

DATE: May 6, 2019**FILE:** 3350-20 / CP 1CV 19**TO:** Chair and Directors
Electoral Areas Services Committee**FROM:** Russell Dyson
Chief Administrative OfficerSupported by Russell Dyson
Chief Administrative Officer**R. Dyson****RE:** Bylaw Updates Relating to Cannabis Cultivation, Processing and Sales

Purpose

The purpose of this report is to recommend the initiation of a review and update of the policies of the Official Community Plan (OCP) and the provisions of the Planning Procedures and Fees Bylaw and the Building Bylaw regarding cannabis.

Recommendation from the Chief Administrative Officer:

THAT the Comox Valley Regional District Board direct staff to report back to the board with a recommended bylaw update and communication plan for updating Bylaw No. 337 being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014”, Bylaw No. 328 being the “Comox Valley Regional District Planning Procedures and Fees Bylaw No. 328, 2014” and Bylaw No. 142 being the “Comox Valley Regional District Building Bylaw No. 142, 2011”, as the bylaws relate to cannabis (CP 1CV 19).

Executive Summary

- The new federal *Cannabis Act* creates licencing categories that include cultivation, processing and sales (medical) and the provincial *Cannabis Control and Licensing Act* creates licencing for cannabis retail stores.
- Currently, the OCP, Bylaw No. 337 being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014” only considers “medical marihuana production facilities” as it was defined under the now-repealed *Marihuana for Medical Purposes Regulations*. An update to the OCP will provide direction for zoning regulations and considerations for applications relating to the newly legalized cannabis uses.
- As the new provincial licensing process for retail stores requires the local government to gather the views of residents and allows for the imposition of a fee to cover associated costs, Bylaw No. 328 being the “Comox Valley Regional District Planning Procedures and Fees Bylaw No. 328, 2014”, should be updated to impose that fee and specify a minimum level of consultation prior to consideration of a cannabis retail sales application.
- The Building Bylaw, Bylaw No. 142 being the “Comox Valley Regional District Building Bylaw No. 142, 2011”, can be reviewed regarding how it relates to a cultivation of cannabis use.
- Staff recommends updating these bylaws as they relate to cannabis.

Prepared by:

Concurrence:

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Background/Current Situation

On May 14, 2018, during consideration of a zoning amendment bylaw to prohibit cannabis cultivation, processing and sale, the Electoral Areas Services Committee adopted the following resolution:

“THAT staff report back to the Electoral Areas Services Committee with a fulsome analysis of options regarding regulations once the Cannabis Act and related regulations have been approved and made available to the public.”

The *Cannabis Act* and its regulations came into force on October 17, 2018. They require a person to hold a licence issued by Health Canada in order to work with cannabis. The licence can be issued under one of the following categories:

- Cultivation (standard)
- Cultivation (micro-cultivation)
- Cultivation (nursery)
- Processing (standard)
- Processing (micro-processing)
- Sale (medical)
- Analytical testing
- Research
- Cannabis drug licence

The province, under the *Cannabis Control and Licensing Act*, issues the licencing for:

- Cannabis retail stores

Before submitting an application for a licence under a cultivation, processing or sale category, Section 7 of the *Cannabis Regulations* requires the applicant to notify the local government, the local fire authority and the local police detachment (licencing for analytical testing, research and cannabis drugs do not involve local governments). If the proposed cultivation, processing or sale of cannabis is not consistent with the local government’s Zoning Bylaw, then the licence may not be approved.

Context

Since legalization of cannabis by the federal government, Comox Valley Regional District (CVRD) staff have received numerous enquiries from members of the public assessing the feasibility of cultivation and sale in the rural areas. Because the Zoning Bylaw prohibits such activity, an application for a zoning amendment or Temporary Use Permit (TUP) is required for any property owner before they can apply for a federal or provincial cannabis licence. To date, two such applications (all TUP applications) have been submitted, all for “micro-cultivation” which is a cultivation licence limited to a maximum surface area of 200 square metres. In reviewing applications staff takes direction from the objectives and policies of the OCP. Because the OCP contemplated cannabis only in the form of “medical marihuana production facilities” (MMPFs), which were large, secure facilities (though none were constructed in the Comox Valley), there is

uncertainty in how smaller-scale proposals will be received in areas where the larger-scale production facilities were not permitted. Updating the OCP bylaw will provide a policy basis for future zoning regulations and clarity for the public regarding how applications will be reviewed.

Official Community Plan

The OCP was adopted in 2014 at a time when cannabis production and distribution was regulated by the *Maribuana for Medical Purposes Regulations*, and consequently, the OCP only speaks to MMPFs (equivalent to the new “standard cultivation” category) without consideration to micro-cultivation, processing or sale of cannabis. Policy 21.(2) of the OCP currently directs MMPFs to be considered only through a rezoning process and only in the Agricultural Areas and Resource Areas. The Agricultural Areas is a designation that overlaps with the *Agricultural Land Reserve* (ALR) and the Resource Areas is a designation that generally covers the areas used for forestry, primarily west of the Inland Highway. Policies 58.(3) and 62.(2) are the corresponding Agricultural Areas and Resource Areas policies that state the considerations for how a rezoning proposal will be reviewed.

