

**City of Kelowna
Regular Council Meeting
AGENDA**



Monday, December 2, 2013
8:30 am
Knox Mountain Meeting Room (#4A)
City Hall, 1435 Water Street

	Pages
1. Call to Order	
2. Confirmation of Minutes	3 - 6
Regular AM Meeting - November 25, 2013	
3. Reports	
3.1 City of Kelowna Fibre Strategy	30 m
To provide Council with an overview of the Fibre Strategy to be developed by Information Services.	
3.2 Medical Marijuana Operations	45 m 7 - 22
To obtain Council direction to regulate Health Canada commercial Medical Marijuana grow operations.	
4. Resolution Closing the Meeting to the Public	
THAT this meeting be closed to the public pursuant to Section 90(1) (e) and (g) of the Community Charter for Council to deal with matters relating to the following:	
• Acquisition, Disposition or Expropriation of Land or Improvements; and	
• Litigation or Potential Litigation.	
5. Adjourn to Closed Session	
6. Reconvene Open Session	
7. Issues Arising from Correspondence & Community Concerns	

8. Termination



City of Kelowna Regular Council Meeting Minutes

Date: Monday, November 25, 2013
 Location: Knox Mountain Meeting Room (#4A)
 City Hall, 1435 Water Street

Council Members Present: Mayor Walter Gray and Councillors Colin Basran, Andre Blanleil, Maxine DeHart, Gail Given, Luke Stack and Gerry Zimmermann

Council Members Absent: Councillors Robert Hobson and Mohini Singh

Staff Present: City Manager, Ron Mattiussi; City Clerk, Stephen Fleming; and Council Recording Secretary, Sandi Horning

(* denotes partial attendance)

1. Call to Order

Mayor Gray called the meeting to order at 10:37 a.m.

2. Confirmation of Minutes

Moved By Councillor DeHart/Seconded By Councillor Zimmermann

R736/13/11/25 THAT the Minutes of the Regular AM Meeting of November 18, 2103 be confirmed as circulated.

Carried

3. Issues Arising from Correspondence & Community Concerns

3.1. Mayor Gray, re: Issues Arising from Correspondence

3.1.1 Mayor Gray, re: City Facility Funding Requests

Mayor Gray:

- Advised that he had an inquiry regarding the use of Kelowna Community Theatre for a Philippines Fundraising event and inquired as to the City's policy.

City Manager:

- Advised that there is a Council Policy in place that is adjudicated through the Active Living & Culture Division.

Council:

- Important to remember the reasons behind the policy being implemented.
- Let staff evaluate the request and provide the appropriate response.

3.1.2 Mayor Gray, re: National Health and Fitness Day 2014

Mayor Gray:

- Advised that the Honourable Nancy Greene Raine introduced a Bill in the Senate, "An Act to establish a national day to promote health and fitness for all Canadians". The Bill designates the first Saturday in June as "National Health and Fitness Day".
- The objective of the day is to increase participation by Canadians in fitness and sports activities contributing to their own health and well-being.
- Advised that the new connection for the 'rails with trails' project is estimated to be ready to open around the first weekend in June 2014.
- Inquired if Council would like to participate in the initiative, and if so, suggested writing a letter to Senator Greene Raine advising of Kelowna's support and inviting Senator Greene Raine to come to Kelowna to celebrate National Health and Fitness Day 2014.

City Manager:

- Advised that staff is working on "Active by Nature" promotional information to make the 'rails with trails' and other off-road bike routes better known.

Moved By Councillor Blanleil/Seconded By Councillor Zimmermann

R737/13/11/25 THAT Council authorizes the Mayor, on behalf of Council, to write a letter to The Honourable Nancy Greene Raine advising that the City of Kelowna would like to support the National Health and Fitness Day initiative.

Carried

3.1.3 Mayor Gray, re: Gas Tax Funding

Mayor Gray:

- Provided an update to Council.

3.1.4 Mayor Gray, re: Medical Marijuana

Mayor Gray:

- Advised that staff are planning on bring forward a Report for Council's consideration at next week's Council Meeting regarding medical marijuana.

