



MEMO

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REPORT TO: Christopher D. Coates, Chief Administrative Officer *FILE: 3900-100*
FROM: Laura Beckett, Planner
DATE: March 5, 2014
SUBJECT: **Medical Marihuana Land Use Considerations**

**To CoTW
March 10, 2014**

RECOMMENDATION

THAT Council give Bylaw 363 Option 1 first and second readings, and schedule a public hearing for immediately preceding the regularly scheduled Council meeting on Tuesday, April 22, 2014 at the School House

Staff previously brought forward a referral from the Juan de Fuca Land Use Committee regarding medical marihuana. Some of that information is repeated in this report.

BACKGROUND

Health Canada has created new regulations (“Marihuana for Medical Purposes Regulations” or MMRP) for growing marihuana for medical purposes. As of April 1, 2014, all marihuana grown for medical purposes may only be produced by and acquired through licensed producers. Due to the expected high costs for extensive licensing requirements (including that the product is contained entirely indoors under security cameras), such licensed producers are expected to only be large scale operations. Currently, marihuana grown for medical purposes is regulated under the Medical Marihuana Access Program. This program allows individuals needing this pain management treatment for terminal illness or chronic pain to grow their own, or acquire it from a regulated source. Under this scenario, for better or worse, any ability to regulate was outside of local government jurisdiction. Generally speaking, it is expected that over the long term the new regulation regime will be safer for communities. Because these operations will be of completely different scale, there are local government land use implications.

The following is an excerpt from a Health Canada web site, explaining the overall intention and goal of the new regulation:

In response to concerns from stakeholders that (the) system (under the current Medical Marihuana Access Program) for was open to abuse, and after extensive consultations, the Government of Canada introduced the new *Marihuana for Medical Purposes Regulations*...The regulations aim to treat marihuana as much as possible like any other narcotic used for medical purposes by creating conditions for a new, commercial industry that is responsible for its production and distribution. The regulations will provide access to quality-controlled marihuana for medical purposes, produced under secure and sanitary conditions, to those Canadians who need it, while strengthening the safety of Canadian communities. In addition, the new regulations will also enable more choices of marihuana strains and licensed, commercial suppliers. (Sources: [http://www.hc-sc.gc.ca/dhp-mps/marihuana/about-
apropos/faq-eng.php](http://www.hc-sc.gc.ca/dhp-mps/marihuana/about-
apropos/faq-eng.php) and [http://www.hc-sc.gc.ca/dhp-mps/marihuana/about-
apropos/index-eng.php](http://www.hc-sc.gc.ca/dhp-mps/marihuana/about-
apropos/index-eng.php))

LAND USE CONSIDERATIONS OF PERMITTING MEDICAL MARIHUANA FACILITIES

Essentially, this is an agricultural operation, with processing and distribution as ancillary activities. Such a use primarily fits within the District's "Agriculture" definition:

AGRICULTURE means a use providing for growing, harvesting and sales of agricultural products and the keeping and breeding of livestock, and the primary producing, storage and sales of those agricultural products and livestock that were grown and harvested or kept and bred on that individual farm.

(There are a few other definitions that could be interpreted to include medical marihuana production. However, these uses are not as predominant in the community as agriculture. Nonetheless, these other uses are dealt with in the attached Bylaw 363 Option 2.)

The best comparison might be to that of a pharmaceutical operation or a commercial greenhouse, both with high security. More noticeable potential implications of such a land use would include:

- Light pollution from external security lighting
- Higher traffic volumes to and from the location. This would only include employees and delivery vehicles, as such medical marihuana facilities are not authorized for storefront or retail outlet sales
- Extensive use of water, and discharge of water.

The Agricultural Land Commission (ALC) is the body that regulates provincially designated agricultural land reserve (ALR) land. Permitted uses on such land is out of the jurisdiction of municipalities. Thus, municipalities that have ALR land are required to match their land use bylaws with that of the ALC. Another case where agriculture uses fall outside the jurisdiction of the local government is for "farming areas" as designated by the Province under the *Farm Practices Protection (Right to Farm) Act*. The District contains none of these types of land.

The BC Assessment Authority considers medical marihuana facilities pursuant to the MMPR included in farm class. This could have taxation implications for local governments. For example, even if a municipality chose to locate such a use in an industrially-zoned area, they could not expect to receive a commercial or light industrial taxation rate.

