MINUTES OF THE REGULAR MEETING OF COUNCIL HELD IN THE COUNCIL CHAMBER, CITY HALL, 141 WEST 14TH STREET, NORTH VANCOUVER, BC, ON MONDAY, MAY 8, 2017.

REPORT OF THE COMMITTEE OF THE WHOLE (CLOSED SESSION)

   – File: 09-4000-01-0001/2017

   Report: Manager, Bylaw Services, May 3, 2017

   Moved by Councillor Bell, seconded by Councillor Buchanan


   THAT at the Closed Council meeting of March 27, 2017, the following resolution was approved:

   PURSUANT to the report of the Manager, Bylaw Services, and the Manager, Business Services, dated March 22, 2017, entitled “Business Licence Application for LotusLand Cannabis Club at 148 East 2nd Street (Marijuana Dispensary)”:

   THAT the 2017 Business Licence Application from Jason Toback and Shane Escher, doing business as “LotusLand Cannabis Club” at 148 East 2nd Street, for a Retail Merchant - Medicinal/Recreational Cannabis business be refused, having considered the recommendation and reasons provided by the Manager, Bylaw Services, and the Manager, Business Services;

   AND THAT the report of the Manager, Bylaw Services, and the Manager, Business Services, dated March 22, 2017, entitled “Business Licence Application for LotusLand Cannabis Club at 148 East 2nd Street (Marijuana Dispensary)” remain in the Closed session.

   THAT staff received a written submission from Kirk Tousaw, legal counsel for Jason Toback and Shane Escher (the “business owners”), within the specified deadline, requesting a delegation before Council for reconsideration of Council's decision to refuse issuance of the business licence to the business owners, doing business as “LotusLand Cannabis Club” at 148 East 2nd Street, for a Retail Merchant - Medicinal/Recreational Cannabis business;

Continued...

THAT Kirk Tousaw has requested a copy of the above noted Closed Report dated March 22, 2017, in order to prepare for their delegation;

THAT the report of the Manager, Bylaw Services, and the Manager, Business Services, dated March 22, 2017, entitled “Business Licence Application for LotusLand Cannabis Club at 148 East 2nd Street (Marijuana Dispensary)” be released from the Closed session and a copy forwarded to Kirk Tousaw;


CARRIED

Councillor Clark is recorded as voting contrary to the motion.
Council approved release of Confidential Report on May 8, 2017

CONFIDENTIAL REPORT

To: Mayor Darrell R. Mussatto and Members of Council

From: Guy Gusdal, Manager, Bylaw Services

SUBJECT: RELEASE OF CLOSED REPORT DATED MARCH 22, 2017 – BUSINESS LICENCE RENEWAL FOR LOTUSLAND CANNABIS CLUB AT 148 EAST 2ND STREET (MARIJUANA DISPENSARY)

Date: May 3, 2017

File No: 09-4000-01-0001/2017

The following is a suggested recommendation only. Please refer to Council Minutes for adopted resolution.

RECOMMENDATION:

PURSUANT to the report of the Manager, Bylaw Services, dated May 3, 2017, entitled "Release of Closed Report dated March 22, 2017 – Business Licence Renewal for LOTUSLAND CANNABIS CLUB at 148 East 2nd Street (Marijuana Dispensary)";

THAT at the Closed Council meeting of March 27, 2017, the following resolution was approved:

PURSUANT to the report of the Manager, Bylaw Services, and the Manager, Business Services, dated March 22, 2017, entitled "Business Licence Application for LotusLand Cannabis Club at 148 East 2nd Street (Marijuana Dispensary)";

THAT the 2017 Business Licence Application from Jason Toback and Shane Escher, doing business as "LotusLand Cannabis Club" at 148 East 2nd Street, for a Retail Merchant - Medicinal/Recreational Cannabis business be refused, having considered the recommendation and reasons provided by the Manager, Bylaw Services and the Manager, Business Services;
AND THAT the report of the Manager, Bylaw Services and the Manager, Business Services, dated March 22, 2017, entitled “Business Licence Application for LotusLand Cannabis Club at 148 East 2nd Street (Marijuana Dispensary)” remain in the Closed session.

THAT staff received a written submission from Kirk Tousaw legal counsel for Jason Toback and Shane Escher (the “business owners”), within the specified deadline requesting a delegation before Council to ask reconsideration of Council’s decision to refuse issuance of the business licence to business owners, doing business as “LotusLand Cannabis Club” at 148 East 2nd Street, for a Retail Merchant - Medicinal/Recreational Cannabis business.

THAT Kirk Tousaw, legal representative for Jason Toback and Shane Escher, doing business as “LotusLand Cannabis Club” at 148 East 2nd Street, has requested a copy of the above noted Closed Report dated March 22, 2017, in order to prepare for their delegation.

THAT the report of the Manager, Bylaw Services, and the Manager, Business Services, dated March 22, 2017, entitled “Business Licence Application for LotusLand Cannabis Club at 148 East 2nd Street (Marijuana Dispensary)” be released from the Closed session and a copy forwarded to Kirk Tousaw;

AND THAT a copy of this resolution and the report of the Manager, Bylaw Services, dated May 3, 2017, entitled “Release of Closed Report dated March 22, 2017 – Business Licence Renewal for LOTUSLAND CANNABIS CLUB at 148 East 2nd Street (Marijuana Dispensary)” be released from the Closed session and a copy forwarded to Kirk Tousaw, legal representative for Jason Toback and Shane Escher (the “business owners”).

