

BACKGROUND

At the March 19, 2019 Council meeting, resolution CC2019-96 was passed:

WHEREAS in their Audit Findings Report dated December 31, 2016 and presented to the Audit Committee on June 20th, 2017, the external auditors, as part of their verification of compliance with established travel and expense reimbursement policies, noted that "the City's policies permit the reimbursement of alcohol purchases under certain circumstances and our testing did identify instances of reimbursement of alcohol purchases. The reimbursement of alcohol beverages may expose the City to potential reputational and legal risks. In light of potential risk exposures, the City may wish to re-evaluate its policies with respect to alcoholic beverages."

AND WHEREAS recreational cannabis became legal in Canada on October 17th, 2018;

AND WHEREAS the legalization of recreational cannabis impacts municipal programs and services as well as policy and business process considerations, including substance use and fitness for duty in the workplace and the reimbursement of expenses;

AND WHEREAS in light of this most recent legislation and the recommendations of its external auditors, it would seem appropriate for the City of Greater Sudbury to review its policies with respect to alcoholic beverages, recreational cannabis, and the reimbursement of expenses for those substances;

THEREFORE BE IT RESOLVED that the City of Greater Sudbury direct staff to bring forward a report for Council's consideration in the spring of 2019, with recommendations to either eliminate or strictly limit the reimbursement of expenses for alcohol and cannabis to very specifically defined "business hospitality expenses".

The Payment of Expenses for Members of Council and Municipal Employees has been in effect since January 26, 2016. As referenced above, KPMG included a recommendation as part of its audit findings report issued in June 2017.

A) Current City of Greater Sudbury Policies

The City has some policies and guidance relating to consumption and/or reimbursement of expenses relating to alcohol and cannabis.

1. Payment of Expenses for Members of Council and Municipal Employees (by-law)

Schedule B - Eligible Expenses – Councillor Office Expense Budgets provides the following guidance:

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11. Meeting expenses (excluding alcohol) such as snacks, venue set-up and external facilitators.
12. Business hospitality expenses incurred in the conduct of City business for food and beverages (including alcohol) related to business meals and/or receptions with constituents, volunteers, business contacts, Municipal Employees, employees of a City agency or board, representatives of other levels of government, international delegations or visitors.

No definitions are provided for meeting and business hospitality.

2. Substance Use and Fitness for Duty in the Workplace Policy

The City of Greater Sudbury has introduced a corporate Substance Use and Fitness for Duty in the Workplace Policy effective October 17, 2018 that includes recreational cannabis use. The policy clearly indicates in section 3.5 that:

Employees must not use, distribute or offer for sale any alcohol, recreational cannabis, illicit drugs and/or drug paraphernalia while at work. All Employees operating any CGS vehicle or equipment are prohibited from having any presence of alcohol in their blood. All Employees operating any CGS vehicle or equipment are prohibited from having any presence of cannabis or other drugs that can be detected by an oral fluid screening device.

The workplace is defined as “all land, property, structures, installations, offices, job sites, vehicles, and equipment owned, leased, operated or otherwise directly controlled by CGS and/or used for CGS business”.

Section 3.10 provides the General Managers or their designate the ability to “approve the consumption of alcohol for CGS sponsored staff functions, work-related events or outings.” The following requirements must be met:

- ✓ The function is managed such that the risk of accidents, injury, harmful situations, etc. is limited or minimal and a written plan is in place;
- ✓ Alternate forms of transportation for Employees leaving the event or function including taxis and public transit are available;
- ✓ The Employee remains fit for duty while at the work-related function/event and when returning to their workplace;
- ✓ The employee does not hold a safety-sensitive position.

Section 4.1.3 of the policy also indicates the City's responsibility as the Employer to:

- ✓ “Firmly and fairly enforce the principle that its Employees must report and remain fit for work while conducting CGS business in a CGS workplace or elsewhere.”

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The policy also provides some examples of effects:

Category	Examples of general effects
Alcohol	Impaired judgement, slowed reflexes, impaired motor function, sleepiness or drowsiness, coma, overdose may be fatal
Cannabis	Distorted sense of time, impaired memory, impaired coordination

3. Employee Handbook

The Employee Handbook provides direction relating to alcoholic beverages.

Employees found consuming, under the influence, or in the possession of alcoholic beverages while on CGS property, at CGS work sites, while operating or a passenger in any CGS vehicle or equipment, or during working hours, will be under immediate suspension and be sent home. Further disciplinary action will then be determined by the Employer. During unpaid lunches, Employees are also expected to use restraint, as returning to work under the influence of alcohol is also a serious offence subject to discipline.