CONCLUSIONS

Due to expected land use implications resulting from the new federal regulations, some communities are considering this type of use agricultural, while others are considering it industrial. In any event, it appears evident that such a use does not belong in residential neighbourhoods. Staff is equally convinced that such a use does not belong within a residential community that is dependent on groundwater. Because the Highlands is predominantly a residential community, pretty much entirely dependent on groundwater, staff is of the opinion that such as use is not compatible within any residential area in the District.

This leads to questioning whether such a use would be appropriate in the industrial area. The District has limited commercial or light industry taxation capacity: a very small percentage of the District has this taxation potential. It is within Council's strategic priorities to realize the full sustainable economic benefits of these lands. Because the Highlands has very limited lands that could be taxed at a higher rate for the District's benefit, staff is of the opinion that any type of use that would negate this potential is not in the District's best interest.

Staff has discussed the issue with legal counsel and a provincial expert. Providing the District can base its decision in proper planning purposes (such as those stated above) and because there is neither ALR land nor farming land as designated by the Farm Practices Protection (Right to Farm) Act, the District is in the position to outright prohibit medical marihuana facilities as defined by the MMPR.

This may or may not be Council's wish. There may be situations where the District would consider permitting such a use. An easy and established way to do this is through the rezoning process. In any event, staff recommends that the District only consider such a use through the rezoning process, where proper setbacks, screening and other zoning details could be determined on a site specific basis.

OPTIONS FOR HIGHLANDS

Council may wish to see medical marihuana production and facilities prohibited throughout the District. If this is the case, the simplest way to do this would be by adding it as a prohibiting use in all zones. For clarity, staff suggests adding a definition of medical marihuana production. Please Bylaw 363 Option 1. This form of regulation implies that the District would not be readily open to a rezoning for such a use. Certainly, anyone could apply, and the District would decide the application upon its own merits.

Alternatively, and with the same effect, Council may wish to exclude this use from the District's agriculture definition as well as a few other definitions for absolutely clarity. This would involve defining and adding the term to the District's zoning bylaw, and then excluding it from existing definitions that could be interpreted as including such a use. Please see Bylaw 363 Option 2. This form of regulation implies that the District might be open to considering a rezoning application to have the use either added to a property or to create a unique zone for that use. Either way, this would involve a full rezoning application involving public input and ultimately Council decision.

As another alternative, Council may prefer to not outright prohibit the use. This alternative would open the District up to potential building permit applications for medical marihuana production and facilities. These facilities would be governed by individual zoning setbacks and maximum building sizes where they exist. In most of the zones, there is no maximum amount of building size for agriculture uses. Staff does not recommend this alternative. If Council chooses this alternative, Council may wish to direct staff to provide recommendations regarding setbacks, building size restrictions, screening, and any other zoning detail that would mitigate any negative effects of this land use.

OPTIONS

1. *(Recommended.)* Council may wish to outright prohibit the use throughout the District. This is staff's recommendation based on the facts that the District is almost entirely residential and dependent on groundwater for potable sources, and that the District would not realize taxation benefits from the use on its limited commercial/industrial lands. This recommendation would be realized if Council were to give Bylaw 363 Option 1 first and second readings and schedule a public hearing for immediately preceding the regularly scheduled Council meeting on Tuesday, April 22, 2014 at the School House.
2. An alternate way to effectively prohibit medical marihuana production and facilities is to add a definition of the use and exclude it from the agriculture definition. For the sake of clarity, staff also recommends excluding it from other definitions where there is a risk of misinterpretation. This recommendation would be realized if Council were to give Bylaw 363 Option 2 first and second readings and schedule a public hearing for immediately preceding the regularly scheduled Council meeting on Tuesday, April 22, 2014 at the School House.
3. Council may be satisfied with the potential effect on the District as a result of the MMPR. If this is the case, Council may wish to direct staff to provide recommendations to Council regarding appropriate setbacks, building size restrictions, screening and other zoning details that would allow the use to best coexist with existing uses within the municipality.