ATTACHMENTS:

1. Reconsideration request letter from Kirk Tousaw, Tousaw Law Corporation; ( #1519271)
2. Decision Letter to the operator of the LotusLand Cannabis Club; ( #1512212), and

PURPOSE:

To request that Council approve the release a Closed Report to the public in response to a request from the operator for Council to reconsider their decision of March 27, 2017.
DISCUSSION:

On March 27, 2017 Council refused to issue the business licence to Jason Toback and Shane Escher, doing business as “LotusLand Cannabis Club” at 148 East 2nd Street, (a copy of the March 27, 2017 resolution is included in the proposed Council resolution above). The operator, through the legal representative, has exercised their right to request Council reconsider their March 27, 2017 and requested a copy of the report which provided staff’s reasons for not issuing the business licence.

The request for disclosure of the document is reasonable and will assist the operator in understanding the City’s rationale for the decision. It is hoped that release of the report may cause the operator to rethink their need to address Council.

Staff will prepare a brief report for Council in conjunction with the delegation appearance before Council. Staff anticipate that the delegation will be scheduled for a Council meeting in late June or early July.

FINANCIAL IMPLICATIONS & INTER-DEPARTMENTAL IMPLICATIONS:

Nil.

CORPORATE PLAN AND/OR POLICY IMPLICATIONS & STRATEGIC PLAN IMPLICATIONS:

Nil.

RESPECTFULLY SUBMITTED:

Guy Gusdal
Manager, Bylaw Services

GG/rl/eb
April 20, 2017

North Vancouver City Hall
141 West 14th Street
North Vancouver, BC V7M 1H9

ATTENTION: Guy Gusdal, Manager, Bylaw Services

Dear Mr. Gusdal:

RE: Business Licence Application 0026773

This firm is counsel to LotusLand Cannabis Club. This letter responds to your recent correspondence. Please note that you have requested that a reconsideration submission be made with a very short timeline. I am in the process of being retained and am unable to provide a full and complete response by April 20, 2017. Accordingly, please take the below as a general submission with further detailed response to be provided in the near future. I request that my client be provided until May 31, 2017 to make that detailed response.

Further, as my client is unable to fully and completely respond without understanding the "case against" it, this letter also requests that you disclose the March 22, 2017 report of the Manager, Bylaw Services and the Manager, Business Services, that you indicate formed the basis for the Council's decision. This request is made both as part of your duty of administrative fairness and under all applicable access to information legislation.

In your letter you make reference to the allegedly unlawful status of medical cannabis dispensaries. I can advise that my view is that the current government regulations are constitutionally deficient and of no force and effect. The activities of medical cannabis dispensaries provide patients with reasonable access to medical cannabis consistent with the various decisions of the courts that have considered this issue.

The courts have had occasion to consider the issue of access the medical cannabis and a reasonable source of supply many times over the past two decades. The
decisions are almost universally favourable to patients and their sources of supply. It is my client’s position that the Canadian Charter of Rights and Freedoms protects reasonable access by patients and therefore dispensaries as their source of supply.

Indeed, the most recent decision of the Federal Court in this area is a case called Allard v. Canada (decided in March 2016) which included Justice Phelan commenting on medical cannabis dispensaries and calling them the "heart of access" to medical cannabis.

There is currently litigation ongoing in Federal Court Trial Division filed by a medical cannabis dispensary seeking a declaration of invalidity of the CDSA and the current medical exemption scheme due to violations of sections 7 and 15 of the Canadian Charter of Rights and Freedoms. I am counsel to the Plaintiff in that action and expect that LotusLand would have similar arguments should it be forced to defend itself from any bylaw infractions or other action by the City.

History

Medical cannabis dispensaries, or “compassion clubs,” are organizations that exist to provide access to medical cannabis to patients that consume it for the treatment of the medical conditions and/or symptoms. These entities currently operate outside the federal regulatory framework for medical cannabis (under the MMAR, the initial regulatory scheme, or under the MMPR, the last regulatory scheme or the ACMPR, the current system) though Licensed Producers under the MMPR and ACMPR can be considered a form of dispensary that is restricted in its distribution to mail order sales only.

Despite urging the federal government to regulate their operations for more than a decade, all of the government regulations failed to do so. This omission has led to a number of Charter-based constitutional challenges. The various regulatory schemes have been found to arbitrarily restrict the supply options of medical cannabis patients, in violation of section 7 of the Charter of Rights and Freedoms, in cases in both the civil and criminal courts. Below I set out excerpts from the decisions with the most relevance to the operation of dispensaries.

