

To: Her Worship Mayor McKortoff and Members of Council

From: Christopher Garrish, Planner

Date: August 8, 2024

Subject: Zoning Bylaw No. 1395, 2024

Tracker No: BLW-389

RECOMMENDATION:

THAT Official Community Plan (OCP) Amendment Bylaw 1375.06, 2024, and Zoning Bylaw No. 1395, 2024, be read a first and second time;

AND THAT Council considers the process, as outlined in the Administrative Report dated May 14, 2024, to be appropriate consultation for the purpose of Section 475 of the *Local Government Act*;

AND THAT, in accordance with Section 477 of the *Local Government Act*, Council has considered OCP Amendment Bylaw No. 1375.06, 2024, in conjunction with its Financial and applicable Waste Management Plans;

AND THAT the holding of the public hearing for OCP Amendment Bylaw No. 1375.06, 2024, and Zoning Bylaw No. 1395, 2024, be scheduled for September 10, 2024;

AND THAT staff give notice of the public hearing in accordance with the requirement of the *Local Government Act*.

CAO Comments:

Reviewed by Director of Corporate Services on behalf of the CAO. Approved for Council's consideration.

Executive Summary:

The purpose of this report is to provide Council with options in relation to the introduction of a new zoning bylaw.

Background:

The Town's current Zoning Bylaw was adopted in 1998 and has been formally amended over 150 times in the intervening 25 years, which has affected hundreds of lines of text within the bylaw.

Extensive amendments to a bylaw can, over time, impact its effectiveness as internal inconsistencies and conflicts are introduced, impairing its coherence and ease of use by staff and

the public. In addition, the Town completed a review of its Official Community Plan (OCP) in 2022 and it is considered good practice to ensure zoning regulations are aligned with and support the strategic direction contained within an OCP.

For these reasons, and following a review of the Town's OCP Bylaw, Council initiated a comprehensive update of the Zoning Bylaw in 2022, which was to comprise three distinct components:

1. updating of Zoning Bylaw No. 1085, 1998;
2. reviewing the Foreshore and Lake Zoning Bylaw No. 1294, 2011; and
3. exploring regulatory options for short-term tourist accommodations.

Following commencement of the Zoning Bylaw Review project, the provincial government introduced two pieces of new legislation in October of 2023 that have significantly impacted the timing and scope of the Zoning Bylaw Update:

- *Housing Statutes (Residential Development) Amendment Act, 2023* (Bill 44); and
- *Short-Term Rental Accommodations Act* (Bill 35)

In response, the Zoning Bylaw Update will also now address implementation of the Small-Scale Multi-Unit Housing (SSMUH) requirements introduced into the *Local Government Act* by Bill 44.

Consideration of regulatory options for short-term tourist accommodations (i.e. "vacation rentals") will be completed separately to the Zoning Bylaw Update.

Small-Scale Multi-Unit House (SSMUH) Implementation:

The amendments to the *Local Government Act* enacted under *Housing Statutes (Residential Development) Amendment Act, 2023* (Bill 44), are intended to facilitate the delivery of "more small-scale, multi-unit housing for people, including townhomes, triplexes and laneway homes, and fix outdated zoning rules to help build more homes faster."

Further, a new Section 481.3(7) of the *Act* requires that the Town "consider applicable guidelines" made by the Minister when developing or adopting a zoning bylaw to permit the use and density of use required under to be permitted under the *Act*.

The *Provincial Policy Manual & Site Standards* (the "Small-Scale, Multi-Unit Housing (SSMUH) Policy Manual", or the "Manual") includes recommended approaches to regulations governing building types, density, setbacks, building height, parcel coverage, vehicle parking requirements as well as the use of development permit area designations.

When considering these regulations, the province has advised that "creating a favourable regulatory environment for SSMUH housing to help overcome these barriers will require an openness to new building forms in areas traditionally reserved for detached single-family and duplex homes."

SSMUH Implementation Extension Request:

On May 17, 2024, the Town submitted a request to the Minister of Housing for an extension to SSMUH Implementation to the end of 2029 due to current water production wells being unable to provide sufficient water to meet current peak hour demands and should increased densities be permitted before a surface water system is completed, there is risk to the community in regard to fire protection.