4. Travel and Business Expenses Policy

Section 5.3 Ineligible for Employees indicates that alcoholic beverages are an ineligible expense, except where these form part of a legitimate hospitality expense and must be approved by the CAO or ELT Member.

5. Alcohol Risk Management Policy (by-law)

This policy is designed to:

- ensure that there are responsible management practices at social events held in municipally owned facilities where alcohol use is permitted,
- prevent alcohol related problems at these events,
- minimize the legal responsibility of facility users and volunteers as well as the Municipality's legal liability.

Some items to highlight:

- 5.2 Provision of low alcohol beverages and food items must be provided. Food must be sufficient to serve the number of persons attending; snacks are not considered food for this purpose.
- 5.3 Standard alcohol content beverages: extra alcohol content drinks are not permitted, the standard is 5% for beer, 12% for wine and 40% for liquor.
- 5.4 Alcohol marketing practices: marketing practices which encourages increased consumption such as oversized drinks, double shots of alcohol, volume discounts and unattended free alcohol are not permitted.

5.9 Safe transportation: the authorized designate shall be responsible for promoting safe transportation options for all the drinking participants (designated driver, taxi, etc).

6. Benefit Coverage

The City's current health care plan does not provide for the reimbursement of medical cannabis as it is not considered a prescription drug with a Drug Identification Number (DIN) and could only be added as an optional benefit. The City's benefits provider will be launching optional coverage, for interested plan sponsors, to permit the reimbursement of medical cannabis costs for limited conditions/symptoms.

Medical cannabis is an eligible medical expense that can be claimed on an individual's tax return (lines 330 and 331) as per Canada Revenue Agency. Medical cannabis is not required to be reimbursed through private health care benefits.

B) Information from other municipalities

1) Reimbursement of alcohol as a business hospitality expense

City staff surveyed other municipalities and located additional municipal policies that referenced the reimbursement of alcohol.

Item	Number
Municipalities that do not reimburse alcohol	8
Municipalities that do reimburse alcohol with restrictions	6

See Appendix A – Summary of Information for additional details.

2) Reimbursement of cannabis as a business hospitality expense

None of the municipalities surveyed (11) reimbursed cannabis as a business hospitality expense. In addition, municipalities responded that cannabis was not considered when their policies were drafted and/or would not consider adding cannabis as an eligible expense.

3) Requirement to include name of attendees and/or group/affiliation where meals or hospitality were provided.

While reviewing other municipal policies, staff noted additional requirements relating to meals and hospitality. The requirement was to document the purpose of the meeting and/or hospitality and the attendees and/or their affiliation.

See Appendix A – Summary of Information for additional details.

4) Definitions

As Resolution CC2019-96 requests recommendations to either eliminate or strictly limit the reimbursement of expenses for alcohol and cannabis to very specifically defined "business hospitality expenses" staff reviewed other municipal policies to identify potential definitions that could be used to formulate the City's definition for these categories.

See Appendix A – Summary of Information for additional details for examples of definitions.

C) Additional risk, legal and other considerations

If a Council Member or an employee is buying alcohol for themselves at a licensed establishment then the liability for injury or damage to others falls on the licensed establishment. The liability for the injury or damage to the Council Member or employee falls to the municipality and will be managed by Human Resources and the Workers Safety Insurance Board.

If a Council Member or employee pays for alcohol and serves this to another person, liability for that person is with the City. Even if the person then chooses to purchase more alcohol on their own, the City can be held accountable for any liability that may arise as the City would have been part of the string of events that caused that person to consume alcohol.

There is a concept of "host" liability which can be categorized as: commercial (licensed establishments), social and employer. There is a duty of care that arises when parties in a proximate relationship and injury to a party is reasonably foreseeable (not fit to drive, duty, etc). The duty of care may be limited or negated based on circumstances. In determining social host liability the Courts have relied on the existence of a special relationship between the host and the injured party, evidence of impairment when guests leave the social event and reasonable foreseeability that they pose a threat to themselves and others.

As for cannabis, the Province of Ontario restricts the maximum amount of cannabis purchased up to 30 grams at one time for personal use only.

