



ADMINISTRATION REPORT REZONING & PLAN AMENDMENT OLIVER

11516 - Jasper Avenue NW

To allow for an exemption to Zoning Bylaw regulations related to the separation of Cannabis Retail Sales uses.



RECOMMENDATION AND JUSTIFICATION

Administration is in **NON-SUPPORT** of this application because the location is not compatible relative to City standards for separation distances between Cannabis Retail Sales uses.

THE APPLICATION

1. BYLAW 19228 to amend the Oliver Area Redevelopment Plan (ARP) to update a land use map to reflect the zoning change proposed by Charter Bylaw 19229.
2. CHARTER BYLAW 19229 to amend the Zoning Bylaw from (DC1) Direct Development Control Provision to (DC2) Site Specific Development Control Provision to exempt the subject site from Zoning Bylaw regulations related to the separation of Cannabis Retail Sales uses.

Section 70 of the Edmonton Zoning Bylaw regulates the Cannabis Retail Sales Use. The application under consideration proposes to exempt the subject site from Section 70.1 of the Zoning Bylaw which requires that Cannabis Retail Sales not be located less than 200 metres from any other Cannabis Retail Sales use.

Section 70.1 states:

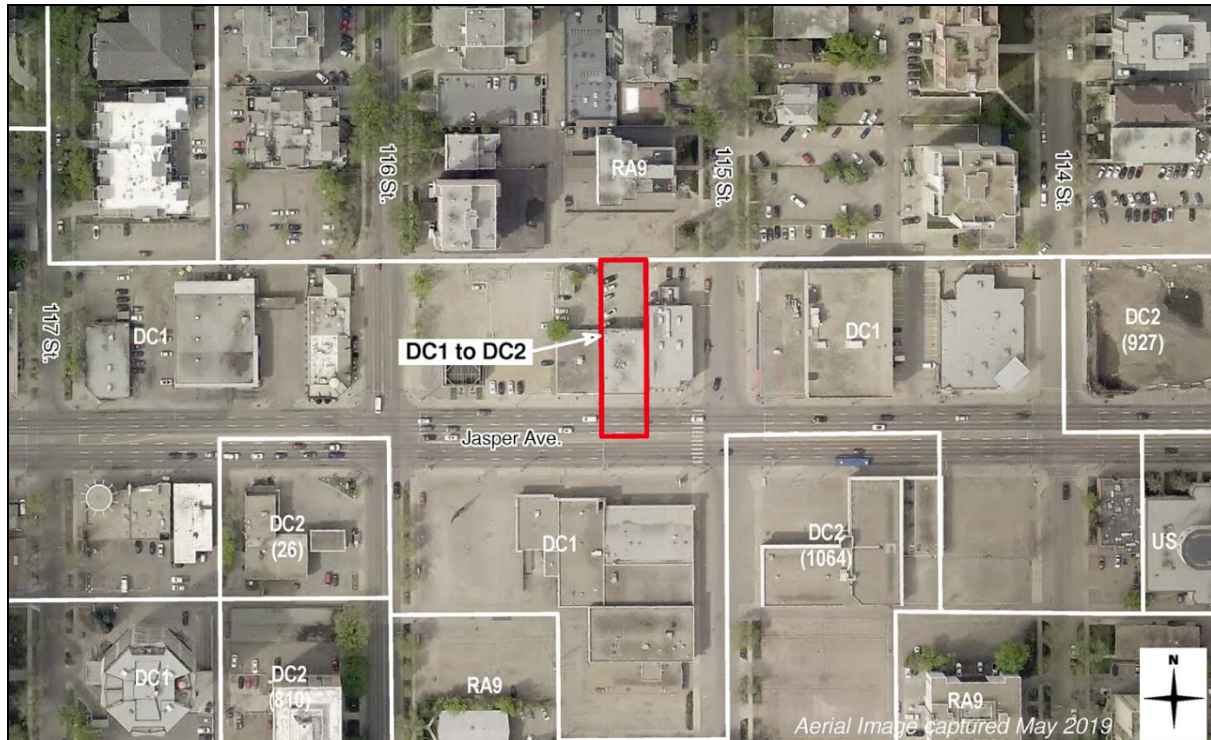
Any Cannabis Retail Sales shall not be located less than 200 m from any other Cannabis Retail Sales.