Respectfully submitted



Laura Beckett, MCIP, RPP

CAO Concurrence



C.D. Coates, CAO



**DISTRICT OF HIGHLANDS
BYLAW NO. 363**

*******OPTION 1*******

A BYLAW TO AMEND THE “HIGHLANDS ZONING BYLAW NO. 100, 1998”

The Council of the District of Highlands in open meeting assembled enacts as follows:

1. THAT “Highlands Zoning Bylaw No. 100, 1998” be amended as follows:
 - a) In section 1, in the correct alphabetical order, **add:**
 - a. **“MEDICAL MARIHUANA PRODUCTION** means a use related to the growing, production, processing, selling, provision, shipping, delivering, transporting, destroying, research, exporting and/or importing of marihuana for medical purposes pursuant to the *Marihuana for Medical Purposes Regulation, SOR/2013-119*”,
 - b. **“MEDICAL MARIHUANA LICENSED PRODUCER** means a licensed producer pursuant to the *Marihuana for Medical Purposes Regulation, SOR/2013-119* authorized to possess, sell, provide, ship, deliver, transport, destroy, produce, export and/or import marihuana for medical purposes.”
 - b) In section 3.6, **add** in proper numeric order: “(4) *Medical marihuana production* is prohibited in all zones.”
2. This Bylaw may be cited for all purposes as “Highlands Zoning Bylaw, 1998, Amendment No. 36, (Medical Marihuana) Bylaw No. 363, 2014.”

READ A FIRST TIME THIS	DAY OF
READ A SECOND TIME THIS	DAY OF
PUBLIC HEARING HELD THIS	DAY OF
READ A THIRD TIME THIS	DAY OF
ADOPTED THIS	DAY OF

MAYOR

CORPORATE OFFICER



DISTRICT OF HIGHLANDS BYLAW NO. 363

*****OPTION 2*****

A BYLAW TO AMEND THE "HIGHLANDS ZONING BYLAW NO. 100, 1998"

The Council of the District of Highlands in open meeting assembled enacts as follows:

1. THAT "Highlands Zoning Bylaw No. 100, 1998" be amended as follows:
 - a) In section 1, in the correct alphabetical order, **add**:
 - i. **"MEDICAL MARIHUANA PRODUCTION** means a use related to the growing, production, processing, selling, provision, shipping, delivering, transporting, destroying, research, exporting and/or importing of marihuana for medical purposes pursuant to the *Marihuana for Medical Purposes Regulation, SOR/2013-119*,
 - ii. **"MEDICAL MARIHUANA LICENSED PRODUCER** means a licensed producer pursuant to the *Marihuana for Medical Purposes Regulation, SOR/2013-119* authorized to possess, sell, provide, ship, deliver, transport, destroy, produce, export and/or import marihuana for medical purposes."
 - b) In section 1, **replace** the following definitions with those below:
 - i. **"AGRICULTURE** means a use providing for growing, harvesting and sales of agricultural products and the keeping and breeding of livestock, and the primary producing, storage and sales of those agricultural products and livestock that were grown and harvested or kept and bred on that individual *farm*, but excludes *medical marihuana production*;"
 - ii. **"AGRICULTURE, INTENSIVE** means the use of land, *buildings* or *structures* by a commercial enterprise or an institution for the confinement of poultry, livestock or fur bearing animals, or the growing of mushrooms, but excludes *medical marihuana production*;"
 - iii. **"FARM** means an agricultural business consisting of one or more *lots* which are primarily used for *agriculture*, but excludes *medical marihuana production*;"
 - iv. **"HOME BASED BUSINESS** means an activity that provides employment on a *lot* the principal use of which *residential*, but excludes *medical marihuana production*;"
 - v. **"INDUSTRIAL USE** means a use providing for the processing, manufacturing, fabricating, assembling, servicing, storing, transporting, distributing, warehousing, testing, repairing, wrecking, or salvaging of goods, materials or things, with or without an ancillary office to administer the industrial use on the *lot*, and includes the wholesaling of heavy industrial equipment provided that the merchandise being sold is distributed from the *lot*, but excludes the processing of fish, live animals, live poultry or other fowl, and excludes *medical marihuana production*;"
 - vi. **"LIGHT MANUFACTURING** means a commercial undertaking limited to the manufacturing, assembly, fabrication, servicing and packaging of products from processed materials all of which activities are conducted within a wholly enclosed building. This use excludes primary processing of raw materials and excludes *medical marihuana production*;"

vii. **“NURSERIES** means the use of lands principally involved in floriculture and horticulture, and accessory product sales and garden supply sales, but specifically excludes the sale of agricultural, floricultural or horticultural machinery, and excludes *medical marihuana production*;”

2. This Bylaw may be cited for all purposes as “Highlands Zoning Bylaw, 1998, Amendment No. 36, (Medical Marihuana) Bylaw No. 363, 2014.”

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MAYOR

CORPORATE OFFICER

OPTION 2 - DRAFT