3.1.5 Mayor Gray, re: RCMP Detachment

Mayor Gray:

- Noted that the original RCMP Detachment was constructed in 1952. The City's population has grown nine-fold since that time.

3.1.6 Councillor Stack, re: Rojem Road

Councillor Stack:

- Advised that he has received a request to have the City of Kelowna take over Rojem Road from private status to public road classification.

City Manager:

- Will have staff investigate the request and report back to Council with the process and costs of maintaining the roadway.

3.1.7 Councillor Stack, re: Possible Rat Infestation

Councillor Stack:

- Advised that he was approached by a member of the public regarding the extent of a rat infestation within the City.

City Clerk:

- Advised that discussions have been held with Interior Health Authority and that a public education approach has been taken to date.

Councillor Zimmermann:

- Inquired as to the number of complaints regarding deer within the City limits.

City Clerk:

- Advised that the City receives numerous complaints about deer and that the complainants are directed to the BC Conservation Office.

City Manager:

- Will have staff review the complaints received with respect to a potential rat infestation within the City, and the number of complaints regarding deer, and report back to Council with implications and options.

3.1.8 Mayor Gray, re: Baby Friendly Initiative

Mayor Gray:

- Advised that a request has been made regarding UBC-O and Interior Health's Baby Friendly Initiative and provided background information.
- UBC-O Nursing Students have met with the Mayor and various Councillors regarding the public health benefits to breastfeeding.

City Manager:

- Provided details regarding his discussion with the nursing students and advised that the City of Kelowna's facilities are already baby friendly.

Council:

- Agreed that the City already accommodates breastfeeding and has for some time.
- Satisfied with how the City Manager has dealt with the issue.

4. Resolution Closing the Meeting to the Public

Moved By Councillor Stack/Seconded By Councillor Basran

R738/13/11/25 THAT this meeting be closed to the public pursuant to Section 90(1) (a), (e) and (f) of the Community Charter for Council to deal with matters relating to the following:

- Position Appointment;
- Acquisition, Disposition, or Expropriation, of Land or Improvements; and
- Law Enforcement.

Carried

5. Adjourn to Closed Session

The meeting adjourned to a closed session at 11:19 a.m.

The meeting was terminated at 12:03 p.m.

Mayor

/slh



City Clerk

DRAFT

Report to Council



Date: November 21, 2013
File: 0930-10
To: City Manager
From: City Clerk and Director Subdivision, Agriculture & Environment
Subject: RTC Medical Marijuana Operations

Recommendation:

THAT Council receives the Report of the City Clerk and Director Subdivision, Agriculture & Environment, dated November 21, 2013, with respect to Regulating Commercial Medical Marijuana Grows - Business Licence and Zoning Options;

AND THAT Council directs staff to bring forward amendments to Zoning Bylaw 8000 that would permit Medical Marijuana Production operations in the I2 - General industrial and I-3 Heavy Industrial Zones only and prohibit the use in A1 - Agriculture 1 and in all Commercial Zones for reading considerations;

AND THAT Council direct staff to bring forward a Commercial Medical Marijuana Business Licence Bylaw to an afternoon meeting for reading considerations;

AND THAT Council approves the Mayor writing to the Minister of Community, Sport and Cultural Development and local MLA's to petition the Provincial Government to amend Regulation 411/95 Classification of Land as a Farm Regulation to remove "medicinal plant culture" as a farm use for assessment purposes;

AND THAT Council direct staff to bring forward Safe Premises Bylaw No.10064 at an afternoon meeting for adoption consideration.

Purpose:

To obtain Council direction to regulate Health Canada commercial Medical Marijuana grow operations.

Background:

Local government authority and ability to regulate Health Canada medical marijuana grow operations has been limited at best. Health Canada put little thought or regulations towards the local health and safety impacts of medical grow operations prior to the creation of the

medical marijuana program in 2001. Nationally, the number of licenced users grew from 500 in 2001 to over 30,000 today. The majority of the 30,000 licences are in British Columbia. In June 2013 the federal government announced changes to the program, to take affect April 1, 2014, prohibiting home-based growing in favour of large commercial operations. Health Canada has stated these commercial grow operations are to follow municipal bylaws. However, it is an open question as to the extent local government bylaws are legally able to regulate a federally approved program.