Central to this application's request to exempt the subject site from Section 70.1 of the Zoning Bylaw is that there are currently two separate sites within 200 metres of this site that have approved development permits to operate Cannabis Retail Sales uses (see Figure 1 in Planning Analysis). As a result, a development permit to operate a Cannabis Retail Sales use on this site was refused by a Development Officer. The decision to refuse the development permit was subsequently appealed to the Subdivision and Development Approval Board (SDAB), where the SDAB confirmed that the Development Authority's decision to refuse the development permit application upheld Council's direction as established in the (DC1) Direct Development Control Provision.

Through this rezoning application, the applicant is requesting an exemption from the separation space rule between Cannabis Retail Sales in order to obtain a development permit to operate a Cannabis Retail Sales use at this location.

SITE AND SURROUNDING AREA

The subject site is located along the north side of Jasper Avenue, one of Edmonton's commercial main streets, which supports a broad mix of uses including commercial, retail and residential. The site is currently developed as a two-storey commercial building.



AERIAL VIEW OF APPLICATION AREA

	EXISTING ZONING	CURRENT USE
SUBJECT SITE	(DC1) Direct Development Control Provision	Two storey commercial building
CONTEXT		
North	(RA9) High Rise Apartment Zone	Seven storey residential building and surface parking
East	(DC1) Direct Development Control Provision	Two storey commercial building
South	(DC1) Direct Development Control Provision	Two storey commercial building and surface parking
West	(DC1) Direct Development Control Provision	One storey commercial building



VIEW FACING NORTH, FROM JASPER AVENUE NW

PLANNING ANALYSIS

REGULATING CANNABIS RETAIL SALES

Charter Bylaw 18387, which established Section 70 Cannabis Retail Sales, was passed at the June 12, 2018, City Council Public Hearing following a comprehensive stakeholder engagement and public consultation process. A key component of Administration's recommended approach in regulating the sales of cannabis was to impose limitations through separation distances from one Cannabis Retail Sales use to another in recognition of the sensitive nature of this use. Regulating minimum distances between Cannabis Retail Sales uses, as well as regulating minimum distances from other sensitive land uses such as parks, schools and libraries, would help to establish an even distribution of opportunities across the city for cannabis store locations as well as provide the general public, the Development Authority and applicants certainty about where Cannabis Retail Sales are allowed.

Section 70 of the Zoning Bylaw was further amended by Charter Bylaw 18720 on February 25, 2019 to make minor adjustments to land use regulations and reduce separation spaces distances on sites larger than 2.0 hectares. These further changes to Section have no bearing on this application.

SEPARATION SPACE BETWEEN CANNABIS RETAILS SALES

In commercial areas, typical blocks are generally no more than 200 metres in width. As such, a 200 metre separation between Cannabis Retail Sales uses was introduced within Section 70 of the Zoning Bylaw to prevent clustering of stores within a particular neighborhood and along main streets to ensure that this new land use would not be concentrated in a given area.

During the review that led to the passing of Charter Bylaw 18387, engagement with stakeholders indicated support for the separation of Cannabis Retail Sales between uses with a distance of 2 blocks apart or more.

Section 70(1)(b) of the Zoning bylaw regulates variances to reduce separation distance between Cannabis Retail Uses. The regulation limits the Development Officer to variances of 20 metres or less.

