

Committee of the Whole Report

To: Her Worship Mayor McKortoff and Members of Council

From: Christopher Garrish, Planner

Date: February 13, 2024

Subject: Zoning Bylaw Review – Misc Items

Tracker No: BLW-389

RECOMMENDATION:

That the following be incorporated within the Draft Town of Osoyoos Zoning Bylaw:

- the retail sale of cannabis be considered a “retail” use;
- that cannabis production be considered “agriculture, indoor” and that this use be permitted in the general industrial zone;
- that the regulations for “home occupations” and “bed and breakfast” be revised in accordance with Attachment Nos 1 & 2 to this report;
- that regulations be introduced to clarify the requirements for “mobile vendors”;
- that the C1 zone be revised to allow for dedicated residential buildings;
- that “service stations” only be permitted within a dedicated zone; and
- that “Neighbourhood Consent” not be carried forward into the new zoning bylaw.

AND THAT a review of the campground zone be deferred pending the adoption of a new Zoning Bylaw.

CAO Comments:

Approved for Council consideration.

Executive Summary:

The purpose of this report is to provide Council with options in relation to a number of matters related to the drafting of a new Town zoning bylaw.

Background:

The preparation of a new Zoning Bylaw has been a Council priority since 2022, and background research and drafting work has been on-going throughout 2023.

Analysis:

As part of the on-going drafting work related to the preparation of a new Zoning Bylaw, Administration requires direction from Council on a number of land use matters, which are addressed under separate sub-sections below:

Committee of the Whole Report

1. Cannabis (Production & Retail Sales)

At present, the Town's Zoning Bylaw prohibits "cannabis operations" (which is understood to relate to production) and includes a policy statement regarding the circumstances under which Council may approve a rezoning to allow such a use to occur in an industrial zone. There are currently two (2) site specific zonings in which "cannabis production" is permitted.

It is recommended that a more flexible approach be adopted by Council in relation to indoor agricultural production and that a new use category of "agriculture, indoor" be permitted in the General Industrial (M1) Zone and defined as follows:

the use of a building or structure for the growing, harvesting, cultivating, propagating, packing, storing and wholesaling of horticultural products, including but not limited to, vegetables, fruits, nuts and flowers, and cannabis.

The Town's Zoning Bylaw has applied a similar approach to the retail sale of cannabis, prohibiting it in all zones, but including a policy statement regarding the circumstance under which Council might consider approving such a use on a site specific rezoning basis.

Again, Administration recommends that a more flexible approach be applied by Council at the retail sale of cannabis be considered a "retail" use and permitted in all zones in which "retail" is listed as a permitted use, subject to provincial approvals. This *could* include the following zones:

- Downtown Commercial (C1)
- Shopping Centre Commercial (C2)
- Highway Commercial (C3)
- Tourist Commercial (C4)
- Special Industrial (M3)
- Comprehensive Development (CD1)
- Comprehensive Development (CD6)

With regard to the inclusion of a policy statements in a regulatory bylaw such as the zoning bylaw that pertain to cannabis production and sales, Administration considers this to be more appropriately located within the Town's Official Community Plan (OCP). NOTE: the Town's OCP is currently silent on the issue of cannabis production and sales.

Depending upon the direction provided by Council on the questions posed above, the current policies contained in the Zoning Bylaw regarding cannabis production and sales may be moot and an amendment to the OCP to retain the existing policies un-necessary.

2. Home Occupations

The allowance for "home occupations" to be conducted within a residential dwelling is a long-standing policy of Council in order to support small businesses, encourage entrepreneurship, and provide residents with opportunities to generate income from their homes.

It is common, however, for zoning bylaws to contain regulations regarding "home occupations" in order to mitigate the occurrence of potentially negative effects that larger commercial operations might have on the residential character of a neighborhood, such as increased noise, traffic, or other disruptions.

At present, the Town's Zoning Bylaw contains such regulations which limit a home occupation to the residents of the dwelling (i.e. no employees), no outdoor storage of materials and adequate provision of on-site vehicle parking.