On July 31, 2000, the Ontario Court of Appeal confirmed the existence of a constitutional right to consume cannabis as medicine. The government chose not to appeal this decision and the Parker case became the seminal case on the constitutional requirement that the government provide a means by which medical cannabis users can be exempted from the operation of the criminal law. The following excerpts from the decision outline the key components of the ruling:

   a) The Liberty Interest
Liberty includes the right to make decisions of fundamental personal importance. Deprivation of this right must also accord with the principles of fundamental justice. I have little difficulty in concluding that the choice of medication to alleviate the effects of an illness with life-threatening consequences is such a decision ... [This decision] is a right that Robins J.A. ranked as "fundamental and deserving of the highest order of protection .... To intrude into that decision-making process through the threat of criminal prosecution is a serious deprivation of liberty (paragraphs 92 & 103).

b) The Security Interest
[Section 7] protects the right to make choices concerning one's own body and control over one's physical and psychological integrity free from interference by criminal prohibition. Preventing Parker from using marijuana to treat his condition by threat of criminal prosecution constitutes an interference with his physical and psychological integrity (paragraph 110).

d) Common Law Right of Access to Treatment
While there is obviously a difference between a right to refuse treatment and a right to demand treatment, they can also be seen as two points on a continuum rooted in the common-law right to self-determination with respect to medical care. This includes the right to choose to select among alternative forms of treatment...Some common-law support for access to drugs with a therapeutic value can also be found in the defence of necessity...Permitting access to medicine that may relieve debilitating symptoms of illness is consistent with the common understanding about the purpose of proper medical care (paragraphs 135,136 & 138).

e) Restricting Access to New Drugs

There may be circumstances in which the state interest in regulating the use of new drugs prevails over the individual's interest in access. This, however, is not one of those circumstances. The evidence establishes that the danger from the use of the drug by a person such as Parker for medical purposes is minimal compared to the benefit to Parker and the danger to Parker's life and health without it. It may be that the state is entitled to require the approval of the patient's choice by a physician in much the same way that in Morgentaler, Beetz J. contemplated that even if there was a right of access to abortion founded upon the right to liberty, a second medical opinion as to the mother's health could be justified in some circumstances (Wilson J. suggested the second trimester) because of the state interest in the protection of the foetus. However, the current legal and administrative structure completely deprives Parker of any choice, even with
the approval of his physician (paragraph 161).


Subsequent to *Parker* the government promulgated the MMAR.

Shortly after the MMAR were promulgated, the regulations became the subject of litigation launched by a group of medical cannabis consumers. The newly-minted MMAR were found to be constitutionally defective in *Hitzig v. Canada*, (2003), 171 C.C.C. (3d) 18 (*Hitzig I*) because they “fail[ed] to provide individuals who have a serious medical need to use marijuana with a legal source and safe supply of their medicine.”

Lederman, J’s decision in *Hitzig I* was upheld by a unanimous Ontario Court of Appeal in *Hitzig et al v. Canada* (2003) 177 CCC (3d) 449 decided October 7, 2003 (*Hitzig II*). The overly restrictive scheme for accessing a legal supply of marijuana set out in the MMAR were found to pose unconstitutional obstacles to medical users’ access to a legal source of supply. The *Hitzig II* court urged the government to, in effect, regulate dispensaries:

[162] As the record makes clear, there are a number of people who already have a source of marihuana and wish to engage in compassionate supply of it to those in medical need. Indeed the Government's case rested in large part on their existence. It argued that they effectively serve as "unlicensed suppliers" for ATP holders. It may be that not all of these people would satisfy the requirements to become DPL holders set out in the MMAR. However, we are satisfied that, on this record, enough would do so that taken together with existing DPL holders, the DPL mechanism as modified could then provide a licit source of supply to ATP holders. Once this modification is implemented, ATP holders would therefore no longer need to access the black market to get the marihuana they need.

[173]...a central component of the Government's case is that there is an established part of the black market, which has historically provided a safe source of marihuana to those with the medical need for it, and that there is therefore no supply issue. *The Government says that these “unlicensed suppliers” should continue to serve as the source of supply for those with a medical exemption.* Since our remedy in effect simply clears the way for a licensing of these suppliers, the Government cannot be heard to argue that our remedy is unworkable.

*Hitzig II* at 162, 173
Instead of doing so, the government chose to re-enact, verbatim, the unconstitutional restrictions on supply that had been stricken by the Court in *Hitzig II*.

This prompted further litigation.

On January 10, 2008, the Federal Court Trial Decision issued its ruling in *Sfetkopoulos et.al. v. Attorney General of Canada*, 2008 FC 33. The Federal Court found the MMAR to be unconstitutional, agreeing that one of the restrictions stricken by the *Hitzig II* Court and re-enacted verbatim by Health Canada (the 1:1 Ratio) should be declared constitutionally invalid and, again, be stricken:

Consequently, I have concluded that the restraint on access which subsection 41(b.1) provides [the 1:1 Ratio] is not in accordance with principles of fundamental justice...It does not adequately respond to the concerns motivating the Ontario Court of Appeal judgment in Hitzig...the only factor which has changed since the Hitzig case arose is the advent of PPS as a licensed dealer...In my view it is not tenable for the government, consistently with the right established in other courts for qualified medical users to have reasonable access to marihuana, to force them either to buy from the government contractor, grow their own or be limited to the unnecessarily restrictive system of designated producers.”

*Sfetkopoulos* at paragraphs 10 and 25 (emphasis added).