Health Canada has confirmed the following number of active licences in Kelowna as of October 7, 2013:

- 1,186 Authorizations to Possess;
 - 841 Personal-Use Production Licences; and
 - 181 Designated-Person Production Licences
- A Designated-Person licence permits an operator to grow for up to four (4) individuals, up to a total of 200 plants. Of the 181 Designated-Person Production Licences issued by Health Canada in Kelowna, only 18 have either applied for or been issued a City business licence.

Based on the Health Canada information above, there are at least 1,022 (841+181) premises where medical marijuana is being grown in Kelowna. The legal authority to grow under either a Personal-Use or Designated-Use Production licence will cease as of March 31, 2014. These 1,022 premises are subject to the City Nuisance Controlled Substance Bylaw as of April 1, 2014. Health Canada has recently contacted current licence holders informing them of the changes. However, Health Canada will not release the locations of these premises to the City so it is virtually impossible to determine where they are. The RCMP, Bylaw Enforcement and Development Services are developing an enforcement strategy to addresses these premises, as there is a high likelihood that many, if not all, will have some level of contamination as a result of the grow operation. This poses a health hazard to current and future occupants.

Staff has been using existing regulatory powers under the Business Licence and Building bylaws to provide some level of control over the current medical grow operations, and are now proposing these powers be strengthened and enhanced through our land use/zoning and business regulation authorities.

Land Use/Zoning Considerations

Staff recommends the appropriate land use for the new medical marijuana production facilities is in the I2 - General Industrial and I-3 Heavy Industrial Zones only. Staff also recommends that the use be prohibited in the A1 - Agriculture 1 and in all Commercial Zones.

The ALC has provided an information bulletin advising that "If a land owner is lawfully sanctioned to produce marihuana for medical purposes, the farming of said plant in the Agricultural Land Reserve (ALR) is permitted and would be interpreted by the Agricultural Land Commission as being consistent with the definition of *farm use* under the ALC Act." The ALC bulletin goes on to advise that it would also "include the accessory uses which could include a small business office, testing lab, processing and drying, packaging shipping areas, cloning room and anything else directly related to the growing and processing of the plant."

Given this interpretation a MMPF, as described above, is currently allowed within the A1 - Agriculture 1 zone. However, any associated research and development facility would require a non-farm use application and subsequently would trigger appropriate zoning.

When considering the appropriate regulatory approach to facilitate a medical marijuana production facility (MMPF) consideration must be given to the impact on adjacent land uses; servicing requirements; and potential re-use of the facility should the production facility relocate or close.

Concerns with allowing the MMPF within the ALR include the sterilization of arable land given the structural requirements for the facility. If the MMPF were to cease operating then there would be the issue of repurposing the building for other agricultural uses. In addition, adequate servicing would need to be addressed such as water (fire flows), sewer, disposal of waste water, and electricity. It would be the recommendation of Staff to pursue a bylaw amendment to exclude MMPF specifically from the A1 zone, however, to do so would require the approval of the Ministry of Agriculture. Alternatively, if the Ministry were to turn down the request, consideration should then be given to amending the A1 zone to include setback buffers from schools, parks, recreational facilities and residential areas.

When reviewing the most appropriate zone to consider the MMPF use Staff would recommend that either the I2 - General Industrial zone or the I3- Heavy Industrial zone be considered. Furthermore the Health Canada regulations for building and security requirements are more characteristic of what could be expected within an industrial building. Under the current definition of General Industrial there are components of the operation that would be allowed under the existing definition. However, the preferred approach would be to provide a specific use definition and include regulations within both the I2 zone and the I3 which again would include setback buffers from schools, parks, recreational facilities and residential areas for this specific use.

Meeting with Municipalities Subject to Right to Farm Regulation

Staff recently participated in a conference call with representatives from Abbotsford, Delta, and Langley Township (each subject to the above Regulation) to discuss the possibility of preparing a joint submission to the Minister of Agriculture seeking his support in prohibiting the production of medical marijuana in agriculture zones. Should Council agree with this approach, then the City could be added to this submission.

