

**DATE:** May 8, 2018**FILE:** 3360-20 / RZ 1CV 18**TO:** Chair and Directors  
Electoral Areas Services CommitteeSupported by James Warren  
Acting Chief Administrative Officer**FROM:** James Warren  
Acting Chief Administrative OfficerJ. Warren**RE: Zoning Bylaw Amendment to Prohibit Non-Medical Cannabis Retail and Production**

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**Purpose**

To recommend an amendment to the Zoning Bylaw that would prohibit the production and distribution of non-medical cannabis in anticipation of federal legalization.

**Recommendations from the Chief Administrative Officer:**

1. THAT the board endorse the external agency referral list outlined in Appendix A;

AND THAT the board give first and second readings of Bylaw No. 537, being the “Comox Valley Zoning Bylaw, 2005, Amendment No. 74”, Appendix B attached to staff report dated May 8, 2018, which proposes an amendment to the Zoning Bylaw to address implementation of the legalization of cannabis;

2. 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.

**Executive Summary**

- The federal government is in the process of passing legislation to legalize non-medical cannabis through the *Cannabis Act* anticipated in August 2018. The focus is on the legalization of non-medical cannabis activities including production, distribution and consumption.
- Medical cannabis will still be regulated separately under the existing *Access to Cannabis for Medical Purposes Regulation (ACMPR)*, which may be revisited once the *Cannabis Act* has become law.
- On April 26, 2018, the province introduced cannabis legislation that lays out the regulatory framework for implementation of legalized cannabis in BC:
  - BC’s *Cannabis Distribution Act* (Bill 31-2018) will establish BC’s jurisdiction over wholesale distribution of cannabis and provide authority for government-run retail sales.
  - BC’s *Cannabis Control and Licensing Act* (Bill 30-2018) will establish licensing of private retailers, and restrictions on the possession, personal cultivation and consumption of cannabis by adults and prohibitions of minors.
- Although the planning department is in the process of a comprehensive review of the Zoning Bylaw, the new Zoning Bylaw will not be in place by August 2018 and therefore there could be a window under which production and retail could lawfully be established (i.e., retail use, agricultural use).

- The proposed approach is a two-step process of precautionary zoning with the “door closed” until federal and provincial regulations are established, and then the Comox Valley Regional District (CVRD) can “open the door” to provide access in locations and to the degree that is acceptable to the community.
- To address implementation of cannabis legalization, staff recommend that the Zoning Bylaw be amended specifically to prohibit non-medical cannabis production and retail to prevent non-medical cannabis related uses from being established as a lawful use. Any location that is proposed for the production or retail sale of non-medical cannabis would require a rezoning or a Temporary Use Permit.

Prepared by:

**R. Holme**

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Robyn Holme, MCIP, RPP  
Long Range Planner

Concurrence:

**A. Mullaly**

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Alana Mullaly, M.Pl., MCIP, RPP  
Acting General Manager of Planning and  
Development Services Branch

**Stakeholder Distribution (Upon Agenda Publication)**

None	
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**Background/Current Situation**

The federal government is in the process of adopting the *Cannabis Act* (Bill C-45) and related impaired driving amendments to the *Criminal Code* (Bill C-46). These new regulations focus on the legalization of non-medical cannabis activities including production, distribution and consumption.

Under the proposed federal framework the provinces have some flexibility around the legalization of non-medical cannabis. To this end, B.C. has introduced two bills, currently at first reading. The bills include direction on home cultivation limits, possession limits and public space consumption. Further, the bills include direction on the proposed public retail model and indicate that local governments will be authorized to prohibit non-medical cannabis uses, or to supplement regulations should they choose.

Despite the information the province has provided in relation to the intended approach for the implementation of legalized non-medical cannabis, the provincial legislation has not been approved. As changes may arise as the two implementing bills move through the house, the specifics of the regulatory framework that local government will be working within remain relatively unclear.

Medical Marijuana Regulatory Framework

Medical cannabis will still be federally regulated separately under the existing ACMPR. The CVRD Rural Official Community Plan (OCP) and Zoning Bylaw regulate medical cannabis; no changes are proposed to the OCP framework at this time. Presently, production of medical marijuana requires a site-specific zoning amendment and can proceed without an amendment to the OCP if the proposed location is in either the Agricultural or Resource designation. Staff is not proposing any change to the fundamentals of this framework.

### Non-Medical Cannabis Local Government Regulatory Framework

Generally, legal counsel has recommended that local governments initially establish a zoning bylaw prohibition of cannabis retail and production and then take time to work with their respective communities to establish a locally appropriate regulatory framework.