This decision was upheld on appeal *Canada (Attorney General) v Sfetkopoulos*, 2008 FCA 233.

Subsequently, the British Columbia Supreme Court decided *R v. Beren*, 2009 BCSC 429, leave to appeal to the Supreme Court of Canada denied. This case involved a producer for a medical cannabis dispensary located in Victoria, BC. In the result, the Court determined that the government should have the opportunity to amend its unconstitutional Regulatory Scheme to license medical cannabis dispensaries:

[72] Thus, the evidence in this trial demonstrates that the source, the form, and the atmosphere in which cannabis is obtained, in all probability increases the effectiveness of the substance. Barriers to obtaining this type of cannabis, from a safe and supportive source which the patient believes will provide effective pain relief, contributes to the frustration of seriously ill patients. In the MMAR regime, generally patients must spend months, if not years, persuading their physicians of the benefits of cannabis for them, finding a specialist who is
sympathetic to their perceived need for such unorthodox medication, completing an application and finally, if successful, receiving cannabis from the government. However, it is alleged, that this source lacks a supportive network of belief in the efficacy of different strains, lacks the benefits of belief in organic growing methods, and, perhaps most important, lacks a supportive environment in using an unorthodox medication.

[115] The trial court decision in Sfetkopoulos, affirmed by the federal Court of Appeal in October 2008, dealt specifically with the issue of whether, given the government supply as a third source of medical marihuana, the restrictions created by the MMAR in ss. 41(b.1) and 54.1, pass constitutional muster. The trial court’s decision was in relation to a judicial review of the Minister’s disallowance of an application by an organization, similar to a compassion club, to produce medical marihuana for sale to more than two applicants. The trial court found that the disallowance illustrated that those specific provisions were unconstitutional.

[127] Adopting the reasoning in Hitzig and Sfetkopoulos, further bolstered by the evidence before this court, I find ss. 41(b.1) and 54.1 of the MMAR contrary to s. 7 of the Charter.

[134] Such regulation and licensing requires careful thought in drafting. Consistent with the reasoning in Schachter v. Canada, [1992] 2 S.C.R. 679, 93 D.L.R. (4th) 1, these provisions, unduly restricting DPLs from growing for more than one ATP or growing in concert with two other DPLs, are hereby severed from the MMAR.

[135] The government, in my view, will need time to put in place appropriate monitoring and enforcement mechanisms in relation to such compassion clubs. Thus, it is appropriate to stay the effect of this declaration of invalidity for one year.

Beren at paragraphs 72, 115, 127, 134 and 135.

The government sought, unsuccessfully, to appeal Beren to the Supreme Court of Canada.

Further, in the decision of the Federal Court in Allard v. Canada 2016 FC 236, the Court held the MMPR regime to be unconstitutional because of barriers to access the regime interposed between patients and a reasonable source of medicine. In coming to his conclusion, Justice Phelan considered the role of medical cannabis dispensaries (despite that dispensaries were not central to the claims raised in the case) and called them the “heart of access” to medical cannabis (see paragraph 162).
Further, the prohibition on accessing non-dried forms of medical cannabis was stricken by in a per curiam decision of a unanimous Supreme Court of Canada in R v. Smith [2015] 2 S.C.R. 602. The government’s response to that decision (issuing a series of exemptions pursuant to s. 56 of the CDSA and codifying those exemptions in the Access to Cannabis for Medical Purposes Regulation, which replaced the MMPR) is insufficient and does not address the constitutional shortcomings identified by the Court in Smith.

As I noted, the Allard decision is the most recent such case and the federal government was given six months to remedy the constitutional shortcomings. It implemented the ACMPR, which is essentially a blend of the two prior regimes. Dispensaries continue to be unregulated at the federal level, though many municipalities have enacted, or are considering, regulating dispensaries using zoning and business bylaws. The clearest examples are Vancouver and Victoria, but other local jurisdictions have also stepped in to fill the legislative void.

As you can see from this summary, the courts have repeatedly found that the Charter is violated by unduly restrictive regulations that impede patient access to a supply of medical cannabis and medicines derived from cannabis. The courts have also repeatedly urged the government to expand its regulations to include dispensaries. Because the government has, thus far, chosen not to do so, medical cannabis dispensaries continue to, as they have for more than two decades, fill the supply gaps created by the government’s unconstitutional programs and, as such, are a vital component of providing patients with access to medicine.

I again urge the City to reconsider its position in this regard. Rather than depriving its residents of an essential and Charter-protected right to reasonable access to medical cannabis, the City could take a leadership role and implement sensible regulations and/or issue my client a Temporary Use Permit or analogous permit to allow its continued operation. My client stands ready to work with the City on this matter.