Business Regulation Considerations

The proposed Health Canada Commercial Medical Marijuana Grow Business Licence Bylaw would include the following regulations and requirements:

- All tenant improvements must comply with the BC Building Code and City Building Bylaw, Plumbing Bylaw, Gas Bylaw, Life Safety Bylaw;
- The premises must be cleaned to the standard contained in the Nuisance Controlled Substance Bylaw or whichever similar bylaw is in place at the time the operation ceases (i.e. Safe Premises Bylaw);
- Health Canada identification number must be provided
- Copy of Health Canada Medical Grow licence must be provided to the City, which clearly indicates maximum number of plants permitted to be grown;
- A list of employees must be provided to the City and kept updated;

- Evidence must be presented that all employees have passed an RCMP criminal records check on an annual basis;
- City may inspect at any time to confirm conditions are being met;
- Failure to meet any of the conditions, including growing more than the maximum number of plants, will be grounds for a business licence suspension hearing [staff decision] or business licence revocation hearing [council decision].

Nuisance Controlled Substance Bylaw Update

The above bylaw, more commonly referred to as the “Grow-Op Bylaw” was adopted in October 2005 and has been applied against 185 properties since coming into force. The basic premise of the bylaw is based on removal of the occupancy permit upon discovery that the property is being used as marijuana grow operation. To date notification by the RCMP has triggered the implementation of the Bylaw. A note is made internally on the City Tax Notice that a property is subject to the bylaw, but no Notice is put on title at the Land Title Office. An analysis of the properties subject to the Bylaw show most still have no Occupancy Permit, in some cases several years after the illegal Grow operation was dismantled. This calls into question the effectiveness of the Bylaw as currently used.

Council considered a “next generation” Safe Premises Bylaw No. 10064 in November 2009; this was not adopted due to concerns the bylaw was too broad in it’s application. Staff recommends bringing the Safe Premises Bylaw back for Council’s consideration. Use of the Bylaw by other local governments has not resulted in it being applied too broadly, and has resulted in some amendments that have made the Bylaw more workable in practice. Use of the LTO Notice option (which involves Council) is a consideration worth exploring in an effort to obtain a greater level of compliance.

Assessment Considerations

Under existing Regulation, BC Assessment authority would assess the manufacture and production of a medical marijuana grow operation under Assessment Class 9 Farm Class, regardless of the actual zoning. This has potential negative taxation implications for the City.

Notice of Intent - New Operations

Under the new Health Canada Regulations, an applicant must notify the City of their intention to apply for a Licence to Produce Medical Cannabis. To date, the City has been contacted by eleven potential applicants: three are zoned A1 and within the ALR; two are zoned I2; others are zoned C4, C10 and I4. One did not provide an address, while another is zoned RU1 and therefore does not meet the Health Canada requirements.

Internal Circulation:

Manager, Bylaw Services

Director, Development Services

Building, Plumbing & Gas Inspector Supervisor

Crime Prevention Supervisor

Deputy Fire Chief, Fire Administration, Training and Fire Prevention

Legal/Statutory Authority:

Health Canada *Marijuana Medical Access Regulations* (to be repealed March 31, 2014);
Health Canada *Marijuana for Medical Purposes Regulations*;
Assessment:

- *Assessment Act*;
- Regulation 411/95 *Assessment Act Classification of Land as a Farm Regulation*

Business regulation:

- *Community Charter* section 8, 15, 57, 59, 60 and 61;

Land Use regulation:

- *Local Government Act*, Part 26.

Legal/Statutory Procedural Requirements:

Before adopting a business licence bylaw, Council must provide notice and provide an opportunity for persons who consider they are affected by the bylaw to make representations to Council. Council may determine the form and manner of the notice and representations.

Public notice and a public hearing must be held prior to adopting an amendment to the Zoning Bylaw.

Zoning Bylaw 8000 amendments to the A1 - Agriculture Zone prohibiting or regulating farm uses require approval of the Minister of Agriculture prior to adoption.

