

## SUNSHINE COAST REGIONAL DISTRICT STAFF REPORT

---

**TO:** Planning and Community Development Committee – September 6, 2018

**AUTHOR:** Andrew Allen, Manager, Planning and Development

**SUBJECT:** APPROACH TO CANNABIS LEGALIZATION

---

### RECOMMENDATIONS

**THAT the report titled Approach to Cannabis Legalization be received;**

**AND THAT Zoning Amendment Bylaw Nos. 310.183 and 337.117 be forwarded to the Regular Board meeting of September 6, 2018 for First Reading and Second Reading;**

**AND THAT public hearings be waived pursuant to Section 464 of the *Local Government Act*;**

**AND THAT Zoning Amendment Bylaw Nos. 310.183 and 337.117 be forwarded to the Ministry of Transportation and Infrastructure for approval, pursuant to Section 52 of the *Transportation Act*;**

**AND THAT upon completion of notice of waiving public hearing and *Transportation Act* approval, Zoning Amendment Bylaw Nos. 310.183 and 337.117 be forwarded to the Board for Third Reading and Adoption;**

**AND FURTHER THAT Procedures and Fees Bylaw No. 522 be amended to establish fees for:**

- a) **\$4,275, where an application is made to rezone property where cannabis production or retail is proposed to occur, and;**
- b) **\$3,275, for review and response to a retail cannabis license application in a permitted zone.**

---

### BACKGROUND

The SCRD Board adopted the following recommendation on July 26, 2018:

237/18      **Recommendation No. 10**      *Cannabis Legalization – Bylaw Amendments*

The Infrastructure Services Committee recommended that the report titled Cannabis Legalization – Bylaw Amendments be received;

AND THAT; WHEREAS once the *Cannabis Act* is in effect, existing cannabis production and retail facilities may attempt to claim legal non-conforming status;

RESOLVED THAT staff prepare bylaw amendments to prohibit the production and retail of commercial (*non-medicinal*) cannabis being established as a lawful use in Residential and Rural zones;

AND THAT the work be completed on a schedule that would allow for adoption prior to the *Cannabis Act* implementation;

AND THAT staff amend Bylaw 310 and Bylaw 337 language around the terms Marijuana and Medical Marijuana to reflect the upcoming regulatory regime;

AND THAT definitions of Horticulture and Home Occupation be amended as necessary to reflect the main motion;

AND FURTHER THAT staff report to a future Committee meeting on public engagement processes in consideration of providing production and retail opportunities in locations and to the degree acceptable to the community, including opportunities presented by the Bylaw 310 Review Process.

## DISCUSSION

### Process for Adoption of Zoning Bylaw Amendments Prior to Cannabis Act Implementation

The *Cannabis Act*, and in particular legalization of non-medical cannabis is set to come into force on October 17, 2018. Pursuant to the Board resolution to adopt amendments to zoning bylaws prior to this date options are provided in this report. An expedited approach could include opting out of referrals to advisory committees, First Nations, and a public information meeting. Approval from Ministry of Transportation and Infrastructure (MOTI) is required pursuant to Section 52(3)(a) of the *Transportation Act* as the zoning bylaws affect areas within a radius of 800m from the intersection of a controlled access highway with any other highway. One part of expediting the bylaw amendment process involves the consideration of the public hearing. There are two options to consider; one is to waive the public hearing and the other is to hold a public hearing immediately before or after a Regular Board meeting.

#### *Waiving of Public Hearing*

Section 464 (2) of the *Local Government Act* permits waiving of a public hearing on a proposed zoning bylaw if an official community plan is in effect for the area that is subject to the zoning bylaw and the bylaw is consistent with the official community plan. Official community plans for the five electoral areas are currently in effect for the areas subject to the two zoning bylaws. The current zoning bylaws have a number of regulations pertaining to cannabis production. The proposed zoning amendment bylaws are intended to further regulate the production and retail of cannabis in residential and rural areas. The bylaws are not attempting to limit the general land use patterns as identified within land use designations of the OCP's, nor do OCP's provide specific direction on production and retailing of cannabis. The previous bylaw amendments which established the production facilities within select zones in each bylaw were also previously considered to be consistent with the respective OCP's. Therefore, the proposed bylaws are consistent with the general intent of the OCPs, and Section 464 (2) is applicable.

*Public Hearing in Association with Board Meeting*

The other option is to hold a public hearing in conjunction with a board meeting. The Board can hold a public hearing prior to its regular meeting and without further notice adopt or defeat or recommend changes which do not alter the use or density. If the public hearing is a delegated hearing then either staff or one of the delegated Board members can provide a report to the remainder of the Board. This is not routine SCRD practice, however the procedure is outlined within Section 470 of the *Local Government Act*. There are certain conditions to consider, including the specific start time of the public hearing and its relation to other previously scheduled board and committee meetings and whether the public hearing will be delegated or convened by the Board as whole.