Prohibiting cannabis related uses prior to legalization of non-medical cannabis will ensure no potentially unwanted or inappropriate uses are established in the electoral areas. Given that the provincial bills were granted first reading on April 26, 2018 (and not made publically available prior to that date), staff recommend implementing interim zoning regulations to prohibit all non-medical cannabis related uses. This will allow sufficient time to review the provincial legislation (once approved), consult with citizens, stakeholders, external agencies and First Nations and develop CVRD appropriate changes to the Zoning Bylaw and other related bylaws, if necessary.

The proposed amendment to the Zoning Bylaw will be sufficient to prohibit the growing, cultivation, production, processing, storage and sale of non-medical cannabis in the electoral areas.

### Next Steps

An inter-departmental working group of staff in planning and development, bylaw compliance, community services branch, human resources and communications will be established to review the legislative framework and assess options for the CVRD. The working group will bring forward an implementation strategy with recommendations to the executive management team in June to receive further direction. Staff will report back to the Electoral Areas Services Committee (EASC) with a fulsome analysis of options regarding regulations once the *Cannabis Act* and provincial legislation are in place.

### **Policy Analysis**

Part 14 of the *Local Government Act (RSBC, 2015, c. 1) (LGA)* provides the framework for local government authority over planning and land use management.

### **Options**

The board may:

1. Authorize external agency referrals; grant first and second reading of the proposed Zoning Bylaw amendment; direct staff to report back to EASC with a fulsome analysis of options regarding regulations once the *Cannabis Act* and related regulations have been approved and made available to the public.
2. Maintain the status quo.

Staff recommends Option 1, as the proposed Zoning Bylaw amendment responds to legal advice, and mitigates potential risk related to not having regulations in place (i.e. establishment of lawful non-conforming uses).

### **Financial Factors**

There are no immediate financial implications associated with this report. The Zoning Bylaw amendment was prepared in house by staff. The CVRD will bear the expenses of staff time, newspaper advertisements and costs related to a public hearing.

### **Legal Factors**

The content of the proposed amendment has been reviewed by counsel as part of the comprehensive Zoning Bylaw review.

**Regional Growth Strategy Implications**

There are no directly related Regional Growth Strategy implications related to staff's proposed approach.

**Intergovernmental Factors**

The proposed two-step process of precautionary zoning with the “door closed” until federal and provincial regulations are established, and then a community-driven “opening of the door” to provide access in locations and to the degree that is acceptable to the community is akin to the approach that the Town of Comox has recently undertaken.

The City of Courtenay is in the process of reviewing options and may bring forward changes to their Zoning Bylaw later this spring. The Village of Cumberland already put a regulatory framework in place in 2016 to prohibit non-medical and medical cannabis retail use.

Appendix A contains a list of the external agencies to which the proposed Zoning Bylaw amendment be forwarded. The Zoning Bylaw amendment will also be referred to First Nations in accordance with the Referrals Management Program.

**Interdepartmental Involvement**

Planning staff have consulted with various CVRD departments including community parks, recreation services, communications, bylaw compliance and human resources. Departmental comments have been included in this report.

**Citizen/Public Relations**

The proposed bylaw amendment will be forwarded to Electoral Area A, B and C Advisory Planning Commissions (APC) and the Agricultural APC for comment. Public consultation will be undertaken in accordance with the LGA. If the board concurs with staff's recommendation to proceed to public hearing, staff will aim to schedule a hearing date in early July. This would enable the board to consider bylaw adoption prior to the anticipated August approval of the federal *Cannabis Act*.

Attachments: Appendix A – “External Agency Referral List”  
Appendix B – “Bylaw No. 537”

## Agency and First Nations Referral List

- The following agencies will receive a referral of the proposed Development Permit Area amendments.

### First Nations

<input checked="" type="checkbox"/>	K'ómoks First Nation	<input checked="" type="checkbox"/>	Homalco Indian Band
<input checked="" type="checkbox"/>	We Wai Kai Nation of the Laich-Kwil-Tach Treaty Society	<input checked="" type="checkbox"/>	Wei Wai Kum / Kwiakah First Nation of the Kwiakah Treaty Society

### Federal Departments and Agencies

<input type="checkbox"/>	Canadian Coast Guard	<input type="checkbox"/>	Public Works and Government Services Canada
<input type="checkbox"/>	Department of National Defence (CFB Comox)	<input checked="" type="checkbox"/>	RCMP
<input type="checkbox"/>	Fisheries and Oceans Canada	<input type="checkbox"/>	Transport Canada Navigable Waters
<input type="checkbox"/>	Indian and Northern Affairs Canada		