Existing Policy:

Nuisance Controlled Substance Bylaw No. 9510.

External Agency/Public Comments:

Considerations not applicable to this report:

Financial/Budgetary Considerations:

Personnel Implications:

Communications Comments:

Alternate Recommendation:

Submitted by:

Stephen Fleming
City Clerk

Shelley Gambacort
Director, Subdivision, Agriculture and Environment

Approved for inclusion:



Rob Mayne, CMA
Divisional Director, Corporate & Protective Services

REGULATING MEDICAL MARIJUANA
OPERATIONS



CURRENT PROGRAM

- ▶ Medical marijuana grows authorized by Health Canada
- ▶ Licence to grow and have possession of a specified amount of a controlled substance

CURRENT PROGRAM

3 types of Health Canada licences:

- ▶ Authorization to Posses (1,186)
- ▶ Personal Use Production - up to 50 plants (841)
- ▶ Designated Person Production - up to 4 others @ 50 plants each (181)

(numbers of current licences in Kelowna as of October 7, 2013)

CURRENT PROGRAM

- ▶ No land use restrictions - majority in residential zones
- ▶ Serious public safety implications
 - ▶ Building improvements without permits
 - ▶ Water cross connection contamination - water & infrastructure
 - ▶ Nuisance - ventilation
 - ▶ Nuisance - contamination & mould
 - ▶ Theft of product - occupant & neighbourhood safety

CURRENT REGULATION AUTHORITIES

- ▶ Nuisance Controlled Substance Bylaw
- ▶ Safe Premises Bylaw
 - ▶ Cannot revoke occupancy permit
- ▶ Building Bylaw / BCBC
- ▶ Business licencing
 - ▶ If growing for others Designated Person Licence
 - ▶ Compassion club operations
 - ▶ Store front operations
- ▶ Police: if grow greater than permitted

CURRENT REGULATION AUTHORITIES - RESIDENTIAL GROWS AFTER APRIL 1

- ▶ Nuisance Controlled Substance Bylaw
- ▶ Safe Premises Bylaw
- ▶ Police: residential grows illegal

Problem:

- ▶ Where are the current licence holders located?
- ▶ Kelowna
 - ▶ 841 individual grow locations
 - ▶ 181 collective grow locations - 17 business licences
 - ▶ 1,022 total locations

NEW MMPR PROGRAM

- ▶ In effect April 1, 2014
- ▶ Prohibits operations in residential zones
- ▶ Permits in agriculture, commercial or industrial zones
- ▶ Local govts may use land use powers
- ▶ Operations must be indoors
- ▶ High security requirements
- ▶ Distribution by mail or pharmacy only

MMPR ISSUES

Differing opinions and approaches on the extent to which land use powers may be used:

- ▶ Prohibit in all zones
- ▶ Permit in Industrial zones only
- ▶ Permit in Agriculture zone within ALR only
- ▶ Permit in Industrial & ALR only
- ▶ Proper planning purposes test

MMPR ISSUES

Right to Farm Regulation:

- ▶ Kelowna requires Minister approval prior to adoption of zoning bylaw amendments prohibiting or regulating farm use
- ▶ Abbotsford, Delta and Langley Township also under this Regulation

Assessment implications:

- ▶ BCAA farm class regardless of zone

Business Regulation:

- ▶ Proper municipal purposes test

MMPR SITES KELOWNA

- ▶ Currently not a permitted use in any zone
- ▶ City has received correspondence for 10 locations:
 - ▶ 4 zoned A1 and within the ALR;
 - ▶ 2 zoned I2; one zoned I4;
 - ▶ One zoned C10
 - ▶ Two with no location provided

NEXT STEPS

Recommend bylaws be drafted to:

- ▶ Permit MMPR operations in zones I2 and I3;
- ▶ Prohibit in all Commercial zones; and
- ▶ Prohibit in A1 and in A1 within ALR (requires Minister approval)
- ▶ Create a Commercial Medical Marijuana Business Licence Bylaw
- ▶ Adopt Safe Premises Bylaw