Of some concern, the "home occupation" regulations attempt to classify uses into two "Levels" seemingly based upon intensity of use (e.g. a chartered accountant is considered

Committee of the Whole Report

“Level I”, while a landscaping service is considered “Level II”) and then specify what structures these may occur within (e.g. principal vs. accessory buildings).

It is recommended that a more flexible approach be applied to “home occupation” uses and that a simplified set of regulations be introduced (see Attachment No. 1) that would include, amongst other things:

- a standard floor area allowance (e.g. 40% of the floor area of the principal dwelling up to 50.0 m²);
- replacement of “Levels” of permitted types of home occupations with a list of what is not allowed as a home occupation; and
- allowance for all types of home occupations in either the principal or accessory structure.

It is further recommended that “bed and breakfast” be separated from “home occupation” and be listed as a stand-alone use in those zones which Council considers B&Bs to be an acceptable use and with its own set of general regulations (see Attachment No. 2).

3. Mobile Vendor Regulations

At present, the Town offers opportunities for operators of food trucks to locate on Town property, subject to the issuance of a Business Licence, and further suggests that “a Stationary Street Vendor or Food Truck may operate on private property if it is commercially zoned and has a minimum of 10 parking spaces available on site.”

Administration notes that the Zoning Bylaw is currently silent on the matter of “Mobile Vendors” (i.e. Food Trucks), including parking requirements, and that this should be addressed.

In response, it is recommended that the new Zoning Bylaw provide clarification that “Mobile Vendors” are permitted on lands zoned Agriculture, Commercial, Tourist Commercial, Industrial and Parks and Recreation.

Further, on Commercial and Tourist Commercial zoned lands, a minimum of 10 on-site vehicle parking spaces must be available.

4. Downtown Commercial (C1) Zone

The C1 Zone is a mixed-use zone that allows for a range of commercial uses and residential densities that has been applied to parcels fronting Main Street, but also to nearby parcels fronting parts of 70th, 72nd, 74th & 77th avenues.

As a condition of use, the ground floor of any structure in the C1 Zone must only be used for commercial purposes, while a further restriction prohibits certain commercial uses on parcels that front Main Street (e.g. car wash, bottle depot, pawn shop are prohibited).

Despite this, due to the C1 Zone having been applied to residential areas, an allowance exists to allow for the on-going maintenance of existing single detached dwellings.

Administration notes that the OCP Bylaw speaks to making allowances in the C1 zone for dedicated residential buildings, subject to certain conditions being present.

Moreover, and in light of recent legislative changes requiring the introduction of greater zoning flexibility for residential uses, Administration is recommending that the allowance for single detached dwellings be deleted from the Bylaw and that prohibition on residential uses

Committee of the Whole Report

occurring on the ground floor of a building be removed from those parcels not fronting Main Street.

This is recommended in order to encourage the development of greater residential densities in the C1 Zone in the form of townhouses and apartment buildings. The maximum residential densities to be permitted in the C1 Zone is the subject of a separate administrative report to Council.

Conversely, the option of the status quo is available to Council, in which residential uses are prohibited on the ground floor of buildings and the allowance for single detached dwellings is retained.

5. Service Stations

At present, “service stations” (i.e. gas stations), which the Zoning Bylaw defines as meaning “a building and land used for the retail sale of motor fuels and lubricants and includes as accessory uses, the servicing and repair of motor vehicles and the sale of automobile accessories ...” are permitted as-of-right in the Highway Commercial (C3) and Service Commercial (C8) zones.

Administration is recommending that a new approach be applied in which a dedicated service commercial zone be created and applied to existing gas stations and that “service station” be removed as a permitted use in the C3 & C8 zones.

This is in recognition that gas stations typically involve the storage, handling, and dispensing of flammable and hazardous materials. Limiting the locations where new gas stations can be established allows for better control over potential environmental risks and ensures the amenity of adjacent areas.

Proposals seeking to create a new gas station site within the Town would be required to go through a site specific rezoning process, which would involve community input and Council approval.

Conversely, the option of the status quo is available to Council in which case “service station” would remain a permitted use in the C3 & C8 zones.

6. Keeping of Poultry & Honeybees

At its meeting of October 10, 2023, Council, meeting as the Committee of the Whole (COTW), resolved that the keeping of four (4) hens in the R1 zone be permitted in the new Zoning Bylaw.