The province had advised that decisions on such SSMUH Implementation Extension Requests should be received prior to June 30, 2024.

As of the writing of this report, the Town has not received a response from the province in relation to its Extension Request.

In response, it is proposed to only increase residential densities in the proposed RS1 Zone to a maximum of two (2) dwelling units per parcel under Zoning Bylaw No. 1395.

Should the province grant the Town an SSMUH Implementation Extension, this density would remain in place until the expiry of the Extension (e.g. to the end of 2029).

Should the province not grant the Town an SSMUH Implementation Extension, the Town will be required to amend its zoning bylaw within 90 days of the province's decision being received in order to comply with the requirements of the *Local Government Act* (e.g. 3-4 units per parcel on most lands to be zoned RS1).

Previous Council Consideration:

In addition to various Zoning Bylaw Review Workshops completed in 2022 and 2023, Council has, more recently, considered and provided direction on a number of different zoning matters presented at its Committee of the Whole (COTW) between February and May of 2024, including:

- SSMUH implementation in the low density and medium density residential zone (see below for more details);
- repeal and incorporation of the Foreshore and Lake Zoning Bylaw No. 1294, 2012, into the new zoning bylaw;
- including "child care facilities" as a permitted principal use in low density residential zones;
- review and consolidate existing Comprehensive Development (CD) Zones into other, existing zones (e.g. CD11 & CD12 zones be combined into the new RM1 Zone);
- increasing cash in-lieu payments for deficient on-site vehicle parking spaces in the Downtown Commercial (C1) Zone from \$3,000/space to \$10,000/space;
- the retail sale of cannabis as a general "retail" use;
- cannabis production be considered an "agriculture, indoor" use and permitted in the industrial zone;
- that the regulations for "home occupations" and "bed and breakfast" be simplified;
- that regulations be introduced to clarify requirements for "mobile vendors";

- that the C1 zone be revised to allow for dedicated residential buildings;
- that “service stations” only be permitted within a new Service Commercial One (CS1) Zone; and
- that “Neighbourhood Consent” not be carried forward into the new zoning bylaw;
- that the keeping of livestock (e.g. chickens) and beehives be prohibited in residential zones;
- that the residential occupancy of recreational vehicles (RVs), including “Park Models”, in campgrounds, be deferred to after the adoption of the new zoning bylaw;
- providing “rough-in’s” for electric vehicle charging stations in new residential developments; and
- increasing the maximum building height in the proposed medium density residential zone to 15.0 metres.

Referrals:

Pursuant to Section 476 of the *Local Government Act*, Council must consult with the relevant School District when proposing to amend an OCP for an area that includes the whole or any part of that School District. In this instance, the School District has been made aware of the proposed amendment bylaw.

Pursuant to Section 477 of the *Local Government Act*, after first reading Council must consider the proposed OCP amendment in conjunction with the Town’s current financial and waste management plans. The proposed OCP amendment has been reviewed by the Operational Services and the Finance Department, and it has been determined that the proposed bylaw is consistent with the Town’s current waste management plan and financial plan.

Pursuant to Section 475 of the *Local Government Act*, Council must consult with the Agricultural Land Commission (ALC) when proposing to amend an OCP which might affect agricultural. Both the ALC and the Ministry of Agriculture have been made aware of the proposed OCP amendment bylaw.

Public Process:

Under Section 475(1) of the *Local Government Act*, Council “must provide one or more opportunities it considers appropriate for consultation with persons, organizations and authorities it considers will be affected.”

At its meeting of June 11, 2024, Council considered a staff report in which the following consultation opportunities were proposed in relation to Zoning Bylaw No. 1395:

- *Agency Referrals;*
- *Public Notification (e.g. newspaper ads, email news, etc.);*
- *Posting of Materials (e.g. Town website);*

- *Online Public Information Meeting; and*
- *In-person meetings by appointment.*

Copies of the draft bylaws, including map schedules, staff reports, PowerPoint presentations, and transition matrixes and comparison tables outlining differences between current and proposed zones were posted to the Town's web-site by the end of June 2024.

In July of 2024, newspaper and radio adverts regarding the Zoning Bylaw Update project and pending information meetings were notified and directed residents to the Town's web-site in order to obtain more information.

