



COUNCIL REPORT

To: Paul Gipps, CAO

Date: September 29, 2020

From: Chris Oliver, Planner III

File No: Z 20-09

Subject: **Z 20-09, Multi-Tenant Cannabis Review, Zoning Amendment Bylaw No. 0154.93**

MOTIONS FOR CONSIDERATION

Option 1 (Amend Bylaw):

THAT Council give first and second reading to City of West Kelowna Zoning Amendment Bylaw No. 0154.93, 2020; and

THAT Council direct staff to schedule a public hearing for the proposed Zoning Amendment Bylaw.

OR

Option 2 (No Amendments):

THAT Council not proceed with the proposed City of West Kelowna Zoning Amendment Bylaw No. 0154.93.

OR

Option 3 (Postpone):

THAT Council postpone consideration of City of West Kelowna Zoning Amendment Bylaw No.0154.93.

STRATEGIC AREA(S) OF FOCUS

Economic Growth and Prosperity (Strategic Plan Priorities 2020-2022)

BACKGROUND

Legislative Requirements

Council has the authority under Part 14 (s.479) of the *Local Government Act* to create and amend its Zoning Bylaw.

History

In 2014, as part of an amendment to the recently adopted Zoning Bylaw No. 0154, Council adopted a limitation to not permit Commercial Medical Marihuana Production in multi-tenant buildings as well as buffering requirements. Since the adoption, the associated

terminology and definitions associated with Commercial Medical Marijuana Production uses have been updated in 2017 and most recently in 2018 to update the language in the bylaw in advance of legalization to reflect the forthcoming *Cannabis Act*. While terminology and licensing names have changed, the multi-tenant regulation and buffering requirements have been consistent since 2014.

As part of a recent consideration of a rezoning proposal (Z 20-01), Council identified that a stand-alone review of the multi-tenant cannabis production regulation in the Zoning Bylaw was warranted. This report provides an overview of the City's cannabis production regulations, Health Canada requirements, and comparative research from neighbouring jurisdictions.

POLICY AND BYLAW REVIEW

Zoning Bylaw Requirements

The Light Industrial Zone (I1) is the only zone that explicitly permits Cannabis Production Facilities, however, as of 2013 the Agricultural Land Commission (ALC) has determined that all forms of cannabis production are a “farm use”. Following the ALC's determination, local governments may regulate, but not prohibit cannabis production. The ALC outlines their own requirements for cannabis production facilities and the multi-tenant production requirement would apply to properties in the Agricultural Land Reserve as well as those in the Light Industrial Zone (I1).

Cannabis Production Facilities are defined in the Zoning Bylaw as:

CANNABIS PRODUCTION FACILITY means premises used for cannabis production, including premises used for cannabis production by a licensed producer under Part 1 of the Federal Regulations and premises used for cannabis production by one or more persons under one or more registrations under Part 2 of the Federal Regulations, but not including residential premises used for the production, processing or storage of cannabis for the medicinal use of a resident of the premises under a registration under Part 2 of the Federal Regulations.

In addition to the definition, the Zoning Bylaw also regulates Cannabis Production Facilities in the General Regulation section as follows:

3.3.8 Except as expressly permitted by this bylaw, cannabis production facilities are prohibited in buildings with multiple occupancies unless all of the occupancies in the building are cannabis production facilities.

3.25.1 Cannabis production facilities shall be sited a minimum distance of 150 m (492 ft) from an abutting:

- (a) zone that permits dwellings as a principal use; and
- (b) P zone

3.25.2 Cannabis production facilities shall comply with, at a minimum, the air filtration and security requirements set out in Part 1 of the Federal Regulations. Following the direction provided by Council, S.3.3.8 is the only regulation that is being reviewed as part of the proposed amendments.