Yours very truly,

[Signature]

Kirk Tousaw
Tousaw Law Corporation
March 29, 2017

Jason Toback and Shane Escher, Owners
LotusLand Cannabis Club
148 East 2nd Street
North Vancouver, BC V7M 1C3

Dear Messrs. Toback and Escher,

Re: Decision on Business Licence Application for your business located at 148 East 2nd Street in the City of North Vancouver (2017 Business Licence Application # BUS-0026773) doing business as “LotusLand Cannabis Club”

At the March 27, 2017 Regular meeting, Council ratified the action of the Closed session of Council, as follows:

**PURSUANT** to the report of the Manager, Bylaw Services, and the Manager, Business Services, dated March 22, 2017, entitled “Business Licence Application for LotusLand Cannabis Club at 148 East 2nd Street (Marijuana Dispensary)”: 

**THAT** the 2017 Business Licence Application from Jason Toback and Shane Escher, doing business as “LotusLand Cannabis Club” at 148 East 2nd Street, for a Retail Merchant - Medicinal/Recreational Cannabis business be refused, having considered the recommendation and reasons provided by the Manager, Bylaw Services and the Manager, Business Services;

**AND THAT** the report of the Manager, Bylaw Services and the Manager, Business Services, dated March 22, 2017, entitled “Business Licence Application for LotusLand Cannabis Club at 148 East 2nd Street (Marijuana Dispensary)” remain in the Closed session.

Pursuant to the preceding Council resolution, this notice is to advise that you are required to immediately Cease and Desist your Retail Merchant – Medicinal Cannabis (a.k.a. Marijuana Dispensary) business at 148 East 2nd Street. Due to the unlawful nature of the business the City of North Vancouver was precluded from issuing a business licence. A traditional Business Licence Hearing was not required. However, a Council Resolution was necessary because the Business Licence Bylaw provides Council the authority to refuse issuance of a business licence (the bylaw does not grant staff the authority to refuse issuance of a business licence).

The nature of your business also limits the manner by which you can appeal Council’s decision; there is no regulatory framework for an appeal of a business licence decision regarding an
unlawful business. Staff have determined that the best model for an appeal process is the "Reconsideration" provisions contained in Part 3, Division 11, Section 78 of the Community Charter. Should you wish Council to reconsider their March 27, 2017 decision regarding your business licence application, please submit a written request to the City Clerk’s Office on or before April 20, 2017. Your written submission must include the reason(s)/rationale supporting your request (this information will be provided to Council for their review and consideration).

Upon receipt of your written request, staff will prepare a report to Council and advise you of the date and time of Council’s Reconsideration Hearing where you or your agent can make a representation to Council. The City Clerk’s Office will work with you to accommodate a hearing date and time in conjunction with their regular agenda planning.

The Cease and Desist Notice would be held in abeyance pending the conclusion of a Reconsideration Hearing should one be requested.

Should you have any questions regarding the contents of this letter, please contact either of the authors below.

Sincerely,

Guy Gusdal
Manager, Bylaw Services
Ph. 604.983.7307
e-mail: ggusdal@cnv.org

Larry Orr
Manager, Business Services
Ph. 604.982.3913
e-mail: lorr@cnv.org

cc: Karla Graham, City Clerk
Property Owner: AMPCO Holdings Ltd., 7735 Thornhill Drive, Vancouver, BC, V5P 3T4

GG/LO/skj
The Corporation of THE CITY OF NORTH VANCOUVER
COMMUNITY DEVELOPMENT DEPARTMENT

Council approved release of Confidential Report on May 8, 2017

CONFIDENTIAL REPORT

To: Mayor Darrell R. Mussatto and Members of Council

From: Guy Gusdal, Manager, Bylaw Services
       Larry Orr, Manager, Business Services

SUBJECT: BUSINESS LICENCE APPLICATION FOR LOTUSLAND CANNABIS
         CLUB AT 148 EAST 2ND STREET (MARIJUANA DISPENSARY)

Date: March 22, 2017

File No: 09-4000-01-0001/2017

The following is a suggested recommendation only. Please refer to Council Minutes for adopted resolution.

RECOMMENDATION:

PURSUANT to the report of the Manager, Bylaw Services, and the Manager,
Business Services, dated March 22, 2017, entitled “Business Licence Application
for LotusLand Cannabis Club at 148 East 2nd Street (Marijuana Dispensary)”:

THAT the 2017 Business Licence Application from Jason Toback and Shane
Escher, doing business as “LotusLand Cannabis Club” at 148 East 2nd Street, for
a Retail Merchant – Medicinal/Recreational Cannabis business be refused,
having considered the recommendation and reasons provided by the Manager,
Bylaw Services and the Manager, Business Services.

AND THAT the report of the Manager, Bylaw Services and the Manager,
Business Services, dated March 22, 2017, entitled “Business Licence Application
for LotusLand Cannabis Club at 148 East 2nd Street (Marijuana Dispensary)”
remain in the Closed Session.
ATTACHMENTS:

1. LotusLand Cannabis Club at 148 East 2nd Street – 2016 Business Licence application submission (#1495626);
2. Letter to LotusLand Cannabis Club dated November 3, 2016 (#1461985);
3. Letter to LotusLand Cannabis Club dated November 16, 2016 (#1467160);
4. Letter to LotusLand Cannabis Club dated November 28, 2016 (#1470045); and
5. Photographs of the LotusLand Cannabis Club business at 148 East 2nd Street (#1497753)

PURPOSE:

To obtain Council’s approval to refuse a business licence application from Jason Toback and Shane Escher, doing business as “LotusLand Cannabis Club” to operate a Retail Merchant – Medicinal/Recreational Cannabis business at 148 East 2nd Street. Pursuant to the City’s Business Licence Bylaw only Council has the authority to refuse the issuance of a business licence.