A formal referral to the agencies occurred on June 18, 2024, with received comments included as an attachment to this report.

On July 23, 2024, an electronic public information meeting for residents was scheduled to be held on the Zoom software platform, but was required to be rescheduled to July 30, 2024, due to technical issues. This meeting was subsequently held in a hybrid fashion (i.e., in-person and via Zoom) and attended by approximately 29 residents.

On July 30 & 31, 2024, in-person meetings (by appointment) were held with approximately eight (8) different sets of residents, in order to discuss issues related to the draft zoning bylaw.

Staff recommends that the steps outlined above represents sufficiently early and ongoing consultation for the purpose of Section 475 of the *Local Government Act*.

Analysis:

In light of previous direction provided by the Committee of the Whole (COTW) of Council, most "significant" regulatory changes contained within Draft Zoning Bylaw No. 1395, have already been considered by Council (June 11, 2024); nevertheless, the following is a brief overview of other proposed changes:

- Small-Scale Multi-Unit Housing (SSMUH) Implementation
- Updated Definitions (Section 4.0)
- Occupancy of an RV during construction (Section 6.6)
- Retaining Wall Regulation (Section 6.8)
- Waterfront Facilities Regulations (Section 6.13)
- Subdivision Regulations (Section 8.0)
- Floodplain Regulations (Section 9.0)
- Vehicle Parking Regulations (Section 10.0)
- Industrial Zones consolidation (Section 16.0)
- Airport Zone Updates (Section 17.2)
- Desert Park Zone introduction (Section 18.2)

- Osoyoos Lake Zoning (Sections 15.3 & 18.4)
- Comprehensive Development Zones (Sections 20.0)

The following items are a result of feedback on the draft bylaw as well as further review by Administration:

Front Parcel Line Setback – RS1 Zone:

According to the Provincial SSMUH Policy Manual:

Of all the land use regulation changes proposed in this manual, reducing customary single-family and duplex front and rear lot line setbacks may have the most profound effect on the traditional development pattern in single-family and duplex zones. It will enable buildings to be sited in what would have traditionally been a front yard or a back yard.

To address this, the provincial Policy Manual recommended the implementation of a 2.0 metre front parcel line setback for new development and this was included in the draft of Zoning Bylaw No. 1395 considered by Council in Committee on June 11, 2024.

Under the Town's current Zoning Bylaw No. 1085, 1998, a range of minimum front parcel line setbacks have been enacted for the various residential zones, including 6.0 metres (R1, R3, R6 & R7 zones), 4.5 metres (R2 Zone), 3.5 metres (RSS & R5 zones) and no setback (IRD Zone).

While no representations have been received on the proposed 2.0 metre front setback in the RS1 Zone, Administration is aware that no other member local governments of the Southern Interior Local Government Associated (SILGA) have implemented a 2.0 metre setback in complying with SSMUH requirements (see Attachment No. 2).

Given the average is between 3.0 to 4.5 metres and the District of Summerland and Town of Oliver have both implemented a 3.0 metre front setback requirements in their equivalent RS1 zones, Administration is recommending that a 3.0 metre setback be applied in Zoning Bylaw No. 1395.

Conversely, the option of retaining a 2.0 metre front setback in the RS1 Zone is available as is the option of a larger setback (e.g. 4.5 metres).

Cooking Facilities in Motels:

Under the Town's current Zoning Bylaw No. 1085, 1998, the definition of "motel" is seen to preclude the inclusion of cooking facilities within a sleeping unit. Yet, it is Administration's understanding that it is not uncommon to find cooking facilities provided within the various motel units within Town.

In order to address this, it is proposed to modify the definition of "motel" in Zoning Bylaw No. 1395, in order to clarify that "cooking facilities" are permitted within a motel unit.

Conversely, the option of continuing to exclude "cooking facilities" from a motel unit is available to Council. The rationale for doing so would be to discourage the conversion of such units to long-term residential use in order to retain existing tourist accommodation stock within the Town.

C5 – Recreation Vehicle Park / Campground Zone:

A number of questions regarding the C5 Zone in Zoning Bylaw No. 1085, 1998, were received during the public information meetings and querying what would be permitted by the new Campground Commercial (CT2) Zone that would replace the C5 Zone under Zoning Bylaw No. 1395.