There are factors to consider in the decision to either hold or waive the public hearing. Holding a public hearing can be seen as increasing the accountability of the decision making process. However, if the intent is to “close the door” on cannabis production and retail on an interim basis, and open it again later, it is then during the process of “re-opening of the door” where public participation will occur and be most effective.

Section 467 of *Local Government Act* requires an advertisement in two consecutive newspapers to indicate that a public hearing will be held or waived, and the last publication must not be less than 3 days and not more than 10 days before the bylaw is given third reading.

Proposed Zoning Bylaw Amendments

*Current Provisions Pertaining to Cannabis Production or Retail*

In both zoning bylaws, “marihuana production facility” is defined as a facility used for the cultivation, processing, testing, destruction, packaging and shipping of marihuana as permitted under federal legislation. The definition does not distinguish between medical and non-medical purposes, or define the scale of production. At the time of the bylaw amendments the Board chose not to distinguish a difference between medical and non-medical as the regulatory regime was continually evolving. Initial bylaw amendments were focused on medical production, however it was recognized that non-medical production was also a potential future issue.

Currently within Zoning Bylaw No. 310, cannabis production is permitted within I7 zone, specific parcels within I1 and I5B zones and AG and RU2 zones only for parcels exceeding 8 hectares in size. In Zoning Bylaw No. 337, cannabis production is permitted in RU2 and RU3 zones for parcels exceeding 8 hectares only. However, in terms of production, cannabis may potentially be considered by a property owner as part of a horticulture operation, which is permitted in all zones in both bylaws. It may also be considered to be part of a home based business or home occupation which is permitted in all zones in Bylaw 337 and most zones in Bylaw 310. It can also potentially be argued to be a part of an agriculture or garden nursery operation which is permitted in several rural zones.

“Retail” is not defined in either bylaw, therefore according to zoning language a retail facility can include the sale of cannabis. Retail is permitted in various zones in both bylaws. The retailing of cannabis can also potentially be part of horticultural, agricultural or garden nursery product sales.

Terminology in the bylaws that may relate in some way to cannabis production or retail include the definitions for “horticulture”, “greenhouse”, “garden nursery”, “agriculture”, “agricultural building”, “agricultural product sales”, “horticultural product sales”, “home occupation” and “home based business”.

#### *Recommended Amendments*

Based on the above overview of current provisions in the zoning bylaws, to implement the Board’s motion to prohibit non-medical cannabis production and retail in residential and rural zones, a number of zoning amendments are recommended. The proposed amendment bylaws can be found in Attachments A and B to this report.

To reflect the terminology for “cannabis” which is used in federal and provincial legislation, the words “marihuana” and “marijuana” in both bylaws should be replaced by “cannabis”. There is one reference in the I5B zone in Bylaw 310, which refers to “medical marihuana” in respect to building siting. It is also recommended this be amended to refer to cannabis.

To distinguish between medical and non-medical (commercial or recreational) cannabis, definitions should be added for both terms:

- Cannabis, medical means cannabis used for medical purposes and that has the authorization of healthcare practitioners under the *Access to Cannabis for Medical Purposes Regulations* or *Cannabis Act*.
- Cannabis, non-medical means cannabis that is not used for medical purposes and does not have the authorization of healthcare practitioners under the *Access to Cannabis for Medical Purposes Regulations* or *Cannabis Act*.

In the respective general use provisions sections of each bylaw, a new provision could be added to prohibit cannabis production and retail for non-medical purposes in all residential and rural zones. This is a broad provision to set the overall regulation for non-medical cannabis production and retail in terms of where it is not permitted.

To prevent cannabis production or retail being interpreted as part of other permitted uses in these zones, such as horticulture, home occupation, garden nursery, parcels over 8 hectares in a RU2 zone, etc., an additional provision should also be added that states that non-medical cannabis production or retail being part of other permitted uses in these zones should also be prohibited. This additional provision will override any existing provisions and definitions that may be interpreted as permitting cannabis production or retail. With this additional provision in place, it is unnecessary to amend other definitions such as “home occupation” and “horticulture”.

Public Participation: Short-Term Management of Cannabis Production and Retail Opportunities

Following adoption of the proposed bylaw amendments, SCRD may receive an application to amend the provisions of a residential or rural zone to add cannabis production or retail as a permitted use through a rezoning process.

In such cases, if an application is received, the legislated processes for zoning bylaw amendment (and, if required, an official community plan bylaw amendment) would be enacted. This would entail a report to the SCRD Board, referral to advisory committees, external agencies, a public information meeting and a public hearing. This process would fulfill the requirements set by Liquor and Cannabis Regulation Branch (LCRB) for gathering residents' views. Based on the anticipated level of attention attracted by such an application and the additional time required for correspondence with LCRB, staff recommend that a fee of \$4,275 be established for rezoning and/or official community plan amendment applications involving cannabis. The current rezoning application fee is \$2,400 (or \$2,900 if joint with an OCP amendment). Bylaw amendment fees have not increased in several years and staffing, advertising and venue booking fees have steadily increased. Consideration will be given to all fees identified within Procedures and Fees Bylaw No. 522, however it is anticipated that cannabis-related bylaw amendments will involve more staff time than an average application. This fee increase assumes an additional 15 hours of professional planning time and an additional 5 hours of administrative time beyond an average rezoning application. This is consistent with similar jurisdictions.

