

To: Electoral Area Services Committee

Date: 2018-04-10

From: Margaret-Ann Thornton, MCIP, RPP, Director of Planning and Development

File No: 6410-20-037

Subject: Federal and Provincial Regulation of Medical and Recreational Marihuana

INTENT

This report is intended to advise the Electoral Area Services Committee of information pertaining to the Federal and Provincial regulation of medical and recreational marihuana. Staff is not looking for a recommendation and has forwarded this information should members want more clarification to discuss the item further.

STRATEGIC AREA(S) OF FOCUS

Provide Responsive & Effective Public Services

BACKGROUND

This report is intended to advise the Electoral Area Services Committee of information pertaining to the Federal and Provincial regulation of medical and recreational marihuana. The new Federal and Provincial regulations and their implementation will impact the land use, building and Bylaw enforcement regulations, policies and staffing resources and priorities for the Electoral Areas.

DISCUSSION

The Federal Government licences and regulates controlled substances including medical and recreational marihuana. These regulations have had numerous recent changes and are still evolving. The Province is also examining regulations regarding the distribution and sale of medical and recreational marihuana. The new Federal and Provincial regulations and their implementation will

impact the land use, building and Bylaw enforcement regulations, policies and staffing resources and priorities for the Electoral Areas.

In 2013 a workshop was held with EASC members to review the Federal regulations at that time and develop a strategy of how Medical Marihuana Production Use will be defined and regulated as a land use. In 2014 the Zoning Bylaws in effect for the Electoral Areas were amended to define a Medical Marihuana Grow Operation as “means the cultivation, growth, storage or distribution, testing or research of marihuana for medical purposes as lawfully permitted and authorized under the applicable federal or provincial law”, and permitted in the following zones:

| Electoral Area | Zoning Bylaw | Medical Marihuana Grow Operation Permitted In These Zones |
|----------------|--------------|--|
| A | 823 | All Zones |
| B | 85 | Agricultural (Ag-1) Rural (R) Resource Industrial (I-1) Service Industrial (I-2) Limited Use (L-1) Light Manufacturing (M-1) |
| B | 90 | Agricultural (Ag-1) Rural (R) Limited Use (L-1) Rural II (R-II) |
| B | 801 | Rural (R-1) Rural Resource (R-4) Industrial (I-1) |
| C | 100 | Agricultural (Ag-1) Rural (R) |
| D | 75 | None |
| E and H | 66 | None |

| Electoral Area | Zoning Bylaw | Medical Marihuana Grow Operation Permitted In These Zones |
|----------------|--------------|---|
| C | 559 | Upland Agriculture (A-1) Floodplain Agriculture (A-2) Agricultural Market (A-3) Rural 1 (R-1) Rural 2 (R-2) Rural 3 (R-3) Rural 4 (R-4) Rural 5 (R-5) Rural 6 (R-6) General Industrial (M-1) Heavy Industrial (M-2) |
| F | 559 | Upland Agriculture (A-1) Floodplain Agriculture (A-2) Agricultural Market (A-3) General Industrial (M-1) Heavy Industrial (M-2) |
| G | 559 | Upland Agriculture (A-1) Floodplain Agriculture (A-2) Agricultural Market (A-3) Rural 1 (R-1) Rural 2 (R-2) Rural 3 (R-3) Rural 4 (R-4) Rural 5 (R-5) Rural 6 (R-6) General Industrial (M-1) Heavy Industrial (M-2) |

Since these Zoning Bylaw Amendments, the Agricultural Land Commission (ALC) has confirmed that if a land owner is lawfully sanctioned to produce marihuana for medical purposes, the farming of marihuana in the Agricultural Land Reserve (ALR) is allowed and is interpreted by the ALC as being a farm use under the Agricultural Land Commission Act.

The FVRD has received written confirmation from Health Canada that, "It is the responsibility of an applicant to ensure that federal, provincial, municipal and environmental legislation, including zoning, building and fire codes, are complied with."

What Does This Mean for the Electoral Areas?

The following are a number of scenarios existing in the Electoral Areas:

1. New Facility with Federal Approvals

The FVRD is processing five (5) applications for Building Permits for a Medical Marihuana Grow Operation. These applications are all located within the ALR and the zoning permits a Medical Marihuana Grow Operation. The Building Permits are processed consistent with any other Agricultural building, and approvals from Health Canada are coordinated with the building permit process.