DISCUSSION:

LotusLand Cannabis Club is operating a street level retail commercial space at 148 East 2nd Street selling cannabis and cannabis infused/related products. The Licensee, Mr. Toback, opened at this location on November 2, 2016 without a Business Licence and tenant improvements to the space were completed without permits.

Bylaw Services staff inspected the business location on November 2, 2016 and determined the business was operating without a business licence. Approximately one hour after the inspection the owners of LotusLand Cannabis Club submitted an on-line business licence application (Application BUS0026119). A copy of the business licence application is provided as Attachment #1.

A letter dated November 3, 2016 (Attachment #2) was sent by the City advising that the business was operating without a business licence, that the business activities were not legal and to cease operations immediately. A second letter dated November 16, 2016 (Attachment #3) was sent requiring the business owners to “Cease and Desist” the business operations at 148 East 2nd Street or face further enforcement action.

A letter from the Planning Technician dated November 28, 2016 (Attachment #4) was sent to the operators advising that their business licence application was rejected as part of the Planning Division Zoning Bylaw review of the business licence approval process. In the letter the grounds cited for the rejection are accurate, however the staff person erred in sending this letter as the decision/authority to refuse a business licence application rests with Council. Staff have taken steps to change the business licence approval process to ensure this type of error does not occur again.
The business premises consists of display cases showing different types of dried marijuana strains for sale, a variety of products marked as marijuana (capsules, oils, vials and prepackaged goods) and signage with pricing for the various products (photographs are provided in Attachment #5). Bylaw Services staff issued eight tickets between January 3, 2017 and January 11, 2017 to LotusLand Cannabis Club for operating without a valid business licence; marijuana and marijuana products were displayed for sale on each day a ticket was issued. During multiple inspections the bylaw officer issuing the tickets witnessed transactions between store staff and patrons.

The Federal Government does not permit the distribution or sale of cannabis or cannabis products through retail storefront operations; such distribution remains an offence under the Controlled Drugs and Substances Act (CDSA). The illegality of the business operation precludes any ability for the City to issue a licence.

On February 23, 2017 the Manager, Bylaw Services and the Manager, Business Services held a Business Licence Review meeting with the owner to present the City’s concerns with the existing operation of the business, to hear the owner’s response to those concerns and to discuss solutions to resolve those concerns. The business owner indicated in this meeting that he understood why the City was taking this position but he feels that his business is providing a need for people using medical marijuana through improved access to the product and a more organic product that that provided by the Federal government through the federally-approved production facilities. The owner was given until March 1, 2017 to respond to the request to voluntarily cease the marijuana component of his business. At the February 23 meeting the owner indicated that it is unlikely that they would cease this aspect of the business but would like the additional time to further consider the idea. As of March 1, 2017 no further response was received from the owner.

Having considered the above information, the Manager, Bylaw Services and the Manager, Business Services are satisfied that Jason Toback and Shane Escher, doing business as “LotusLand Cannabis Club”, are operating without a business licence and are operating contrary to the provisions of the Controlled Drugs and Substances Act and the Business Licence Bylaw. The unlawful nature of the business precludes the issuance of a business licence; therefore the only legal option available to Council is to refuse to issue a business licence to LotusLand Cannabis Club to operate a Retail Merchant – Medicinal/Recreational Cannabis business. Should Council adopt the staff recommendation then the business would be advised of Council’s decision and their right to present a delegation to ask Council to reconsider their decision at a future meeting.

There is no written procedure or City policy regarding how to process a request for an unlawful business, nor is there any reference in the Community Charter regarding how a municipality should respond to this type of application. To ensure procedural fairness is provided to the business licence applicant, it is recommended that the applicant be provided an opportunity to appeal Council’s decision. In light of the single legal
outcome available to Council a true “Show Cause” style of hearing is not considered by staff to be appropriate.

As such, staff recommend that a suitable process is to allow the applicant to request Council reconsider their decision by appearing as a delegation in a regular Council meeting. The reconsideration process would be similar to the process used when a property owner requests reconsideration of a Council decision to issue a Remedial Action Order against their property. The proposed process would provide the business licence applicant with 14 business days from the date of the notice letter to submit their written appeal to the City asking for reconsideration of Council’s decision.

If the business continues to operate without appealing, or is unsuccessful in their request to have Council reconsider its decision, then the City would be in a position to take legal action to enforce Council’s decision. Ensuring procedural fairness and having an appeal process strengthens the City’s position should further legal action be required. A civil court injunction would be the only method by which the City could compel closure of the business should the applicant continue operating.

FINANCIAL IMPLICATIONS:

The only cost to this point has been in regular staff time. Should Mr. Toback, (doing business as “LotusLand Cannabis Club”) ask for reconsideration then staff time will be required to prepare for the delegation to Council. These staff costs are not expected to be significant and will be covered through departmental operating budgets. In the event that Council chose to proceed with an injunction legal costs would be incurred. Staff would report back prior to taking legal action and provide an estimate at that time.

INTER-DEPARTMENTAL IMPLICATIONS:

If the operator exercises their right to appeal for reconsideration then additional staff time in 'City Clerks’ Office will be required to organize and schedule the delegation before Council.