Further to the direction provided by Council at its Committee of the Whole (COTW) meeting of February 13, 2024, the review of the C5 Zone has been deferred to a later point in 2024 or early 2025 in order to ensure that Zoning Bylaw No. 1395 could be adopted in accordance with statutory timelines established in the *Local Government Act* for SSMUH Compliance.

Accordingly, the introduction of the new CT2 Zone attempts to approximate, to the extent possible, the current use and density allowances of the C5 Zone with the understanding that a subsequent review of the CT2 Zone *may* result in zoning changes.

Incorporation of the Foreshore and Lake Zoning Bylaw:

Further to the direction provided by Council at its Committee of the Whole (COTW) meeting of May 14, 2024, it is being proposed to consolidate the current Foreshore and Lake Zoning Bylaw No. 1294, 2012, into the new Zoning Bylaw No. 1395.

Administration maintains its support for reducing the number of land use bylaws currently maintained by the Town due to available resources as well as concerns related to consistency of interpretation and coherence between bylaws purporting to regulate the same issues.

Of note, one aspect of Bylaw No. 1294 not being carried forward into Zoning Bylaw No. 1395 is the concept of a “semi-waterfront parcel” (e.g. a parcel that does not share a boundary with the Osoyoos Lake foreshore) and the ability of such parcels to submit an application to the Town, with provincial approval, to lease a portion of the lake for private purposes (e.g. installation of a boat lift, private moorage buoy, etc.).

Administration does not consider this “semi-waterfront parcel” provision to be a zoning regulation and is more akin to an application requirement better located in a document such as the Town’s Land Use Procedures Bylaw, or possibly as a policy statement in the Town’s OCP Bylaw (e.g. as a willingness by Council to consider such applications for use of the lake subject to certain criteria being satisfied).

Administration is also aware that Council has previously indicated that a long-term vision for Osoyoos Lake is still required with a public marina likely a necessary long-term solution to address challenges as they relate to safety and environmental health.

While concerns were expressed at the public information meetings held with residents and in representations submitted on Zoning Bylaw No. 1395 about these aspects of Bylaw No. 1294 not being carried forward into the new Zoning Bylaw, Administration considers the “Lake Health Assessment” project and renewal of the Licence of Occupation with the province to be the more appropriate venue in which establish policy (and subsequent zoning regulations) for use of the lake by upland property owners.

8000 Cottonwood Drive:

Under the Town's current Zoning Bylaw No. 1085, 1998, the property at 8000 Cottonwood Drive is current zoned CD11, the stated purpose of which is "to provide for a mixed use, high-density, resort multiple family residential development."

At the time the CD11 was applied to the subject property, Council was advised that this zoning would be "strictly residential, [and] would not allow for commercial use of the residences (inclusive of short-term rentals). The zoning did allow, however, a maximum height of 24.0 metres for a proposed apartment building and various reduced setbacks.

The initial draft of Zoning Bylaw No. 1395 did not include some of these provisions. Accordingly, it is proposed to apply an RM1 Zone to the property with a site specific regulation allowing a 24.0 metre height for the proposed apartment building.

It is further proposed to apply a site specific zoning to that part of Osoyoos Lake in front of the property to reflect a 2022 amendment to the Foreshore and Lake Zoning Bylaw No. 1294, 2012, that allowed for a 60-berth moorage facility.

With regard to the reduced setbacks currently comprised within the CD11 Zone, Administration considers these to be better addressed through a development variance permit (DVP).

32 Empire Street:

Under the Town's current Zoning Bylaw No. 1085, 1998, the property at 32 Empire Street is current zoned CD10, the stated purpose of which is "to encourage startup businesses to locate in the Town of Osoyoos by providing for a live-work opportunity by allowing for one residential suite above each of the strata titled industrial bays."

Since the building has been completed, the range of businesses seeking to operate in one of the strata units have tended to be non-industrial, such as a dance studio and pet groomer.

While these uses can be accommodated in other zones, the property owner is seeking greater flexibility with the zoning and is requesting a change from the proposed General Industrial (I1) Zone that will replace the CD10 Zone, to Service Commercial Two (CS2).