Since that time, the province adopted Bill 44 which introduced changes to the *Local Government Act* that will require Council to permit up to four (4) dwelling units per parcel and that this be in the form of a range of dwelling types (i.e. apartment buildings, townhouses, duplexes, single detached dwellings, accessory dwellings and secondary suites).

In light of this new direction, Administration is seeking direction from Council as to whether it still wishes to permit the keeping of four (4) hens in the RS1 Zone (NOTE: a new RS1 Zone will likely be applied to the majority of residentially zoned parcels within the municipality).

Although not previously considered by the COTW at its meeting of October 10, 2023, Council may also wish to provide direction on the keeping of honeybees within residential neighbourhoods as this is seen to be a related practice.

7. Campground Occupancy

Committee of the Whole Report

Administration is aware that previous commitments were made to address the residential occupancy of recreational vehicles (RVs), including “Park Models”, in campgrounds as part of the drafting of a new zoning bylaw.

However, due to the pending June 30, 2024, deadline for implementing zoning changes resulting from recent amendments to the *Local Government Act* (i.e. Bill 44), Administration is recommending that this issue be deferred pending the adoption of the new Zoning Bylaw.

Conversely, there are steps that *could* be implemented in the new zoning to address this issue, including

- clarifying that the short-term occupation of an RV is considered a campground use (i.e. delete the use category of “recreational vehicle park”);
- clarifying that a campground is intended for the temporary accommodation of the travelling public (i.e. 30 days or less and not the current 6-month allowance) and not for permanent residential occupancy; and
- rezoning converted RV parks to the Manufactured Home Park (R4) Zone to reflect their predominant residential use.

Under the latter scenario, the intent of replacing the Campground (C5) Zone with the R4 Zone on certain properties would be to encourage the ongoing conversion of such sites to appropriate housing forms (i.e. modular and mobile homes) that meet standards established by the *Building Code* and which can be inspected and permitted by the Town.

8. “Neighbourhood Consent”

The Zoning Bylaw currently contains a provision referred to as “Neighbourhood Consent”, which is defined as meaning:

the action of obtaining consent of at least 75% of the registered property owners within a radial distance of 100 metres of a property requiring neighbourhood consent to perform an activity. The consent must be provided in writing on a form approved by the Town of Ossoyos.

This provision is used twice in the bylaw in relation to the parking of commercial vehicles in a residential neighbourhood as well as fence height:

Notwithstanding the provisions of section 4.14.1, the height of a fence on the parcel between the front lot line and the minimum setback from the front lot line may be constructed or erected to a maximum of 2 metres upon receiving neighbourhood consent as defined in this Bylaw.

This is seen to be a potentially unlawful delegation of Council authority and should not be carried forward into the new Zoning Bylaw. Approving a variance to a zoning regulation is a matter for Council to consider and should not be dependent on neighbourhood “consent”.

As an aside, Administration is concerned that basing the merits of a variance on neighbourhood consent allows for the introduction of considerations unrelated to the merits of a request and fails to recognize the dynamics that may be at play within a neighbourhood (e.g. resistance to change, NIMBYism, inter-personal conflicts, inequitable involvement of marginalized communities, etc.).

Committee of the Whole Report

Options/discussion:

1. That the following be incorporated within the Draft Town of Osoyoos Zoning Bylaw:
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 - that cannabis production be considered “agriculture, indoor” and that this use be permitted in the general industrial zone;
 - that the regulations for “home occupations” and “bed and breakfast” be revised in accordance with Attachment Nos 1 & 2 to this report;
 - that regulations be introduced to clarify the requirements for “mobile vendors”;
 - that the C1 zone be revised to allow for dedicated residential buildings;
 - that “service stations” only be permitted within a dedicated zone; and
 - that “Neighbourhood Consent” not be carried forward into the new zoning bylaw.

AND That a review of the campground zone be deferred pending the adoption of a new Zoning Bylaw.