2. Notice of Intent for a New Facility

The Health Canada guidelines require any new proposed facility to advise in writing the local jurisdiction and local Fire Service area of their intention to apply for a new facility. Upon receipt of these notices, FVRD Planning staff responds in writing to Health Canada, with a copy to the applicant, advising receipt of the notice and property information including if the zoning permits the use, and Development Permit and Building Permit requirements. The FVRD has responded to twenty-four (24) notices of intent.

3. Complaints of Existing Medical Marihuana Grow Operations

The FVRD receives numerous complaints of possible Medical Marihuana Grow Operations. Complaints cite concerns of odours, noise, construction without permits, general disruption of a commercial/industrial use in a residential neighbourhood, and personal safety concerns. Upon receipt of a complaint staff will contact the local RCMP to verify if it is a Federally licenced Medical Marihuana Grow Operation, or not. Health Canada does not advise local governments where facilities licenced by Health Canada are located. This information can only be accessed from the RCMP as a property specific request.

If the property does not have a Health Canada licence, the RCMP typically leads the complaint as a criminal matter. In some instances, the RCMP has advised FVRD staff that there is an ongoing RCMP investigation and to not attend at the site for FVRD staff safety and to not impede the RCMP investigation. Once the RCMP has concluded its investigation, the RCMP will contact Bylaw Enforcement staff to attend the site. This is typically after the RCMP has searched the property. FVRD Bylaw Enforcement staff will attend the property with the RCMP in attendance and post Stop Work Orders (SWO) for any construction without a valid Building Permit, and will follow-up separately on any other Bylaw infractions, such as Zoning, Development Permit requirements, etc.

If the property has a valid licence from Health Canada, Bylaw Enforcement staff will send a letter to the registered property owner requesting a site inspection. The site inspection can take some time to schedule, and is coordinated with the local RCMP to be in attendance to "keep the peace". This is to ensure the safety of FVRD Bylaw Enforcement staff. FVRD Bylaw Enforcement staff will attend the property with the RCMP in attendance and post Stop Work Orders (SWO) for any construction without a valid Building Permit, and to follow-up separately on any other Bylaw infractions, such as Zoning,

Development Permit requirements, etc. There are currently approximately 100 open Bylaw Enforcement files related to Medical Marihuana Grow Operations.

Challenges and Difficulties Encountered for the Investigation of Federally Licenced Medical Marihuana Grow Operations include:

- Scheduling delays with the registered property owners and/or property tenants and coordination with the RCMP.
- All letters regarding Bylaw Enforcement associated with a Medical Marihuana Grow operation are copied to Health Canada. In addition, a number of letters advising of specific health and safety infractions have been sent to Health Canada, with the request that Health Canada follow-up directly with the operator. Health Canada has not undertaken any inspections or action on the properties licenced by Health Canada within the FVRD.
- Property owners will apply for a Building Permit for the Medical Marihuana Grow Operation, with no intention of completing the Building Permit. Once applied for a Building Permit, the application remains active for two (2) years.
- There are a number of higher profile Medical Marihuana Grow Operations in existing residential neighbourhoods causing nuisance and public safety concerns for the surrounding residents. The FVRD has limited enforcement tools and is frustrated by the lack of enforcement by Health Canada, and delays with the Building Permit process.
- Illegal dumping in rural areas, typically Crown Lands and the wastes associated with Medical Marihuana Grow operations. These wastes are typically dumped in isolated rural areas, often in proximity to watercourses.

Impact of new Federal and Provincial Regulations

Personal Use:

The most recent Federal regulations include provisions for the growing Medical and Recreational Marihuana as a personal use to a maximum of three (3) plants per property. It is not clear how this will be regulated and enforced by Health Canada, or if it will be left to the local government to enforce. It is not clear if the existing Health Canada licences will remain in place and if additional resources for enforcement will be provided by the Federal or Provincial governments.

Retail Sales of Medical and Recreational Marihuana:

Provincial legislation is evolving regarding the retail sale of Medical and Recreational Marihuana. The Province published the "BC Cannabis Private Retail Licensing Guide: Applications and Operations in February 2018 (attached), and notes that "Note that while this document sets out Government's intentions for B.C.'s retail framework, it is subject to legislation yet to be passed at both the federal and provincial levels". The guide distinguishes between "Medical" Marihuana retail sales, and "Non-Medical Cannabis"/Recreational Marihuana retail sales. The Province states that all retail stores will be inspected at least once a year by LCLB staff and more often if complaints are received.