Administration is also aware that the existing structure has been constructed with a one (1) hour Fire Resistance Rating (FRR), which limits allowable uses to "low-hazard industrial" (F-3), which precludes such traditional industrial uses that involve welding.

Conversely, the option of retaining the proposed I1 Zone is available to Council as this most closely approximates the intent of the CD10 Zone that was introduced in 2018.

8000 Vedette Drive:

When the property at 8000 Vedette Drive was rezoned in 2019, the Administrative Report considered by Council clearly described and showed, through the submitted development plans, a 54-unit townhouse development, and up to 28 secondary dwelling units (i.e., basement suites).

Importantly, the R7 zone that was applied to the property did not permit for “secondary suites” and Administration is proposing that this be rectified in Zoning Bylaw No. 1395 through the introduction of a new RM1 site specific zoning in which suites are permitted.

OCP Bylaw Amendments:

The proposed amendment to the OCP Bylaw are largely in relation to the designation of development permit areas on parcels that are currently zoned Comprehensive Development (CD).

These parcels were not included in the previous amendments to the development permit area designations in the OCP (e.g. Bylaw No. 1375.04) because of this CD zoning.

Council is asked to be aware that the transition of the CD2 Zone that applies to the property at 4350 Lakeshore Drive will result in the introduction of a Medium Density Residential (MR) OCP designation, Medium Density Residential One (RM1) Zone and Multi-Family Residential Development Permit Area designation.

This is consistent with a request contained within a current rezoning application (Z23-04) that was previously submitted to the Town for this property and remains in process. If Zoning Bylaw No. 1395 and OCP Amendment Bylaw 1375.06 are approved, this rezoning application will become un-necessary.

Summary:

Administration consider the proposed zoning bylaw will be better aligned with the objectives and policies of Council as outlined in the Town’s OCP Bylaw, will further improve ease of use by the public and staff and improve coherence of the bylaw (i.e. consolidate amendments, address internal inconsistencies, etc.) and will ensure the Town is closer to compliance with provincial requirements for Small-Scale Multi-Unit Housing (SSMUH).

Administration further notes that this component of the Zoning Bylaw Update project, being a review of the Zoning Bylaw No. 1085 and Foreshore and Lake Zoning Bylaw No. 1294, 2012, has been completed ahead of schedule and under budget.

Options:

1. THAT Official Community Plan (OCP) Amendment Bylaw 1375.06, 2024, and Zoning Bylaw No. 1395, 2024, be read a first and second time;

AND THAT Council considers the process, as outlined in the Administrative Report dated May 14, 2024, to be appropriate consultation for the purpose of Section 475 of the *Local Government Act*;

AND THAT, in accordance with Section 477 of the *Local Government Act*, Council has considered OCP Amendment Bylaw No. 1375.06, 2024, in conjunction with its Financial and applicable Waste Management Plans;

AND THAT the holding of the public hearing for OCP Amendment Bylaw No. 1375.06, 2024, and Zoning Bylaw No. 1395, 2024, be scheduled for September 10, 2024;

AND THAT staff give notice of the public hearing in accordance with the requirement of the *Local Government Act*.

2. THAT first reading of Official Community Plan (OCP) Amendment Bylaw 1375.06, 2024, and Zoning Bylaw No. 1395, 2024, be denied.

Implications:

a) Community:

- Introduction of a new Zoning Bylaw will improve ease of use by the public.

b) Organizational:

- Introduction of a new Zoning Bylaw will improve ease of use by staff and will ensure better coordination between the Town's land use bylaws and that Council's objectives and policies, as outlined in the OCP Bylaw, are being implemented.

c) Budget:

- None at this time.

d) Financial/Risk Implications:

- Infrastructure such as water and sewer will require upsizing in some areas. The exact number of pipes and associated cost is not known at this time but is estimated to be significant.

e) Significant Dates:

- The Town's zoning bylaw must be updated within 90 days of a decision by the province on the SSMUH Implementation Extension Request, to comply with provincial legislative requirements. Implementation of Zoning Bylaw No. 1395, 2024, is a significant step in ensuring compliance.

f) Sustainability:

- Increasing residential densities is consistent with the Town's designation as a "Primary Growth Area" under the South Okanagan Regional Growth Strategy (RGS).

