



REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE
MEETING OF TUESDAY, MARCH 19, 2019

SUBJECT Proposed Bylaw No. 4278

ISSUE

Proposed bylaw amendment to address the current legislative framework for the licensing of recreational cannabis cultivation and distribution, and to permit the use in the Sooke Business Park Industrial (M-SBP) zone.

BACKGROUND

The Federal government has legalized recreational cannabis consumption and has established a national framework for regulating its cultivation and distribution. New requirements for federally licensed producers of recreational cannabis are outlined in the *Cannabis Act* and *Regulations*. Federal licence categories have been established for cannabis cultivation, processing, analytical testing, sales, import/export and research (Appendix 1). All licences that authorize the possession of cannabis must provide notice to local authorities (local government, police and fire) to ensure land use compliance.

The *Agricultural Land Reserve (ALR) Regulation* was recently amended to define the lawful production of cannabis as a farm use for the purposes of the *Agricultural Land Commission (ALC) Act*. Cannabis can now be cultivated outdoors or in specified structures. Local government bylaws may not prohibit the lawful production of cannabis in the ALR.

The Province of BC has established 19 as the minimum age for consumption and allows up to four personal plants per dwelling provided there is no community care facility involving youth at that address. Local governments can implement more stringent regulations where desired.

Staff have prepared proposed Bylaw No. 4278 to amend the Juan de Fuca Land Use Bylaw, Bylaw No. 2040, to update definitions and permitted uses in the Agricultural (AG) zone to reflect the current legislative framework for non-medical cannabis. The Juan de Fuca Land Use Committee (LUC) considered the issue at their meeting of December 17, 2018, and recommended that proposed Bylaw No. 4278 be referred to the Otter Point Advisory Planning Commission (APC), CRD departments and agencies for comment. Comments received are included in Appendix 2.

At the same meeting, the Land Use Committee also made the following motion:

MOVED by Director Hicks, **SECONDED** by Roy McIntyre that staff amend the Juan de Fuca Land Use Bylaw, Bylaw No. 2040, 1992, to eliminate the distinction between medical cannabis production and recreational cannabis production in the Sooke Business Park Industrial (M-SBP) zone.

CARRIED

Following this direction, staff have revised proposed Bylaw No. 4278 to permit all types of cannabis-related uses in the Sooke Business Park Industrial (M-SBP) zone (Appendix 3).

ALTERNATIVES

Alternative 1

That the Land Use Committee recommends to the Capital Regional District (CRD) Board:

- a) That the referral of the proposed bylaw directed by the Juan de Fuca Land Use Committee to the Otter Point Advisory Planning Commission; BC Hydro; District of Sooke; Island

Health; MFLNRORD – Archaeology Branch; MFLNRORD – Groundwater Protection Branch; Ministry of Transportation and Infrastructure (MoTI); RCMP; T'Sou-ke First Nation; and appropriate CRD departments be approved and the comments received;

- b) That proposed Bylaw No. 4278, “Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 141, 2018” be introduced and read a first time and read a second time; and
- c) That in accordance with the provisions of Section 469 of the *Local Government Act*, the Director for the Juan de Fuca Electoral Area, or Alternate Director, be delegated authority to hold a Public Hearing with respect to Bylaw No. 4278.

Alternative 2

That the CRD Board not proceed with proposed Bylaw No. 4278.

Alternative 3

That more information be provided by staff.

LEGISLATIVE AND PUBLIC CONSULTATION IMPLICATIONS

The proposed bylaw affects multiple parcels in the area covered by Bylaw No. 2040. Property owners of land zoned Sooke Business Park Industrial (M-SBP) will be notified of the proposed bylaw and provided opportunity to comment as part of the Land Use Committee's consideration of referral comments and first reading of the bylaw.

Should the proposal proceed, a public hearing pursuant to Part 14, Division 3 of the *LGA* will be required subsequent to the amendment passing second reading by the CRD Board, which will be advertised in the local paper and on the website.

REFERRAL COMMENTS

Referrals were sent to 12 agencies, the Otter Point APC and to appropriate CRD departments. Comments received are noted below and included in Appendix 2.

CRD Bylaw Enforcement stated no concern.

The District of Sooke stated no objection to the proposed bylaw and wishes to stay informed of any developments related to this matter as the District determines an approach to cannabis production.

Island Health provided a statement from the Office of the Chief Medical Health Officer outlining a public health approach to non-medical cannabis; stated the absence of setbacks from non-compatible uses; requested information on retail cannabis regulations and consideration of how to address potential nuisance issues such as odour; and requested further dialogue between agencies. Bylaw No. 4271, which is referenced in Island Health's comments, amended the Juan de Fuca Land Use Committee Bylaw to allow the Committee to provide input into the Provincial retail licence application process.

Ministry of Transportation and Infrastructure reported that it has no objection to the proposed bylaw.

The Otter Point APC met on January 22, 2019, to review the proposed bylaw. The Commission provided the following motion:

MOVED by Sid Jorna, **SECONDED** by Bud Gibbons that the Otter Point APC supports proposed Bylaw No. 4278, as revised.