2. That the following be incorporated within the Draft Town of Osoyoos Zoning Bylaw:
 - *TBD*

Implications:

- a) Community – To provide clarity and consistency.
- b) Organizational – Clarity provides improved customer service.
- c) Budget
Financial/Risk Implications There are no budget implications.
- d) Significant Dates – The proposed changes can be incorporated with the mandated provincial legislation changes required by June 30, 2024 legislated deadline.
- e) Sustainability- Providing clarity improves Administration interactions with stakeholders resulting in more efficient development.

Others Consulted:

Corporate Services
Operational Services
Protective Services

Attachments:

No. 1 – Comparison of Current vs Proposed “Home Occupation” Regulations

No. 2 – Comparison of Current vs Proposed “Bed and Breakfast” Regulations

Committee of the Whole Report

Attachment No. 1 – Comparison of Current vs Proposed “Home Occupation” Regulations

Current Home Occupation Regulations	Proposed Home Occupation Regulations
<p>.1 A home occupation business is allowed subject to meeting the following general conditions to minimize nuisances for residential neighbours:</p> <ol style="list-style-type: none"> .1 The business is conducted entirely within the dwelling, and / or in its accessory building where allowed; .2 Only permanent residents of the dwelling are engaged in the business; .3 The business does not create a nuisance at any time which is detectable from outside the premises from dust, electrical or radio disturbance, glare, heat, smoke, noise, odour or vibration, or present a safety risk from hazardous materials or equipment; .4 Any products shown for sale or display in the premises have all been processed or made on the premises, with the exception of products associated with hosted events such as kitchenware or beauty products, or hair care products ancillary to a hairdresser; .5 The business does not result in any change to the outside appearance of the dwelling that is inconsistent with its residential character, other than a sign which conforms with the Town's Sign Bylaw; .6 The business does not entail any outdoor storage or display of materials, containers, finished products or equipment; .7 The business does not entail any parking on or about the residential property of more than two (2) commercial vehicles no larger than 5,500 kg gross weight, or one such vehicle and a commercial trailer; .8 The business does not involve receipt or delivery of materials or products more frequently than once per week; and .9 The business has a valid and subsisting business licence pursuant to the Town's Business Licence Bylaw. 	<p>The following regulations apply to <i>home occupation</i> uses where permitted as a use in this Bylaw:</p> <ol style="list-style-type: none"> 1. A <i>home occupation</i> shall not occupy more than 40% of the floor area of a <i>principal dwelling unit</i> to a maximum of 50.0 m². 2. A <i>home occupation</i> shall be carried out within the <i>principal dwelling unit</i>, or in an <i>accessory building or structure</i> where permitted in the particular zone, with no external storage of materials, containers or finished products. 3. No <i>retail</i> sales shall be permitted in a <i>home occupation</i>, except for: <ol style="list-style-type: none"> a) goods produced or made on the premises; b) telephone or internet sales or sales where the customer does not enter the premises; c) mail order sales; d) direct distributors where customers do not enter the premises; and e) sale of products directly related to the <i>home occupation</i>. 4. No vehicle exceeding 4,600 kg in vehicle weight and associated with or used in the conduct of a <i>home occupation</i> shall be parked or otherwise located outside of an unenclosed <i>building</i>. 5. Only persons residing in the <i>principal dwelling unit</i> may carry on the <i>home occupation</i> located on the <i>parcel</i> occupied by the <i>principal dwelling unit</i>. 6. One (1) vehicle parking space is required in addition to those required for the principal <i>single detached dwelling</i>. 7. A <i>home occupation</i> shall not involve: <ol style="list-style-type: none"> a) material or products that produce inflammable or explosive vapours or gases under ordinary temperatures; b) the <i>outdoor storage</i> of materials, vehicles and equipment associated with a contractor, trade or mobile service;