### Provincial Ministries and Agencies

<input checked="" type="checkbox"/>	Agricultural Land Commission	<input type="checkbox"/>	Ministry of Municipal Affairs & Housing
<input type="checkbox"/>	BC Assessment	<input type="checkbox"/>	Ministry of Forests, Lands and Natural Resource Operations & Rural Development
<input type="checkbox"/>	BC Parks	<input type="checkbox"/>	Ministry of Energy and Mines
<input type="checkbox"/>	BC Ferry Services Inc.	<input type="checkbox"/>	Ministry of Environment & Climate Change Strategy
<input type="checkbox"/>	BC Transit	<input type="checkbox"/>	Ministry of Tourism, Arts and Culture
<input type="checkbox"/>	Ministry of Indigenous Relations & Reconciliation	<input type="checkbox"/>	Ministry of Transportation and Infrastructure
<input checked="" type="checkbox"/>	Ministry of Agriculture	<input type="checkbox"/>	Ministry of Forests, Lands and Natural Resource Operations BC Wildfire Services

**Local Government**

<input type="checkbox"/>	Comox (Town of)	<input type="checkbox"/>	Alberni-Clayoquot Regional District
<input type="checkbox"/>	Courtenay (City of)	<input type="checkbox"/>	Strathcona Regional District
<input type="checkbox"/>	Cumberland (Village of)	<input type="checkbox"/>	Regional District of Mount Waddington
<input type="checkbox"/>	Islands Trust	<input type="checkbox"/>	Regional District of Nanaimo

**Other**

<input checked="" type="checkbox"/>	Agricultural Advisory Planning Commission	<input type="checkbox"/>	Comox Valley Economic Development Society
<input type="checkbox"/>	School District No. 71 (Comox Valley)	<input checked="" type="checkbox"/>	Vancouver Island Health Authority (Environmental Health)
<input checked="" type="checkbox"/>	Advisory Planning Commission B Lazo North	<input type="checkbox"/>	Union Bay Improvement District
<input checked="" type="checkbox"/>	Advisory Planning Commission C Puntledge-Black Creek	<input checked="" type="checkbox"/>	Advisory Planning Commission A Baynes Sound – Denman/Hornby Islands

Bylaw No. 537  
Comox Valley Regional District

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## STATUS

Title: Comox Valley Zoning Bylaw, 2005, Amendment No. 74

Applicant: Comox Valley Regional District

Electoral Area: Electoral Area A, B and C

File No.: 3360-20 / RZ 1CV 18

Purpose: To amend Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005”, to prohibit the production and distribution of non-medical cannabis

Participants: All Electoral Areas



Application Received:	<b>Date:</b>	
Electoral Areas Services Committee:	<b>Date:</b> <b>Recommendation:</b>	
Comox Valley Regional District Board:	<b>Date:</b> <b>Decision:</b>	
Comox Valley Regional District Board	<b>Date:</b> <b>Decision:</b>	
Public hearing:	<b>Date:</b>	
Comox Valley Regional District Board:	<b>Date:</b> <b>Decision:</b>	
Ministry of Transportation and Infrastructure	<b>Required:</b> <b>Date Sent:</b> <b>Date Approved:</b>	No
Comox Valley Regional District Board: Decision:	<b>Date:</b>	

**Comox Valley Regional District**  
**Bylaw No. 537**

**A Bylaw to Amend the “Comox Valley Zoning Bylaw, 2005”  
being Bylaw No. 2781**

The board of the Comox Valley Regional District, in open meeting assembled, enacts the following amendments to the “Comox Valley Zoning Bylaw, 2005,” being Bylaw No. 2781:

**Section One Text Amendment**

- 1) Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005,” is hereby amended as set out in Schedule A attached to and forming part of this bylaw.

**Section Two Title**

- 1) This Bylaw No. 537 may be cited as the “Comox Valley Zoning Bylaw, 2005, Amendment No. 74”

<b>Read a first time this</b>	<b>day of</b>	<b>201X.</b>
<b>Read a second time this</b>	<b>day of</b>	<b>201X.</b>
<b>Public hearing held this</b>	<b>day of</b>	<b>201X.</b>
<b>Read a third time this</b>	<b>day of</b>	<b>201X.</b>

I hereby certify the foregoing to be a true and correct copy of Bylaw No. 537, being the “Comox Valley Zoning Bylaw, 2005, Amendment No. 74,” as read a third time by the board of the Comox Valley Regional District on the XX day of XX 2018.