Good Neighbour Bylaw (Noise)

The City's Good Neighbour Bylaw does include regulations regarding noise. In general, the intent of the Bylaw is not to limit the operation of businesses in industrial or agricultural areas when the noise is typical of the industry it is associated with. Noise from mechanical systems or air conditioners would be considered in accordance with the following exemption of the Good Neighbour Bylaw (s7.4(d)):

"lawfully carrying on a trade or industry at a commercial, industrial or light industrial zoned area, provided that the sound or noise therefrom does not exceed the sound or noise common to such trade or industry where carried out in accordance with generally accepted industry standards using equipment and facilities in good operating order".

Health Canada Requirements

The *Cannabis Act* and its Regulations provide, among other things, the framework for legal access to cannabis and control and regulate its production, distribution, and sale.

The oversight of the cannabis supply chain is a shared responsibility across federal and provincial and territorial governments, municipalities, industry, and other stakeholders. One of Health Canada's responsibilities is to provide the licensing and oversight framework for the legal production of cannabis. Under this framework, a person is required to obtain a licence issued by Health Canada in order to conduct various activities with cannabis. Applicants and licence holders are responsible for compliance with the *Cannabis Act* and its Regulations as well as compliance with other applicable federal, provincial and territorial legislation and municipal bylaws.

Part 5 of the Cannabis Regulations addresses the Good Production Practice (GPP) requirements that are designed to help ensure that cannabis meets quality standards appropriate to its intended use. These standards and other requirements are backed by rigorous compliance and enforcement measures by Health Canada, including unannounced inspections where inspectors verify adherence to the regulations. The GPP requirements regulate various aspects of cannabis production and include specific requirements regarding air filtration:

- Filter air to prevent the escape of cannabis odours associated with cannabis plant material to the outdoors.
- Provide natural or mechanical ventilation with sufficient air exchange to provide clean air and to remove unclean air in order to prevent the contamination of the cannabis or thing that will be used as an ingredient, except in the case of any building or part of a building where the only activities being conducted in respect

of cannabis and anything that will be used as an ingredient are its cultivation, propagation or harvesting.

- Be accessible and, if necessary for its cleaning, maintenance or inspection, be disassembled, except in the case of any building or part of a building where the only activities being conducted in respect of anything that will be used as an ingredient are its cultivation, propagation or harvesting;
- Withstand repeated cleaning, except in the case of any building or part of a building where the only activities being conducted in respect of anything that will be used as an ingredient are its cultivation, propagation or harvesting;
- Function in accordance with its intended use, except in the case of any building or part of a building where the only activities being conducted in respect of anything that will be used as an ingredient are its cultivation, propagation or harvesting; and
- Must keep records demonstrating compliance of these requirements, examples included:
 - Records of installation;
 - Maintenance and service of the ventilation and filtration systems; and
 - Replacements of filters.

The City has included specific references in the Zoning Bylaw to reaffirm the Federal regulations for odour mitigation. As part of the layered approach to ensuring these requirements are met, staff ensures these requirements are met through Building Permit and Business Licensing requirements.

Health Canada Compliance and Enforcement Policy for the *Cannabis Act*

The Health Canada Compliance and Enforcement Policy for the *Cannabis Act* is intended to help regulated parties comply with the:

- *Cannabis Act*
- Cannabis Regulations
- Applicable administrative policies

Health Canada monitors the activities of regulated parties to verify they are complying with the Act and its Regulations and to prevent non-compliance. Compliance monitoring includes gathering and analyzing information, carrying out compliance verification activities, and collaborating with other regulatory agencies as appropriate.

Health Canada uses information from internal and external sources to identify possible risks to public health and public safety. When Health Canada identifies a product or activity that may not be compliant with the Act or its Regulations, it applies the guiding principles in this policy, including using a targeted, outcomes-focused, and evidence-based approach to assess whether there is non-compliance. External sources may include consumers, a company within a supply chain, and federal, provincial, territorial, and international partners.

