

EMERGING ISSUES IN CANNABIS: A LOOK AT HOME PRODUCTION FOR MEDICINAL USE IN BRITISH COLUMBIA

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As of October 17, 2018, the Government of Canada has legalized the sale and consumption of cannabis for recreational use. Although marijuana has only recently become legal for those of majority age, local governments have been dealing with issues surrounding grow operations for some time now. Personal use production licenses have opened the door for home-based marijuana production facilities, and at the end of the 2017/2018 fiscal year, over 3,800 of those licenses were active in British Columbia (Health Canada, 2018c). Lack of regulatory monitoring around licensed medicinal grow operations have prompted concerns of health and safety. With restricted access to information and limited resources, local governments struggle to enforce bylaws and building regulations that aim to protect residents from these potential risks.

Since 2000, individuals have been able to apply for a license to grow medicinal marijuana plants for personal use (Clare, Garis, and Maxim, 2017). Under this licensing, individuals are permitted to produce a small amount for themselves or designate someone else to produce for them. In the latter circumstance, producers are only allowed to grow for themselves and one other person that is registered with Health Canada (Health Canada, 2016). The number of plants allowed depends on the amount prescribed by a doctor. The ratio of grams per day to plants allowed is 1 to 5 (Health Canada, 2018a). For example, if a patient is prescribed 2 grams of marijuana per day maximum, they are allowed to have 10 plants. If there are more individuals

in the household with medical licenses, more plants can be grown. This differs from growing for recreational purposes. Upon legalization in October, individuals are now permitted to grow up to 4 cannabis plants per residence for recreational purposes (Department of Justice, 2018)

Health Canada claims there are routine inspections carried out by their organization to verify ongoing compliance. In reality, this is not achieved due to the large amount of personal medical licenses issued nationwide, and a limited number of inspectors (Stevenson, 2011) which means ongoing oversight does not happen in the vast majority of cases (Clare, Garis, and Maxim, 2017). This also means concerns dealing with “suspicion that someone may illegally be growing cannabis” are delegated to local law enforcement (Health Canada, 2018b). However, law enforcement does not have authority to inspect grow ops unless they have reasonable grounds that illicit activity is taking place (Stevenson, 2011).

Privacy legislation prevents Health Canada from disclosing the location of licensed production facilities to local governments. This is intended to prevent potential ‘grow-rips’ (stealing from a grow-op) and the violence associated with it. At the same time, it means local governments are unable to effectively ensure building code and safety regulations are met. A 2017 study found that nearly 30% of medicinal grows surveyed in Surrey, BC were found to have electrical issues, not including the issue of a missing smoke alarm (Clare, Garis,

and Maxim, 2017). Since municipal authorities are unaware of the grow, many go uninspected. Little inspection and enforcement is undertaken to ensure both compliance with the building code or other municipal regulations and the terms of the grow license (Clare, Garis, and Maxim, 2017).

According to Health Canada's website, licensed producers are expected to obey all relevant federal, provincial, and municipal laws and by-laws, including municipal zoning bylaws (Health Canada, 2016). Unfortunately, this has not been the case in many instances. Clare, Garis, and Maxim (2017) found that 86% of medical grow ops examined in their study contravened zoning regulations and 97% had work done without a permit. The producers in these cases had made structural alterations to their homes or had constructed buildings that were in contravention to zoning and building bylaws. These infractions include, violations to safety legislation (e.g., the BC Building Code, the BC Fire Code, the Residential Tenancy Act, and the Public Health Act) and local government bylaws relating to land use and zoning (Clare, Garis, and Maxim, 2017). This may cause health and safety issues for the residents, future owners, and immediate neighbours as well as for emergency first responders who enter into these buildings in cases of emergency (Clare, Garis, and Maxim, 2017). There are electrical and fire safety risks, along with health risks such as mould and mildew that they may be exposed to, which can result in long term health issues (Stevenson, 2011).

Potential grow operations are sometimes caught by local governments during the time of building construction, which in most cases require a building permit and inspection. If the proper building codes and zoning are not met, local governments can impose fines and even a Notice on Title, which discourages bank loans for future buyers of the property. Another way these issues could be remedied is by more regular inspections from Health Canada. These

inspections could also verify that electrical and other safety regulations were being met. If the grower is found to be in violation of their license agreement, they could potentially have their license revoked. Perhaps stronger approaches such as restricting or cutting off electricity, in the interest of health and safety could be a potential strategy in dealing with these violations, although this would require further consideration.

Planners have an obligation to enhance the quality of life of the citizens they are working for. This includes ensuring the health and safety of the community. One of the ways planning departments can do this (besides bylaw enforcement inspections), is by educating the public. Now that many individuals are legally permitted to grow marijuana in their homes, there is a need for public information on how to protect your dwelling and your family from the potential hazards that come with home production. A town with a housing stock of mouldy, fire prone homes does not make for a safe and healthy community.

Before October 2018, only individuals with a valid medicinal license were permitted to grow cannabis in residential homes. Now, everyone 19 years of age and over in BC will be permitted to grow four plants per residence for personal use. It will likely be frustrating for municipal agencies tasked with protecting citizens by effectively enforcing bylaw and building regulations to prevent injury and loss. Municipal agencies are already stretched thin, policing other non-compliance issues such as illegal rooming houses and building without permits. Ensuring marijuana is grown safely and legally will be a challenge without a proper framework for communication and regulation between government agencies. Solutions to this problem are yet to be realized, which adds to the ever-growing list of complex land-use issues that planners deal with in the 21st century.

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