The new framework, with allowances for smaller cultivation facilities with less requisite investments, makes operating such facilities feasible as accessory buildings in rural neighbourhoods, expanding existing legal (operated under a personal medical licence) facilities, or bringing illegal existing facilities into compliance.

Retail sales and processing of cannabis is consistent with the OCP’s policies for commercial and industrial uses. Applications can be processed under those existing policies. While the OCP generally discourages the creation of new commercial and industrial areas outside of the Settlement Nodes, there are numerous existing commercial and industrial zoned properties where these uses may occur.

Agricultural Areas and Agricultural Land Reserve

Under the new framework, the ALR Regulations now allow cannabis cultivation, regardless of scale, but has conditions regarding buildings in which it is grown: they must have a base consisting entirely of soil or be a pre-existing, unaltered buildings constructed for the purpose of growing crops inside. BC Assessment currently does not accept cannabis production as a qualifying agricultural use for the purposes of evaluating farm status under the *Assessment Act*. However, within the ALR, cannabis cultivation is a “farm operation” as defined by the *Farm Practices Protection (Right to Farm) Act* for which nuisance (e.g. odour, noise) complaints are reviewed by the BC Farm Industry Review Board (BC FIRB) and exempted from local government nuisance bylaws. In 2018 the BC FIRB accepted two cases involving odour from a cannabis operation and are currently studying normal farm practices in that industry.

If the proposal is not consistent with the ALR Regulation then a non-farm use application is required. This type of application is reviewed by the CVRD Board in order to provide comments and recommendations to the Agricultural Land Commission (ALC), though the board has the option of refusing to forward the application to the ALC. Staff review of ALR applications are based on OCP policies, including Policies 21.(2) and (3) noted above and those listed in the Agricultural Areas section.

Building Bylaw

In the past, the CVRD has received numerous nuisance complaints regarding existing cannabis cultivation operations, mostly regarding sub-standard building construction and odour. Mandatory building permits for new buildings, or buildings whose use has changed, help address this concern. The proposed review would also include consideration of how a cultivation of cannabis use would be affected by the Building Bylaw, Bylaw No. 142, and its provisions for farm buildings.

Planning Procedures and Fees Bylaw

Regarding sales of recreational cannabis, should an applicant apply to the province for a cannabis retail store licence, Section 33 of the *Cannabis Control and Licensing Act* requires the province to refer the application to the local government and not approve it until the local government provides a “*recommendation that the licence be issued*”.

This Act, combined with Section 13 of the *Cannabis Licensing Regulation*, requires the local government take into consideration a proposed store’s location and how it may affect nearby residents, and must use one or more of the following methods to gather the views of residents of an area:

- “(a) by receiving written comments in response to a public notice of the application;
- (b) by conducting a public hearing in respect of the application;
- (c) by holding a referendum;
- (d) by using another method the local government...considers appropriate.”

Section 35 allows the local government to impose fees, by bylaw, on an applicant in order to recover the costs incurred in assessing the application.

The proposed review of the Planning Procedures and Fees Bylaw would give consideration to the appropriate methods of gathering the views of residents and, based on those methods, the appropriate fee.

Policy Analysis

Section 471 of the *Local Government Act* (RSBC, 2015, c. 1) (LGA) authorizes a local government to establish an OCP for the purposes of stating objectives and policies to guide decisions on planning and land use management. Section 478 of the LGA requires subsequent zoning amendments to be consistent with the OCP. Section 475 requires the local government to consider opportunities for consultation, and specifically consider whether consultation is required with adjacent regional districts, municipalities, first nations, boards of education, improvement district boards, and provincial and federal governments and their agencies.

Options

The board may choose to:

1. Initiate a review and update of the Official Community Plan, Planning Fees and Procedures Bylaw and Building Bylaw as they relate to cannabis, or
2. Not initiate a process at this time.

Staff recommends option 1. Should the board choose to initiate the review process, staff will report back to the board with a recommended update and communication plan.

Financial Factors

These costs of the review process will be covered by the electoral areas planning function.

Legal Factors

The proposed review process is intended to ensure consistency of CVRD policies and regulations with relevant legislation that affects cannabis, including the federal *Cannabis Act* and the provincial *Cannabis Control and Licensing Act*, the *Cannabis Distribution Act* and the *Agricultural Land Commission Act*.

Regional Growth Strategy Implications

The Regional Growth Strategy includes goals and policies related to maintaining a high quality of life for residents, encouraging responsible expansion of the economic base of the Comox Valley, and promoting environmental best practices. Any proposed bylaw amendment must be consistent with this direction. The proposed bylaw amendment process includes referrals to the municipalities of Courtenay, Comox and Cumberland.

Intergovernmental Factors

Should the board choose to initiate the review process, staff will provide the board with a communication plan that include a list of agencies and First Nations which may be referred to for comment.

Interdepartmental Involvement

The review process includes referrals to relevant CVRD departments and their responses are incorporated into the considerations.

Citizen/Public Relations

Should the board choose to initiate the review process, staff will report back to the board with a recommended communication plan.