Others Consulted:

See Attachment No. 1

Attachments:

No. 1 - Agency Referral List

No. 2 - Summary of Residential Parcel Line Setback Regulations

No. 3 – Development Services Preliminary Bylaw Communication MOTI

No. 4 – Interior Health Comments

No. 5 – Correspondence from property owners

No. 6 – Official Community Plan Amendment Bylaw No. 1375.06, 2024

No. 7 – Zoning Bylaw No. 1395, 2024

Attachment No. 1 – Agency Referral List

Referrals to be sent to the following departments and agencies as highlighted with a ☒, prior to Council considering first reading of Official Community Plan Amendment Bylaw No. 1375.06 and Zoning Bylaw No. 1395:

<input checked="" type="checkbox"/>	Ministry of Transportation and Infrastructure	<input checked="" type="checkbox"/>	Chief Administrative Officer
<input checked="" type="checkbox"/>	Agricultural Land Commission	<input checked="" type="checkbox"/>	Corporate Officer
	Archaeology Branch (MFLNRORD)	<input checked="" type="checkbox"/>	Chief Financial Officer
<input checked="" type="checkbox"/>	Interior Health Authority	<input checked="" type="checkbox"/>	Operational Services
<input checked="" type="checkbox"/>	Ministry of Agriculture & Lands	<input checked="" type="checkbox"/>	Building Inspector
	Ecosystem Section (MFLNRORD)	<input checked="" type="checkbox"/>	Fire Department
<input checked="" type="checkbox"/>	School District	<input checked="" type="checkbox"/>	Osoyoos Indian Band
	Fortis BC	<input checked="" type="checkbox"/>	RDOS
	Eastlink		RCMP
	Telus		

Attachment No. 2 – Summary of Residential Parcel Line Setback Regulations

Local Gov.	Front	Rear	Interior	Exterior
Armstrong*	5.0 m	3.0 m	1.5 m	3.0 m
Achcroft	6.0 m	6.0 m	1.5 m	3.5 m
Barriere	6.0 m	6.0 m	1.5 m	4.5 m
Cache Creek	6.0 m	6.0 m	1.5 m	3.0 m
Chase	6.0 m	6.0 m	1.5 m	3.0 m
Clearwater	6.0 m	6.0 m	2.4 m	4.5 m
Clinton	6.0 m	6.0 m	1.5 m	3.0 m
Coldstream*	6.0 m	6.0 m	1.5 m	4.0 m
Enderby*	6.0 m	6.0 m	1.2 m	5.0 m
Kamloops*	4.5 m	6.0 m	1.5 m	4.5 m
Kelowna*	3.0 m	3.0 - 6.0 m	1.8 m	n/a
Keremeos	6.0 m	6.0 m	1.2 m	3.0 m
Lake Country*	4.0 m	3.0 m	1.5 m	4.0 m
Lillooet	3.0 m	3.0 m	1.5 m	3.0 m
Logan Lake	6.0 m	3.0 m	1.5 m	3.0 m
Lytton	3.0 m	3.0 m	1.5 m	3.0 m
Lumby*	4.5 m	6.0 m	2.0 m	4.5 m
Merritt*	5.0 m	3.0 m	1.2 m	n/a
Oliver*	3.0 m	3.0 m	1.2 m	3.0 m
Peachland*	6.0 m	4.5 m	1.5 m	4.5 m
Penticton*	4.5 m	6.0 m	1.2 m	4.0 m
Princeton	6.0 m	6.0 m	1.5 m	6.0 m
Revelstoke	6.0 m	7.5 m	1.5 m	3.0 m
Salmon Arm	6.0 m	6.0 m	1.5 m	6.0 m
Sicamous	5.0 m	4.0 m	1.5 m	4.5 m
Spallumcheen	8.0 m	8.0 m	2.0 m	5.0 m
Summerland*	3.0 m	3.0 m	1.2 m	3.0 m
Vernon*	4.0 m	1.5 m	1.5 m	3.0 m
West Kelowna*	3.5 m	1.5 m	1.2 m	2.5 m

* 3-4 units per parcel permitted