This report was endorsed by the Director’s Team on March 7, 2017.
CONCLUSION:

The City is pursuing actions to give a clear message that until such time as marijuana sales become legal and regulated, the business is not welcomed in the City. The recommendations are consistent with the direction. Therefore, the Manager, Bylaw Services and the Manager, Business Services recommend that the 2017 Business Licence application from Jason Toback and Shane Escher, doing business as “LotusLand Cannabis Club”, to operate a Retail Merchant – Medicinal/Recreational Cannabis business at 148 East 2nd Street be refused pursuant to the reasons outlined in this report.

RESPECTFULLY SUBMITTED:

Guy Gusdal
Manager, Bylaw Services

Larry Orr
Manager, Business Services

GG/eb
**Business Licence Application Form**

**Application Type:** New  
**Home Based Business:** No

**Business Information**
- **Business Name Corporate or Person:** LotasLand canibus club
- **Email:** universalpainter@hotmail.com  
  **Telephone:** 77888572800
- **Business Location:** 148 east 2nd street
- **City:** North Vancouver  
  **Province:** BC  
  **Postal Code:** V7t1c3

**Mailing Address:** 148 east 2nd street
- **City:** North Vancouver  
  **Province:** BC  
  **Postal Code:** V7t1c3

**Applicant Information**
- **Primary Applicant's Name (Full):** Jason Toback
- **Primary Applicant's Email:** universalpainter@hotmail.com  
  **Primary Applicant's Telephone:** 77888572800
- **Primary Applicant's Address Home:**
  - **City:**

- **Secondary Applicant's Name Full:**
- **Secondary Applicant's Email:**
- **Secondary Applicant's Telephone:**
- **Secondary Applicant's Address Home:**
  - **City:**
  - **Province:**
  - **Postal Code:**

**Has Applicants ever had a licence refused revoked suspended or otherwise denied or terminated by this or any other Municipality:** No

**Business Details**
- **Business Description:** WE are a medical herb dispensary we provide alternative health solutions, including medical cannabis products, we also plan to have onsite professionals associated with our business
- **Total Floor Space (Sq. Ft.):** 2800 sq ft  
  **Total Floor Space (Sq. M.):** 853.44 sq m
<table>
<thead>
<tr>
<th>No. of Persons Engaged in Business: 1</th>
<th>Trades T.Q. # (Contractors):</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Vending Machines: 0</td>
<td>Vending Machines - Machine/Type/Price: 0</td>
</tr>
<tr>
<td>Bldg Rentals Residential: 0</td>
<td>No. of Suites/Rooms: 5</td>
</tr>
<tr>
<td>Bldg Rentals Commercial: 0</td>
<td>Sq. M./Sq. F.t:</td>
</tr>
</tbody>
</table>
November 3, 2016

Lotusland Cannabis Club
C/o Shane Escher and Jason Toback, owners
148 East 2nd Street
North Vancouver, BC V7M 1C3

Dear Sirs:

Re: Sale or dispensing of Marijuana at your business located at 148 East 2nd Street
in the City of North Vancouver (Property legally described as Lot F, Block 141, District Lot 274, Plan 17913 – Parcel ID # 007-241-330)

On November 2, 2016 at approximately 5:30pm City staff inspected your business at the above noted location to determine if marijuana was being sold and/or dispensed in the business premises. The inspection confirmed that marijuana was being sold and/or dispensed from your business premises.

As the business owners, this letter is to advise that the retail dispensing or sale of medical marijuana is not permitted by Health Canada. Furthermore, due to the federal regulations the City of North Vancouver is precluded from issuing a business licence.

At 6:24 pm on November 2, 2016 the City of North Vancouver received an on-line Business Licence application for a Retail Merchant business. Please be advised that the City has also not received any permit applications or issued any permits for the tenant improvements that were constructed in the business premises.

Please be advised that this Notice requires you to Cease and Desist the sale and/or dispensing of marijuana immediately within your business premises at 148 East 2nd Street in the City of North Vancouver. Failure to comply with this Notice may result in the City pursuing further enforcement action.

Should you have any questions regarding this Notice, please contact me at 604.983.7307 or via e-mail at ggusdal@cnv.org.

Sincerely,

Guy Gusdal
Manager, Bylaw Services
City of North Vancouver

Cc: L. Orr, Manager, Business Services
Superintendent Chris Kennedy, Officer-In-Charge, North Vancouver RCMP Detachment
Property Owner: AMPCO Holdings Ltd., 7735 Thornhill Drive, Vancouver, BC, V5P 3T4
November 16, 2016

Lotusland Cannabis Club
C/o Shane Escher and Jason Toback, Owners
148 East 2nd Street
North Vancouver, BC V7M 1C3

Dear Sirs:

Re:  Sale or dispensing of Marijuana at your business located at 148 East 2nd Street in the City of North Vancouver (Property legally described as Lot F, Block 141, District Lot 274, Plan 17913 – Parcel ID # 007-241-330)

On November 15, 2016, a Bylaw Enforcement Officer inspected your business at the above noted location to determine compliance with my letter of November 3, 2016 requiring you to Cease and Desist the sale or dispensing of marijuana from the business premises. The inspection revealed that dried marijuana continues to be sold/dispensed from your business premises.