LAND USE COMPATIBILITY

In October 2018, through Charter Bylaw 18573, the Cannabis Retail Sales Use was added to the Direct Development Control Provision applied to the majority of land adjacent to Jasper Avenue from 110 Street NW to 121 Street NW, including the subject site. Although the Use was added, the issuance of any Development Permit would still be subject to Section 70 of the Zoning Bylaw. Since the passage of Charter Bylaw 18573, two development permits have been issued for Cannabis Retail Sales uses within this area, both of which directly affect the proponent's ability to obtain a Development Permit.

One permit has been issued approximately 153 m to the west of the subject site while another has been issued approximately 129 m to the east of this site.

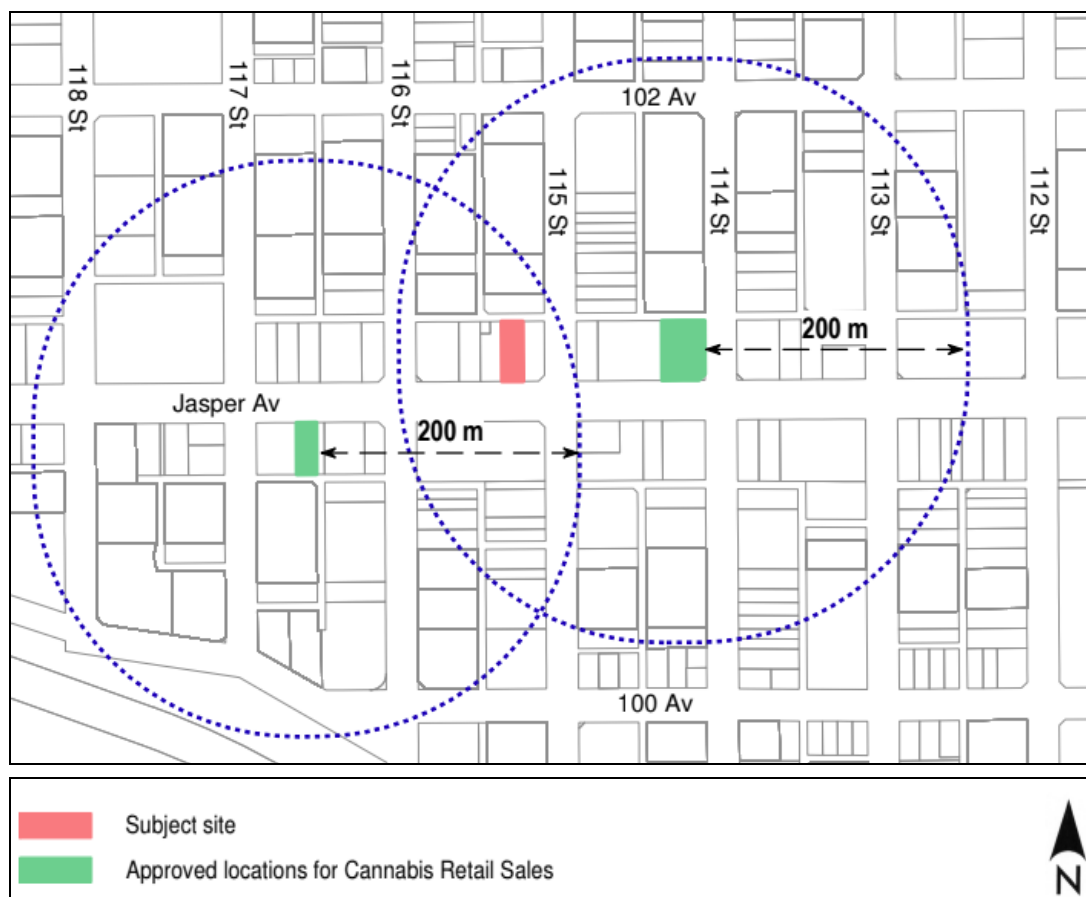


FIGURE 1

Should this rezoning application be approved and a development permit for this site subsequently issued, there would be three Cannabis Retail Uses permitted to operate within an approximately 290 metre distance. This would result in two problematic outcomes:

- multiple Cannabis Retail Sales would be present within a small area of Jasper Avenue, and
- the two existing Cannabis Retail Uses within 200 metres of the site would become legal non-conforming uses.