Non-Medical Cannabis Retail Sales

The guide details that wholesale distribution of non-medical cannabis will be solely through the Liquor Distribution Branch (LDB). The LDB will be the operator of government-run retail stores and the Liquor

Control and Licensing Branch (LCLB) will be responsible for licensing and monitoring the retail sector using a mixed public/private model.

The Provincial guide states that the Province will permit local governments to decide whether they wish to have a recreational cannabis retail store in their community, and that prior to the Province issuing a licence, the applicant must have the support of the local government. The guide details requirements for retail stores security, advertising, signage and staffing. For rural areas, the Province advises that it is still evaluating how to best meet the needs for rural access.

Medical Marihuana Retail Sales

Medical Marihuana retail sales will be available on-line, as is the current policy, and also can be sold at Non-Medical Cannabis/Recreational Marihuana retail stores.

Anticipated FVRD Bylaw Amendments:

It is anticipated that the following revisions to all FVRD Zoning Bylaws will be required:

- To acknowledge that Medical and Recreational Marihuana Grow Operations are a permitted use in all lands within the Agricultural Land Reserve. This is to ensure that the FVRD Zoning Bylaw is in compliance with the Agricultural Land Reserve Act.
- Miscellaneous amendments to eliminate and/or define the distinction between "Medical" and "Recreational" Marihuana uses. Previously, Federal legislation only permitted "Medical" Marihuana, and "Recreational" Marihuana was a Criminal Code offence.
- To determine where the retail sales of Medical and Recreational Marihuana will be permitted. Provincial information released in February 2018 advises that the Province is still evaluating how to best meet the need for rural areas, and that it may be necessary to introduce special provisions for rural areas.

Further discussion with EASC is required to consider:

- Banning retail sales altogether in the Electoral Areas
- Capping the number of retail outlets
- Regulating permissible locations, by Zones and/or proximity to certain uses
- Imposition of security requirements and restrictions on hours of operation
- Adopting procedures for public consultation for licence applications
- How to legally implement additional requirements, typically provided for Business Licencing, such as: hours of operation, requiring proof of Provincial licence issuance, successful completion of Provincial employee training program, and fees to cover FVRD costs involved with the licencing process

The Zoning Bylaw consolidation project is currently underway. Depending upon the timing of the Federal and Provincial regulations, amendments to the Zoning Bylaw may be able to be incorporated into the new Zoning Bylaw consolidation, or alternatively, Zoning Amendments to all nine (9) of the existing Zoning Bylaws will be required.

Union of British Columbia Municipalities (UBCM)

UBCM has established a Task Force to review and assist with implementation. FVRD staff provided the following comments to this task force:

1. No Business Licencing powers for Regional Districts. Regional Districts differ from municipalities, with only a few specific exceptions, as not having authority for Business Licencing. Business Licencing is a powerful and flexible tool for municipalities to regulate both the production and retail sales of medical/recreational marihuana. Business Licencing typically will also coordinate for other municipal inspections, such as yearly (or quarterly) Fire Inspections.
2. Fire Service. Typically fire service, if provided, is by volunteer Fire Departments for Electoral Areas of Regional Districts. The medical marihuana licenced facilities can be large and complex buildings, and access for fire suppression, and general emergency calls can be difficult for volunteer fire departments, especially given the security requirements/building design and access.
3. Building Inspection. In some Regional Districts and areas, there is no Building Inspection Service provided. For example, in the FVRD Electoral Areas, Building Permits are not required in Sunshine Valley, and on properties not accessed by a public (MOTI) road – ie. Accessed from Forest Service Roads (FSR).
4. Impact of large industrial type production facilities in rural areas. The growing of medical marihuana also typically includes the drying and processing of the marihuana. In typically rural Electoral Areas, there is not community water or sewage provided. Potential impacts of ground water contamination from production facilities is noted.

Additional information and model Bylaws are anticipated to be provided from UBCM.

COST

There are no direct costs to prepare this report.

COMMENT BY:

Mike Veenbaas, Director of Financial Services

No further financial comments.

COMMENT BY:

Paul Gipps, Chief Administrative Officer

Reviewed and supported