D) Recommendations

1) Reimbursement of alcohol as a business hospitality expense

Options

1. That the City of Greater Sudbury continues to permit the reimbursement of alcohol, with the following policy modifications:
 - Additional guidance on when alcohol may be provided such as:
 - Alcohol may only be provided at community events of a social, protocol or ceremonial nature involving large groups (more than 10 people). When alcohol is provided, it must be done in a responsible manner, at a licenced establishment, and in such manner as to always provide food when alcohol is available.
 - The provision of details regarding individuals attending business hospitality events and meetings where expenses will be paid by the City:
 - Identify business purpose and date for the expense, and
 - Original itemized receipt indicating items consumed, and total cost and
 - The name and location of the establishment, and
 - Full name of all participants attending meeting or business hospitality, as well as their affiliation if they are representing an organization or business. The names of individuals receiving a benefit as taxpayers are paying costs on their behalf are not confidential. The names of attendees would not be required for community events of a social, protocol or ceremonial nature or events involving large groups (more than 10 people), or school related events where minors are receiving hospitality.
 - Revise/add Definitions (see Appendix C for other municipal examples):

Business hospitality: a gathering/function that includes constituents, volunteers, representatives of other levels of government, international delegations or visitors for the purpose of commemorating, celebrating or raising awareness or development partnerships/ business relationships.

Eligible expenses: cost for food, beverage, accommodation, transportation and other amenities. **Council to determine if alcohol is to be included.**

Meeting: business meetings/receptions that includes only Members of Council, Municipal Employees, employees or officials of a governing body of a local board of the City for educational or business purpose.

Eligible expenses: includes items such as snacks, food, beverage, venue set-up and external facilitators and excludes alcohol.

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Recommended practices if alcohol is provided to guests:

- Be up front regarding expectations, ensure clear heads to discuss business;
 - Let the guest choose the place or select a location that serves food;
 - Know your limit, stay within it (fit for duty);
 - Err on the side of caution, be responsible and plan ahead and ensure there is a safe way home for yourself and your guests – it protects you, the guest and the City.
2. That the City of Greater Sudbury no longer reimburses the purchase of alcohol. If alcohol part of the business hospitality it is recommended that Members of Council and Employees utilize licensed establishments so that the risk belongs with the licensed establishment serving the alcohol to the individuals.
 3. That the City of Greater Sudbury continues its existing practice to reimburse the purchase of alcohol in accordance with the existing policy.

2) Reimbursement of cannabis as a business hospitality expense

Based on the above information it would be illegal for the City to purchase recreational cannabis for other parties and therefore should not reimburse the purchase of recreational cannabis as a business hospitality expense. The Payment of Expenses by-law will be updated indicating that cannabis is not an eligible expense for business hospitality.

3) Changes of an administrative nature

With amendments being sought regarding alcohol and cannabis, staff will incorporate changes to the Payment of Expenses by-law to:

- Add in wording to more clearly reflect that the City wants to ensure that expenses incurred and demonstrate that the City follows its strategic plan, that expenses, and reporting of such are “Responsive, Fiscally Prudent, Open Governance: Focus on openness, transparency and accountability in everything we do.”
- Add in wording to support the implementation of the Sale of Information Technology Equipment Policy which was approved on March 9th, 2017.
- Update Schedule B – Eligible expenses – Councillor Office Expense Budgets to improve the description of office supplies.

These changes result in the City providing further policies and guidelines to ensure the City conducts business in an open, transparent and accountable manner in compliance with the Policy regarding accountability and transparency.

Payment of Expenses for Members of Council and Municipal Employees

List of Resources

By-law 2007-299 Policy regarding accountability and transparency

<https://www.greatersudbury.ca/inside-city-hall/open-government/open-government-pdfs/by-law-delegation-of-powers/>

By-law 2016-16F Payment of Expenses for Members of Council and Municipal Employees

<https://agendasonline.greatersudbury.ca/index.cfm?pg=feed&action=file&attachment=15240.pdf>

Municipal Long-Term Financial Plan dated April 13, 2017 presented at Council April 25, 2017

<http://agendasonline.greatersudbury.ca/index.cfm?pg=feed&action=file&attachment=17844.pdf>

Audit Findings Report for the year ended December 31, 2016 presented at Finance and Administration Committee June 20, 2018

<http://agendasonline.greatersudbury.ca/index.cfm?pg=feed&action=file&attachment=19307.pdf>

Alcohol Risk Management Policy

<https://www.greatersudbury.ca/city-hall/by-laws/by-law-pdfs-en/c-by-law-2003-209/>

Ministry of Transportation

<http://www.mto.gov.on.ca/english/safety/impaired-driving.shtml>

The Cannabis Statute Law Amendment Act, 2018

<https://www.ontario.ca/laws/statute/S18012>

Regulation 468/18

<https://www.ontario.ca/laws/regulation/r18468>

Ontario Cannabis Laws

<https://www.ontario.ca/page/cannabis-laws#section-2>