As stated in my November 3, 2016 letter, the retail dispensing or sale of medical marijuana is not permitted by Health Canada. Furthermore, you have only applied for a Business Licence to operate; you have not obtained any approval to operate a business. In addition, please be advised that staff are precluded from issuing a business licence for the sale or dispensing of marijuana in any form.

You are required to Cease and Desist the sale and/or dispensing of marijuana immediately within your business premises at 148 East 2nd Street in the City of North Vancouver. Failure to comply with this Notice shall result in the City pursuing further enforcement action. Furthermore, the City has yet to receive any permit applications for the tenant improvements completed in the unit.

Should you have any questions regarding this notice, please contact me at 604.983.7307 or via e-mail at ggusdal@cnv.org.

Sincerely,

Guy Gusdal
Manager, Bylaw Services

cc:  L. Orr, Manager, Business Services
   Superintendent Chris Kennedy, Officer-In-Charge, North Vancouver RCMP Detachment
   Property Owner: AMPCO Holdings Ltd., 7735 Thornhill Drive, Vancouver, BC, V5P 3T4
November 28, 2016

VIA EMAIL universalpainter@hotmail.com

Jason Toback

Dear Applicant:

Re: Business License Application for LotusLand Cannabis Club at 148 East 2nd Street, North Vancouver

This letter is in respect of your application for a Business License received on November 2, 2016 for LotusLand Cannabis Club. As a routine process, your application has been referred to our Planning Division for reference to the Zoning Bylaw. In this respect, your application to operate a marijuana retail store from these premises has been rejected.

Marijuana is a federally-regulated substance and as such, the sale of the plant and its derivatives must be licensed by Health Canada under the Access to Cannabis for Medical Purposes Regulations (SOR/2016-230). Uses that are not compliant with federal regulations cannot be permitted anywhere in the City of North Vancouver and so I am unable to approve your Business License application.

To inquire about permitted uses in the City of North Vancouver, please contact Community Development at 604-990-4220 or devel@cnv.org.

Yours truly,

Emily Macdonald
Planning Technician

Cc. Guy Gusdal, Manager, Bylaw Services
    Taryce Wong, Business License Inspector
Photo’s of Product Display Cases in the LotusLand Cannabis Club Dispensary Business at 148 East 2nd Street, North Vancouver, BC.

Picture #1 Store interior looking East

Picture #2 – Store interior looking West
Picture # 3 - Appears to be packaged dried marijuana

Picture # 4 - Appears to be packaged dried marijuana
Picture # 5 – other apparent marijuana/cannabis products

Picture # 6 – other apparent marijuana/cannabis products
Picture # 7 - other apparent marijuana/cannabis products

Picture # 8 – other apparent marijuana/cannabis products
Picture # 9 – other apparent marijuana/cannabis products

Picture # 10 – Label for what appears to be packaged dried marijuana
Picture # 11 - Appears to be packaged dried marijuana

Picture # 12 – other apparent marijuana/cannabis products
Picture # 13 - other apparent marijuana/cannabis products

Picture # 14 - other apparent marijuana/cannabis products
Picture # 15 – other accessory products

Picture # 16 – other apparent marijuana/cannabis products
Picture # 17 - Appears to be packaged dried marijuana

Picture # 18 – label of what appears to be packaged dried marijuana
**Pricing:**

**Gram**
- $10 - gram regular
- $12 - gram exotic

**Eighth**
- $30 - regular eighth
- $35 - exotic eighth

**Quarter**
- $60 - 2 regular eighths
- $70 - 2 exotic eighths

**Half Ounce**
- $110 - 4 regular eighths
- $115 - 3 regular eighths 1 exotic eighth
- $120 - 2 regular eighths 2 exotic eighths
- $125 - 1 regular eighth 3 exotic eighths
- $130 - 4 exotic eighths

After 4 eighths $10 is taken off.

**Ounce**
- $210 - 8 regular eighths
- $215 - 7 regular eighths 1 exotic eighth
- $220 - 6 regular eighths 2 exotic eighths
- $225 - 5 regular eighths 3 exotic eighths
- $230 - 4 regular eighths 4 exotic eighths
- $235 - 3 regular eighths 5 exotic eighths
- $240 - 6 regular eighths 6 exotic eighths
- $245 - 1 regular eighths 7 exotic eighths
- $250 - 8 exotic eighths

After 8 eighths $30 is taken off.

**Deals:**
- Regular 5 dollar pre-rolls - 5 for $20 (only if they ask for it)
- 20mg CBD capsules and 55mg the capsules
  - 1-29 capsules $3 each
  - 30 capsules or more $2 each
  (when you buy 20 you get 10 for free)
- If a strain is out of eighths you would combine grams.
  - Regular pricing 4 grams for $35
  - Exotic pricing 4 grams for $42
- This deal only applies when its the same strain.
- You can't mix and match.
- Quartets must be two eighths or 7 grams of the same strain, not 7 grams of different strains.
Picture # 20 – accessory products

Picture # 21 - Appears to be packaged dried marijuana