When non-compliance is identified, there are a number of options to support achieving compliance. These options are generally categorized into two categories: voluntary measures and enforcement actions initiated by Health Canada to address non-

compliance or to address an issue of public health, depending on the circumstances. These include:

1. Issuing warning letters to non-compliant regulated parties
2. Issuing public advisories or other forms of risk communication
3. Seizure and detention
4. Refusing, suspending or revoking an authorization, including a license or permit
5. Issuing administrative monetary penalties up to \$1 million
6. Issuing a ministerial order to recall products from the market, conduct tests or studies, produce information or documents, or take other measures

Comparative Research

As part of reviewing the multi-tenant regulation in the Zoning Bylaw, eight other jurisdictions in the Okanagan were reviewed to determine if including a limitation to not allow cannabis production in a multi-tenant building was common. A summary of the finding is included in Table 1:

TABLE 1: Okanagan Cannabis Regulation Review

| Municipality | Regulate Multi-tenant Cannabis Production? | Reference odour regulations? | Only permitted in Agricultural and Industrial Zones? |
|---------------------|---|-------------------------------------|---|
| West Kelowna | YES | YES | YES |
| Peachland | YES* | YES | YES |
| Vernon | NO | YES | YES |
| RDCO | NO | YES | YES |
| Lake Country | NO | NO | YES |
| Kelowna | NO | NO | YES |
| Summerland | NO | NO | YES |
| Penticton | NO | NO | YES |

*Only one license is permitted per lot.

Despite there being similarities between some of the regulations regarding cannabis production, West Kelowna and Peachland are the only jurisdictions who currently have or are proposing to include a regulation that limits the ability to have cannabis production in multi-tenant buildings.

DISCUSSION

Option 1 – Amendment to the Bylaw

There are many multi-tenant industrial buildings in West Kelowna where owners or tenants may be able to benefit from having the ability to have a Cannabis Production Facility among a variety of other tenants. By giving first and second reading of the Amendment Bylaw and advancing the application to a public hearing, input and perspectives would be gathered.

Part of the consideration for removing the multi-tenant cannabis production regulation would also be the potential for additional complaints to the City's Bylaw Enforcement Department. Regulating complaints regarding these types of facilities would also likely involve working with Health Canada to gain compliance regarding production related concerns.

Option 2 – No Amendments

The Zoning Bylaw regulation to prohibit a Cannabis Production Facility in multi-tenant buildings was intended to protect the interest of and eliminate potential impacts to existing tenants (e.g., having a cannabis production facility use move into an existing building with established tenants). The concern surrounding infill type cannabis production facilities in multi-tenant buildings was raised by the public as part of the initial development of the cannabis regulations. Part of the concern surrounding cannabis production in multi-tenant Light Industrial Zoned (I1) properties is that the City's I1 Zone permits a variety of uses which may not be typically perceived as light industrial type uses including:

- Food bank
- Offices
- Recreation services, indoor
- Restaurant
- Veterinary clinics
- Fire, police or ambulance services

While Health Canada regulates all aspects of cannabis production through their licensing, by removing the existing regulation, tenants in existing multi-tenant buildings may be impacted if activities related to the use are not appropriately controlled (e.g., odour).

Option 3 – Postpone Consideration

The City's Zoning Bylaw includes a variety of regulations related to Cannabis Production Facilities. Should Council choose to consider Option 3, they would have the ability to consider amendments regarding Cannabis Production Facilities in a comprehensive manner as part of future amendments to the Zoning Bylaw. A review of the cannabis production regulations was identified as being necessary 18-24 months after the adoption of the June, 2018 Zoning Bylaw amendments.

REVIEWED BY

Brent Magnan, Planning Manager

Mark Koch, Director of Development Services

APPROVED FOR THE AGENDA BY

Paul Gipps, CAO

Powerpoint: Yes ☒ No ☐

Attachments:

1. City of West Kelowna Zoning Amendment Bylaw No. 0154.93, 2020
2. Redline version of Zoning Amendment Bylaw No. 0154.93, 2020