As such, cannabis from the illicit market may have uncertain THC levels and additives which can expose residents to substances of undesired or unknown potency.

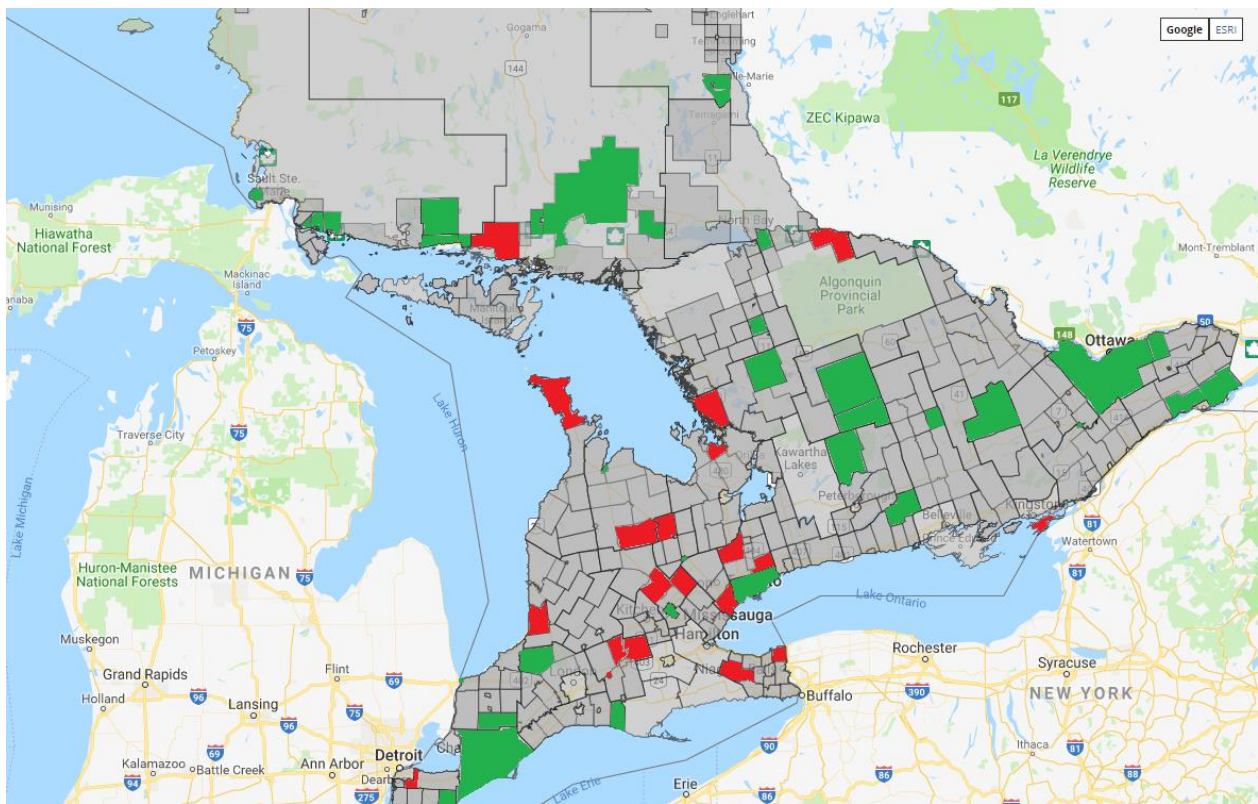
Cannabis from the illicit market is also not subject to the inspection and testing systems of the federal licensed producer regime. As such, cannabis from the illicit market can be of uncertain origin and handling practices and may expose residents to other substances or health risks.

## **Municipal opt-in or opt-out**

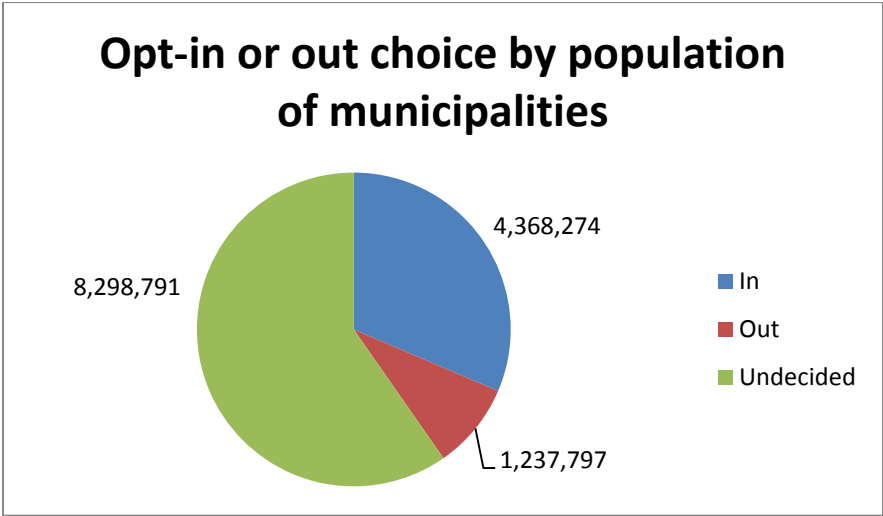
As is discussed above, the *Cannabis Licence Act* provides all municipalities in Ontario an option to, by resolution passed no later than January 22, 2019, prohibit recreational cannabis retail stores from being located in the municipality. The effect of such a resolution, if adopted, would be that the AGCO would issue no licences within the Town of Newmarket.

