SUBJECT: Feasibility of Regulating and Licensing Establishments Selling Non-Prescription Drug Equipment (PED09240) (City Wide)

RECOMMENDATION:

(a) That no further action be taken with respect to the regulation or licensing of establishments selling non-prescription drug equipment

(b) That the outstanding business item titled “Regulating and Licensing Establishments Selling Non-Prescription Drug Equipment” be identified as complete and removed from the Economic Development and Planning Committee’s Outstanding Business List.

EXECUTIVE SUMMARY:

At the November 4, 2008 meeting of the Economic Development and Planning Committee staff were directed “to consider the issue of regulating and licensing establishments selling non-prescription drug equipment” and to report back.

This report fulfils that directive and recommends no further action as the selling (but not possession) of instruments for illicit drug use is prohibited under Part XII.1 of the Criminal Code (Canada), and a municipality cannot re-enact criminal law legislation.
BACKGROUND:

At the November 4, 2008 meeting of the Economic Development and Planning Committee staff were directed “to consider the issue of regulating and licensing establishments selling non-prescription drug equipment and to report back”.

Municipal Law Enforcement staff have consulted with Legal Services respecting this matter and recommends no further action at this time for the following reasons:

- A municipality cannot re-enact criminal law legislation. The selling (but not the possession) of instruments for illicit drug use is prohibited under Part XII.1 of the Criminal Code (Canada). Accordingly, a prohibition is only enforceable by the Police under the Criminal Code.

- A by-law complementing the Criminal Code could possibly be used to regulate businesses selling such goods and to prohibit the most identifiable of drug paraphernalia and to restrict the display and/or sale. The difficulty however, and already being experienced by the Police in enforcing Part XII.1 of the Criminal Code, is that drug paraphernalia (or instruments for illicit drug use) covers a very wide range of goods and it would be very difficult to accurately define drug paraphernalia used for illicit drug use for enforcement purposes.

The sale of goods is considered retail under existing zoning by-laws and, therefore, as long as a retail store is a permitted use, the types of items would not be classified.

ANALYSIS/RATIONALE:

The Town of New Tecumseth (Alliston, Beeton, Tottenham) north of Toronto, appears to be the only Ontario municipality that has enacted a by-law to restrict the display of "drug paraphernalia" to inside a business premise and to restrict its sale to persons over 18. The New Tecumseth Licensing By-Law defines "drug paraphernalia" as:

"equipment, products of material of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, concealing, containing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance and includes but is not limited to pipes, bongs, tubes, rolling papers etc."

The dilemma is that because the New Tecumseth Licensing By-Law so broadly defines "drug paraphernalia", it could be interpreted to include everything from fertilizer to spoons such that it could require businesses from kitchen stores to greenhouses to alter their display of goods and to control sales.

Legal Services advises that such a by-law would appear to be unenforceable as a practical matter, and would not likely survive a legal challenge.
Staff could conduct further investigation and consult in detail with as the Hamilton Police Service and/or Council could write a letter to the Ministry of Health or the Attorney General requesting a more precise definition of drug paraphernalia used for illicit drug use for enforcement purposes. However, as the Criminal Code of Canada already covers this matter broadly, and as there are only a limited number of businesses that would be affected by such a by-law/regulation, staff recommend no further action at this time.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial: N/A  
Staffing: N/A  
Legal: N/A

**POLICIES AFFECTING PROPOSAL:**

N/A

**RELEVANT CONSULTATION:**

Staff from the Legal Services Division were consulted in the preparation of this report.  
Staff from the Zoning By-law Reform Section were consulted in the preparation of this report.

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line”, (community, environment, and economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

**Community Well-Being is enhanced.** ☑Yes ☐No

Efficient and effective licensing programs are essential to the health, safety and well being of the community.

**Environmental Well-Being is enhanced.** ☑Yes ☐No

Efficient and effective licensing programs are essential to the health, safety and well being of the community.

**Economic Well-Being is enhanced.** ☑Yes ☐No

Efficient and effective licensing programs are essential to the health, safety and well being of the community.
Does the option you are recommending create value across all three bottom lines?  
☒ Yes  ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?  
☐ Yes  ☒ No

MH/VO/dt