Committee of the Whole Report

Current Home Occupation Regulations	Proposed Home Occupation Regulations
<p>.2 The following types of home occupations are allowable subject to meeting all other provisions of Section 4.6:</p> <p><u>Level I</u></p> <ul style="list-style-type: none"> consulting services delivered primarily through telecommunications or off the property. chartered accountant. computer repairs (but not sales). <p><u>Level II</u></p> <ul style="list-style-type: none"> alternative health practitioner providing acupuncturist, esthetics, herbalist, holistic healing, naturopath or yoga services. animal grooming. arts and crafts production and sales. barber, hairdresser or beauty salon. bed and breakfast utilizing one or two bedrooms. bus or taxi service home base. carpet cleaning or janitorial services delivered off the property. caterer without any sales on the property. construction company home office. day care for up to five (5) pre-school children as regulated under the Community Care and Assisted Living Act. hosted events for kitchenware or beauty products. landscaping services. sales representative for delivering products or services off the property. <p><u>Levels I or II</u></p> <ul style="list-style-type: none"> Any other home occupation use approved by the Director of Planning and Development Services as meeting the general conditions of subsection 4.6.1. <p>.3 The levels and numbers of allowable home occupation businesses shall suit the type of dwelling on the lot in which they are located as follows:</p>	<ul style="list-style-type: none"> c) the boarding, breeding and keeping of animals; d) <i>cannabis production</i>; e) the salvage or repair of motor vehicles, boats, or other machinery; and f) the assembly of more than four (4) persons for any artistic, educational, religious, therapeutic or similar activity.

Committee of the Whole Report

Current Home Occupation Regulations	Proposed Home Occupation Regulations
<ul style="list-style-type: none"> .1 One (1) Level II home business is permitted within a single-family dwelling unit and / or its accessory building. .2 Two (2) home businesses are only permitted within a single-family dwelling unit and / or its accessory building if at least one of them is a Level I home business. .3 One (1) Level I home business is permitted within a two-family or multiple-family dwelling unit, carriage house, or secondary suite, but not in any accessory building. .4 The total size of one or two home occupation business as allowed on the property shall be clearly incidental and subordinate to its primary residential use as follows: <ul style="list-style-type: none"> .1 If located within a single-family dwelling unit shall not exceed 30% of its gross floor area or 80 m², whichever is less; and .2 If located within an accessory building shall not exceed 50m²; and .3 If located within a two-family or multiple-family dwelling unit, carriage house, or secondary suite shall not exceed 40% of the gross floor area or 40 m², whichever is less. .5 Home occupation business shall require sufficient on-site parking spaces on their lot in addition to that required for dwellings under Schedule 1. Off-Street Parking as follows: <ul style="list-style-type: none"> .1 One additional parking space for each commercial vehicle or trailer required for the business; .2 One additional parking space per bedroom used for a bed and breakfast; and .3 All additional parking spaces shall accord with the applicable provisions of Section 6.9. Standards for Parking Spaces. 	

Committee of the Whole Report

Attachment No. 2 – Comparison of Current vs Proposed “Bed and Breakfast” Regulations

Current Bed and Breakfast Regulations	Proposed Bed and Breakfast Regulations
<p>BED & BREAKFAST means a business of providing a breakfast meal and accommodation for the travelling public within a single family dwelling utilizing not more than three bedrooms for bed and breakfast use, and which is occupied by the operator of the bed and breakfast. An unlicensed Bed and Breakfast is a home occupation utilizing two bedrooms or less for bed and breakfast use.</p>	<p>Bed and Breakfast Operations</p> <p><i>A bed and breakfast operation is permitted where listed as a permitted use, provided that:</i></p> <ol style="list-style-type: none"> .1 it is located within one <i>principal dwelling unit</i> on the <i>parcel</i>; .2 no more than eight (8) patrons shall be accommodated within the <i>dwelling unit</i>; .3 no more than four (4) bedrooms shall be used for the <i>bed and breakfast operation</i>; .4 no <i>cooking facilities</i> shall be provided for within the bedrooms intended for the <i>bed and breakfast operation</i>; .5 no patron shall stay at the <i>bed and breakfast operation</i> for more than thirty (30) consecutive days with 30 days in between any subsequent stay; and .6 only persons residing in the <i>principal dwelling unit</i> may carry on the <i>bed and breakfast operation</i> on the <i>parcel</i> occupied by the <i>principal dwelling unit</i>, and must be present on the property and residing in the <i>principal dwelling unit</i> during a patron's stay.

NOTE: Proposed occupancy allowance is based on Interior Health Authority (IHA) regulations