\_\_\_\_\_  
Corporate Legislative Officer

**Approved by the Ministry of Transportation and  
Infrastructure this**

**day of** **201X.**

**Adopted this**

**day of** **201X.**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Corporate Legislative Officer

I hereby certify the foregoing to be a true and correct copy of Bylaw No. 537, being the “Comox Valley Zoning Bylaw, 2005, Amendment No. 74,” as adopted by the board of the Comox Valley Regional District on the XX day of XX 20XX.

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Corporate Legislative Officer



## Schedule A

### Section One Text Amendments

- 1) Part 200, “Interpretation”, is hereby amended by deleting the definitions of “Medical marihuana production”, “Retail”, “Wholesale”, “Agricultural Use”, “Agricultural Products” and inserting the following new definitions in alphabetical order:

<b>“Agricultural use”</b>	Means the use of land, buildings or structures for the growing, rearing, producing, harvesting, packing, storing and wholesaling of agricultural crops or raising livestock; includes processing crops grown on the land, the storage and repair of farm machinery and implements of husbandry used on that farm, and the storage, sale and processing of agricultural products harvested, reared or produced by the agricultural use. For the purpose of this Bylaw, Agriculture also includes apiculture and aquaculture, but specifically excludes intensive agriculture and cannabis production.
<b>“Cannabis”</b>	Has the same meaning as in the <i>Cannabis Act</i> (Canada), subject to any prescribed modifications.
<b>“Cannabis production”</b>	Means the commercial production, cultivation, synthesis, harvesting, altering, propagating, processing, packaging, storing and distribution of plants or scientific research of cannabis or cannabis products under the <i>Cannabis Act</i> .
<b>“Cannabis production (medical)”</b>	Means the commercial production, cultivation, synthesis, harvesting, altering, propagating, processing, packaging, storing and distribution of plants or scientific research of cannabis or cannabis products for medicinal purposes in accordance with a license issued by Health Canada under the <i>Access to Cannabis for Medical Purposes Regulation</i> (ACMPR).
<b>“Plant nursery and greenhouse”</b>	Means the use of land or buildings for growing, cultivating, harvesting, storing and sale of flowers, trees, bushes, bedding plants, and may include the sale of related gardening products and materials but specifically excludes cannabis production.

**“Retail sales”**

Means the sale of goods to the general public and the accessory maintenance and repair of goods sold, but excludes vehicular fuels and cannabis.

**“Wholesale”**

Means establishments or places of business primarily engaged in selling merchandise to retailers, to industrial, commercial, institutional, or professional business users, or to other wholesalers, or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies and includes the maintenance and repair of such goods that are sold, but excludes the wholesale distribution of cannabis.”

- 2) Part 302(2) “Uses Prohibited In All Zones” be amended by deleting:
  - “x) Medical marihuana production, or any component thereof, except as expressly permitted elsewhere in this bylaw”
 and replacing it with the following text:
  - “x) Cannabis production, or any component thereof.
  - xi) Wholesale or retail sale of cannabis.”
- 3) Part 303 (3) (viii) “Uses Permitted on Conditions” be amended as follows:
  - “viii) Cannabis Production (medical)**
  - The establishment of medical marihuana production on ALR lands in relation to farming for consistency within the *Agricultural Land Commission Act*, its regulations and orders of the Commission must not be permitted unless by a rezoning of the land.”
- 4) Part 303 (2) “Farm Use Regulations” be amended by inserting the following new text after Part 303(2)(iv):
  - “v) Cannabis Production (Medical)**
  - The establishment of cannabis production (medical) on ALR lands in relation to farming for consistency within the *Agricultural Land Commission Act*, its regulations and orders of the Commission must not be permitted unless by a rezoning of the land.”
- 5) Part 304 “Home Occupations”, Part 306 “Domestic Business”, and Part 307 “Domestic Industrial Use” be amended by replacing all instances of “medical marihuana” with “cannabis.”

6) Part 300 “General Regulations” be amended by deleting:

**“316 Medical Marihuana Production**

1. The establishment of medical marihuana production, or any component thereof, on non-ALR lands must not be permitted unless by a rezoning of the land, in accordance with official community plan policies”

and inserting the following:

**“316 Cannabis Production (Medical)**

1. The establishment of cannabis production, or any component thereof, on non-ALR lands must not be permitted unless by a Temporary Use Permit or rezoning of the land, in accordance with Official Community Plan policies”.