CARRIED

PLANNING ANALYSIS

Amendments are proposed to Bylaw No. 2040 to reflect the new legislative framework for recreational cannabis consumption and production, and to permit cannabis production and related uses in the Sooke Business Park Industrial (M-SBP) zone.

Personal Use:

Personal cultivation of up to four cannabis plants by adults at a private residence are permitted by the *Cannabis Act* and the *Cannabis Control and Licensing Act*, but this can be further regulated by local governments if it is deemed practical and warranted. The proposed bylaw amendment does not seek to further restrict personal cannabis cultivation. Rather, the amendment adds a new definition for '*cannabis production – personal*' and clarifies that no more than four cannabis plants may be cultivated at a dwelling.

Cannabis Cultivation on Agricultural Land:

Commercial cannabis cultivation and related ancillary uses are now considered a farm use in the ALR subject to ALC policies that allow production outdoors in a field, in a structure with a soil base, or in a grandfathered structure. Activities designated as a farm use in the ALR must not be prohibited by local government. Staff will consult with the ALC on this policy when determining where cannabis cultivation can occur. The proposed bylaw amendment updates language and retains the 30 m setback requirement from front, side and rear parcel boundaries for cannabis cultivation.

Licensed Cannabis Facilities:

Local governments are able to regulate cannabis facilities outside the ALR. Considerations for locating cannabis facilities may include public tolerance for the use, location and proximity to civic uses, scale of the operation, policing and bylaw enforcement, as well as the capacity of local utilities. In the Juan de Fuca Electoral Area, factors such as odour, water use, septic capacity, hydro-electrical availability and electro-magnetic interference, waste management and fire protection have been raised as factors that inform land use decisions. Local governments may also wish to specify setbacks from non-compatible uses such as schools and parks.

Bylaw No. 2040 currently specifies that *intensive agriculture - medical marihuana production* is a permitted use in the General Industrial – Medical Marihuana (M2-MM) zone and the Sooke Business Park Industrial (M-SBP) zone (Appendix 4). Proposed Bylaw No. 4278 adds a new definition for '*cannabis production – commercial*' and amends the Sooke Business Park Industrial (M-SBP) zone to permit all federal cannabis licence categories (Appendix 3). At this time, the proposed amendment applies to the 11 properties zoned M-SBP. Separate consideration will be given to amending the General Industrial – Medical Marihuana (M-2MM) zone and remaining lands within the Sooke Business Park development.

The Sooke Business Park development is not within proximity to schools or daycare facilities and landscaping around the perimeter of the development provides a buffer from residential areas. The CRD Juan de Fuca Local Area Services Building is located within the development where public events and recreational programs occur, and the adjacent William Simmons Memorial Park and Butler Trail are used by the public including youth. However, cannabis facilities proposed in the M-SBP zone occur within industrial buildings that are indistinguishable from other general industrial buildings. In addition, such facilities require high levels of security and may have no outward display of marketing that would negatively impact youth.

Beyond zoning authority, other tools are available to local governments to address local issues arising from certain types of development, such as development permit (DP) guidelines to regulate the form and character of buildings, and development cost charges to assist with paying

the capital costs of providing utility infrastructure or park facilities that directly or indirectly service the development. CRD may also pursue bylaw enforcement of odour nuisances.

Staff recommend proceeding with proposed Bylaw No. 4278 for first and second reading and holding a public hearing.

CONCLUSION

The staff report outlines the current legislative framework for recreational cannabis and potential implications for local governments. Proposed Bylaw No. 4278 has been prepared to update definitions and to permit federally licenced cannabis-related uses in the Sooke Business Park Industrial (M-SBP) zone.

RECOMMENDATIONS

That the Land Use Committee recommends to the Capital Regional District (CRD) Board:

- a) That the referral of the proposed bylaw directed by the Juan de Fuca land Use Committee to the Otter Point Advisory Planning Commission; BC Hydro; District of Sooke; Island Health; MFLNRORD – Archaeology Branch; MFLNRORD – Groundwater Protection Branch; Ministry of Transportation and Infrastructure (MoTI); RCMP; T'Sou-ke First Nation; and appropriate CRD departments be approved and the comments received;
- b) That proposed Bylaw No. 4278, "Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 141, 2018" be introduced and read a first time and read a second time; and
- c) That in accordance with the provisions of Section 469 of the *Local Government Act*, the Director for the Juan de Fuca Electoral Area, or Alternate Director, be delegated authority to hold a Public Hearing with respect to Bylaw No. 4278.

Submitted by:	Emma Taylor, MA, MCIP, RPP, Planner
Concurrence:	Iain Lawrence, MCIP, RPP, Manager, Local Area Planning
Concurrence:	Kevin Lorette, P.Eng., MBA, General Manager, Planning & Protective Services
Concurrence:	Robert Lapham, MCIP, RPP, Chief Administrative Officer

ET:wm

Attachments:

- Appendix 1. Health Canada Licence Categories
- Appendix 2. Referral Comments
- Appendix 3. Proposed Bylaw No. 4278
- Appendix 4. Zoning Map