SCRD could also receive a notice of application as a referral from LCRB related to a provincial retail license to sell cannabis in a commercial zone, where it would be a permitted use. Upon receiving a notice of application, staff recommend that a report be made to the Board for direction on whether to respond. Non-response would "end a license application in progress because the LCRB cannot issue a license unless the local government gives the LCRB a positive recommendation that the license be issued" (Source: [Local Governments' Role in Licensing Non-Medical Cannabis Retail Stores](#), Province of BC website).

Should the Board direct staff to proceed with responding to the notice of application, a public participation process to gather residents' views will be required. This can be accomplished through a zoning bylaw amendment, if applicable. However, if the zoning does not need to be changed there should still be a process to gather community input. Staff recommend that a public information meeting be conducted, which includes elements similar to a public hearing, such as notification and the opportunity to receive written comments. Acknowledging that the time and resources required for such a process would be similar to a rezoning process involving cannabis with the exception of the formal public hearing, staff recommend that a fee of \$3,275 be levied for review of an application for a provincial cannabis retail license. This fee reflects the cost of a similar work flow, minus public hearing advertising costs.

Public Participation: Planning for Future Cannabis Production and Retail Opportunities

An opportunity exists to integrate a public feedback opportunity for cannabis production and retail zones within the review of Zoning Bylaw 310. As the second, broad-reaching public participation phase for this project will be initiated in Q4 2018, this integration can be accomplished seamlessly. A need to plan for legalized cannabis has already been identified during Phase 1.

Example opportunities include:

- Within the home-based business focus area, specific questions related to zoning for home-based businesses involving cannabis production and sales can be posed.
- Questions relating to retail in commercial areas (e.g. how many stores? Distances from other uses?) can be posed.

Results from this work can be considered in the context of further provincial regulations such as the rural retail licensing framework, once released. Feedback received will be analyzed and can guide recommendations for possible further topic-based and/or area-based public participation. Consideration will be made of the differences between Bylaw 310 and Bylaw 337 and that Bylaw 310 is presently under review whereas Bylaw 337 is not.

Staff will report as directed to a future Committee with analysis and recommendations.

#### *Organizational and Intergovernmental Implications*

The bylaws must be referred to the Ministry of Transportation and Infrastructure. Ministry approval is required prior to adoption of the bylaws.

The proposed approach for the bylaw amendments has been reviewed by SCRD legal counsel.

#### *Financial Implications*

Fees for rezoning applications involving cannabis uses and for review of a retail cannabis license application are proposed. Demand on staff resources and other further financial implications will be monitored.

#### *Timeline for next steps or estimated completion date*

In order to meet the tight timeline for enacting the bylaws, it is recommended the bylaws be forwarded to the September 6, 2018 regular Board meeting for first and second readings, followed by referral to MOTI and advertising for waiving of a public hearing. Upon completion of advertising and MOTI approval the bylaws will be forwarded to the Board for third reading and adoption. Subject to receiving a timely response from MOTI, the bylaws may be adopted at the October 11, 2018 Regular Board meeting.

Further analysis on planning for future cannabis and production retail opportunities is anticipated to be brought forward in early part of 2019 as the review of Zoning Bylaw 310 continues and as the provincial government continues to establish the rural area regulatory framework.

#### *Communications Strategy*

The advertising for waiving of the public hearing will be published in a local newspaper, and information related to the bylaws and the waiving of public hearing will be posted on the SCRD website.

**STRATEGIC PLAN AND RELATED POLICIES**

The following SCRD Strategic Plan objectives and success indicators relate to the subject of this report:

- Incorporate land use planning and policies to support local economic development.

**CONCLUSION**

In preparation for cannabis legalization in October 2018, this report provides an approach on how SCRD regulations and processes can respond to the new legislation.

This report recommends zoning bylaw amendments to further regulate cannabis production and retail in residential and rural areas, and provide public participation strategies for short-term management and future planning for cannabis production and retail. Necessary procedures to enact the bylaws within timeline prior to the cannabis legalization are also recommended.

Fees for planning services related to cannabis-related land use applications/referrals are proposed.

*Attachments*

Attachment A – Proposed Zoning Amendment Bylaw 310.183, 2018

Attachment B – Proposed Zoning Amendment Bylaw 337.117, 2018

Reviewed by:			
Manager	X – A. Allen	Finance	
GM	X - I. Hall	Legislative	X - A. Legault
CAO	X - J. Loveys	Other	X - Counsel