Being legal non conforming means that a permit for Cannabis Sales Use at the subject site of this application would have primacy over all other sites within 200 metres due to the exemption clause in the DC2. In the event the permits of the preexisting cannabis stores cease operations for 6 months or more, they would likely be unable to resume operations as the newly approved permit would create its own unique 200 metre buffer while other properties on this corridor would be subject to the separation rules of Section 70.

These outcomes are in direct conflict with the intended outcome of Section 70.1 of the Zoning Bylaw which is to provide evenly distributed opportunities and balanced outcomes for Cannabis Retail Sales uses.

OLIVER AREA REDEVELOPMENT PLAN (ARP)

The site is within Area 4 of the Oliver ARP where land adjacent to Jasper Avenue is encouraged for a broad range of commercial uses. There are no policies directly related to the use of Cannabis Retail Sales.

TECHNICAL REVIEW

All comments from affected City Departments and utility agencies have been addressed.

PUBLIC ENGAGEMENT

PRE-APPLICATION NOTIFICATION November 18, 2019	<ul style="list-style-type: none"> • Number of recipients: 197 • Number of responses in support: 4 • Number of responses with concerns: 0
PUBLIC MEETING N/A	<ul style="list-style-type: none"> • Not held
ADVANCED NOTIFICATION January 16, 2020	<ul style="list-style-type: none"> • Number of recipients: 197 • Number of responses in support: 9 • Number of responses with concerns: 7 • Of the 9 responses of support, none indicated any further reasoning as to why the application should be supported

	<ul style="list-style-type: none"> ● Of the 5 responses with concerns, further reasoning for concerns that were provided are summarized below: <ul style="list-style-type: none"> ○ Jasper Avenue is the face of downtown and should not be subject to an undue concentration of cannabis stores ○ The regulations for separating cannabis stores should be adhered to by all cannabis retailers ○ Allowing more cannabis stores will detract from Jasper Avenue and the Oliver neighborhood ○ The rezoning application undermines retailer confidence in the area that the established rules of the Zoning Bylaw will be followed
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City Administration received a statement from the Oliver Community League (OCL) with a position of non-support. The OCL does not feel an exemption to separation distances between Cannabis Retail Uses is warranted, as Section 70 is still new and should be sufficiently monitored before deviations are considered.

City Administration also received letters of non-support from the two holders of approved development permits for Cannabis Retail Sales within 200 metres of this site. Stated concerns were the clustering of Cannabis Retail Sales within a small area and a desire for Cannabis Retail Sales uses to be held to the standards of Section 70 of the Zoning Bylaw.

CONCLUSION

Administration recommends that City Council **REFUSE** this application.

APPENDICES

- 1 Edmonton Zoning Bylaw 12800, Section 70. Cannabis Retail Sales
- 2 Application Summary

70. Cannabis Retail Sales

1. Any Cannabis Retail Sales shall not be located less than 200 m from any other Cannabis Retail Sales. For the purposes of this subsection only:
 - a. the 200 m separation distance shall be measured from the closest point of the Cannabis Retail Sales Use to the closest point of any other approved Cannabis Retail Sales Use;
 - b. A Development Officer shall not grant a variance to reduce the separation distance by more than 20 m in compliance with Section 11; and
 - c. The issuance of a Development Permit which contains a variance to separation distance as described in 70(1)(b) shall be issued as a Class B Discretionary Development.
2. Any Site containing Cannabis Retail Sales shall not be located less than:
 - a. 200 m from any Site being used for a public library, at the time of the application for the Development Permit for the Cannabis Retail Sales; and
 - b. 100 m from any Site being used for Community Recreation Services Use, a community recreation facility or as public lands at the time of application for the Development Permit for the Cannabis Retail Sales.
3. For the purposes of subsection 2:
 - a. separation distances shall be measured from the closest point of the subject Site boundary to the closest point of another Site boundary, and shall not be measured from Zone boundaries or from the edges of structures;
 - b. the term “public library” is limited to the collection of literary, artistic, musical and similar reference materials and learning resources in the form of books, electronic files, computers, manuscripts, recordings and films for public use, and does not include private libraries, museums or art galleries.
 - c. the term “community recreation facilities” means indoor municipal facilities used primarily by members of the public to participate in recreational activities conducted at the facilities, as per the Municipal Government Act; and
 - d. the term “public lands” is limited to Sites zoned [AP](#), and Sites zoned [A](#).
4. Subsection 105(3) of the *Gaming, Liquor and Cannabis Regulation*, is expressly varied by the following:

- a. any Site containing a Cannabis Retail Sales shall not be located less than:

Public or private education

- i. 200 m from a Site being used for public or private education, at the time of the application for the Development Permit for the Cannabis Retail Sales;

Provincial health care facility

- ii. 100 m from a Site being used for a provincial health care facility at the time of the application for the Development Permit for the Cannabis Retail Sales; and

School reserve or municipal and school reserve

- iii. 100 m from a Site designated as school reserve or municipal and school reserve at the time of the application for the Development Permit for the Cannabis Retail Sales.

Measurement of Separation Distances

- b. For the purposes of this subsection, separation distances shall be measured from the closest point of the subject Site boundary to the closest point of another Site boundary, and shall not be measured from Zone boundaries or from the edges of structures.

Sites Greater than Two Hectares

- c. For Sites that are greater than [2.0 ha](#) in size and zoned either [CSC](#) or [DC2](#), that do not contain a public library at the time of application for the Development Permit for the Cannabis Retail Sales:
- i. Subsection 70(2), and 70(4)(a) shall not apply; and
- ii. the distances referred to in Subsection 105(3) of the Gaming, Liquor and Cannabis Regulation shall be expressly varied to 0 m.
- d. For the purposes of subsection 70(4)(a)(i), the term "public or private education" means a school as defined in subsection (1)(y)(i) and (1)(y)(ii) of the *School Act* (as amended from time to time).

5. Notwithstanding [Section 11](#) of this Bylaw, a Development Officer shall not grant a variance to subsection 70(2), 70(3)(a) or 70(4).

Design Requirements

6. Cannabis Retail Sales shall include design elements that readily allow for natural surveillance to promote a safe urban environment, where applicable and to the satisfaction of the Development Officer, including the following requirements:
 - a. customer access to the store is limited to a storefront that is visible from the street other than a Lane, or a shopping centre parking lot, or mall access that allows visibility from the interior of the mall into the store;
 - b. the exterior of all stores shall have ample transparency from the street;
 - c. Any outdoor lighting shall be designed to ensure a well-lit environment for pedestrians and illumination of the property; and
 - d. Landscaping shall be low-growing shrubs or deciduous trees with a high canopy at maturity to maintain natural surveillance.

APPLICATION SUMMARY

INFORMATION

Application Type:	Plan Amendment & Rezoning
Bylaw & Charter Bylaw:	19228 & 19229
Location:	North side of Jasper Avenue NW, between 115 Street NW and 116 Street NW
Address:	11516 - Jasper Avenue NW
Legal Description:	Lot 79, Block 15, Plan B3
Site Area:	742 m ²
Neighbourhood:	Oliver
Notified Community Organization:	Oliver Community League
Applicant:	Fire & Flower Inc.

PLANNING FRAMEWORK

Current Zone:	(DC1) Direct Development Control Provision
Proposed Zone:	(DC2) Site Specific Development Control Provision
Plan in Effect:	Oliver Area Redevelopment Plan
Historic Status:	None

Written By:
Approved By:
Branch:
Section:

Stuart Carlyle
Tim Ford
Development Services
Planning Coordination