If a municipality adopts a resolution to opt out, it is permitted to reverse this decision at a later date. However, if the Town opts out of retail locations and then decides to later opt in, it may not then again opt-out. If the Town opts in at any time, it is not permitted to opt out at a later date.

Each local municipality is addressing this question by the same deadline. The map below indicates the current status of municipalities that have notified the AGCO of their decision to opt in or out, current to January 2<sup>nd</sup>, 2019. This includes 39 municipalities that have opted in (in green below), 22 that have opted out (in red below) of a total of 415 local municipalities. Those municipalities that have not yet notified the AGCO are indicated in grey. Municipalities that do not opt out by January 22, 2019 are automatically opted in.



Comparing data geographically in a manner such as this risks creating a perception of representation by area rather than by population. That is to say, it makes large and sparsely-populated areas appear more representative than smaller and more densely-populated areas. A more representative comparison would be to consider the overall population of municipalities within Ontario by their choice to opt in or out. The chart below demonstrates this with information available as of December 17<sup>th</sup>.



As the population of municipalities that have not yet opted in or out is larger than the combined population of municipalities that have done so, it is worth noting that it may be the choice of some municipalities to not notify the AGCO of a choice at all, as if they do not notify the AGCO that they have opted out then they will be opted in by default. That is to say, if a municipality wants to opt in they need take no action at all.

**Restrictions on consumption**

The Regional Municipality of York and the local municipalities of the region have formed a Cannabis Working Group to coordinate information and responses within York Region. A sub-committee of this group has been formed to develop a model by-law for use by local municipalities.

The recommendations of this report, if adopted, would direct staff to prepare amendments to the Parks By-law and/or other applicable by-laws and return with recommendations for Council to regulate the smoking and vaping of cannabis in public places in Newmarket

**Conclusion**

Based on the information in this report, an analysis of data from other jurisdictions that have legalized cannabis, and input from the public, staff is of the opinion that allowing recreational cannabis retail stores best serves the public policy aims of cannabis legalization, and staff recommend that Council direct the Town Clerk to notify the AGCO that the Town is willing to host recreational cannabis retail stores.

**Business Plan and Strategic Plan Linkages**

Living well – Protecting public health by ensuring convenient access to legal substances

Well-equipped & managed – Implementing policy that reflects data and evidence

## Consultation

Staff have undertaken public consultation related to recreational cannabis retail stores and restrictions on the smoking and vaping of cannabis in public. This consultation took the form of outreach in several channels, including:

- Online survey on [newmarket.ca/cannabis](http://newmarket.ca/cannabis) and under the 'News and Notices' section on the homepage of our website
- Random telephone survey
- Public Council Workshop on December 11, 2018
- Public Information Centre on December 12, 2018
- Online web page at [www.newmarket.ca/cannabis](http://www.newmarket.ca/cannabis)
- Promotion through ads in the Town Page of the Newmarket Era, a media release, articles in the Newmarket Now e-newsletter, and a social media campaign

Staff have also worked in coordination with partners such as the other local municipalities, the Regional Municipality of York, York Region Public Health, York Regional Police, and the AGCO. Staff have benefited from the work of other municipalities in the development of this report as all Ontario municipalities seek to develop their respective approaches to this new legislative framework.

## Human Resource Considerations

If the Town opts in to host recreational cannabis retail stores, staff will respond to each licence request. This is anticipated to be managed within existing staff complements.

## Budget Impact

If Council adopts by-laws or amendments to by-laws to restrict where cannabis can be smoked or vaped, this may increase by-law enforcement expenses. This potential cost may be incurred regardless of whether retail stores are permitted.

Staff will track cannabis related expenses for the purposes of allocation of the OCIF.

If recreational cannabis retail stores are located in Newmarket this could pose economic development opportunities as are discussed earlier in this report.

## Attachments

None

## Approval

Ted Horton – Planner

Rick Nethery – Director, Planning & Building Services

Peter Noehammer – Commissioner, Development & Infrastructure Services

Paul Voorn – Acting Director, Legal Services

Lisa Lyons – Acting Commissioner, Corporate Services

Esther Armchuk – Acting Chief Administrative Officer

## **Contact**

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