

COMMITTEE REPORT



Date: June 13, 2019
RIM No. 1210-21
To: Agricultural Advisory Committee (AAC)
From: Community Planning Department (LB)
Subject: Regulatory Options for Cannabis Production in the ALR

1.0 Purpose

To consider options to regulate cannabis production and related uses in the Agricultural Land Reserve.

2.0 Proposal

2.1 Background

On February 22, 2019, the Province of BC brought in new legislation governing the use of land in the Agricultural Land Reserve (ALR). On May 8, 2019, the Agricultural Land Commission (ALC) clarified that, under the new legislation, all forms of cannabis production are considered a farm use, including cannabis grown inside buildings with concrete and other non-soil based floors (see Attachment A). This is a departure from the regulations introduced in July 2018 that limited cannabis production to being grown outdoors in a field, in a structure with a base entirely of soil, or in a pre-existing structure or one under construction for the purposes of crop production. Previously, any proposed cannabis production that did not meet these conditions required a non-farm use application through the ALC. Under the new legislation, cannabis production in an industrial-type building with a concrete floor would be considered a farm use and would not need additional approval from the ALC.

This most recent change follows several years of evolving federal and provincial regulations, which have led to changes in how the City defines and regulates cannabis production and, more recently, retail sales. These changes are summarized below.

Timing	Regulatory Change	Government
July 2002	Medical cannabis legalized	Federal
January 2014	Medical cannabis production permitted in the ALR (added to Regulation in May 2015)	Provincial
April 2014	Medical cannabis regulations changed	Federal
May 2014	Medical cannabis production facilities added to the Zoning Bylaw	City
July 2018	Cannabis production designated as a farm use in the ALR in limited conditions	Provincial
October 2018	Cannabis production facility regulations amended and cannabis retail sales regulations added to the Zoning Bylaw	City
	Recreational cannabis legalized	Federal

Timing	Regulatory Change	Government
February 2019	Cannabis production considered a farm use in the ALR without conditions	Provincial

This change in legislation puts the responsibility on local governments to decide if or how to regulate cannabis production in the ALR in their communities. The City has the ability to regulate farm uses provided it is consistent with the *ALC Act* and associated regulations. Further, section 552 of the *Local Government Act* allows the City to restrict and prohibit farm operations by bylaw with approval from the Minister of Agriculture.

2.2 Current Regulations

Cannabis produced in the manner the ALC legislation defines as a farm use would be considered under the 'agriculture' use in the Zoning Bylaw. As part of the cannabis bylaw amendments in fall 2018, a property used for cannabis production in the ALR must be at least 60 m, measured from lot line to lot line, from a property outside of the ALR that has a residential use as a principal use. This is to limit possible cannabis production operation nuisances (e.g., odour, light) from affecting nearby residential uses. Further, the Zoning Bylaw prohibits the retail sale or dispensing of cannabis as part of the farm retail sales use.

Standard development regulations for setbacks, site coverage, and height of agricultural structures and processing facilities apply. This would allow for buildings used for cannabis production or processing to cover up to 35% of a property, or 75% for a greenhouse.

2.3 Considerations for Cannabis Production

Servicing & Utilities

Cannabis production facilities have significant and unique servicing requirements, particularly around energy, water, and wastewater. FortisBC indicates cannabis production facilities have requested annual energy supplies of up to 22 megawatts for electricity and up to 300,000 gigajoules for natural gas¹. This level of demand far exceeds typical industrial or agricultural uses and may require substantial upgrades to bring the necessary utilities to properties intending to produce cannabis. For reference, 45% of Denver's increase in energy demand since legalization of cannabis is for electricity to power cannabis facilities².

Cannabis production also has greater water demand than many agricultural uses. For example, it is estimated that a cannabis plant needs 22 litres of water per day while a wine grape plant needs 12 litres, and some communities are facing challenges with the quantity and quality of water supplies as it relates to cannabis production facilities³.

¹ FortisBC (2019). *Keeping up with new energy demand: cannabis and blockchain*. <https://www.fortisbc.com/news-events/stories-and-news-from-fortisbc/stories-news-from-fortisbc/2019/03/07/keeping-up-with-new-energy-demand-cannabis-blockchain>

² National Conference of State Legislatures (2016). *Electricity Use in Marijuana Production*. <http://www.ncsl.org/research/energy/electricity-use-in-marijuana-production.aspx>

³ McCarthy Tetrault (2018). *Spotlight on Cannabis*. <https://www.mccarthy.ca/en/insights/blogs/canadian-era-perspectives/spotlight-cannabis-part-2-taking-closer-look-environmental-costs-cannabis-cultivation>

Effluent from cannabis production may contain growth nutrients, pesticides, brine, and other contaminants. Most properties in the ALR are not connected to the City's sanitary sewer system and rely on septic systems for wastewater management.

Ancillary Uses

Processing of cannabis in the ALR falls under other farm product processing regulations defined in the ALR Use Regulation, namely that 50% of the farm product must be produced on the property or by a cooperative association to which the property owner belongs⁴. Other uses ancillary to cannabis production could include agri-tourism, gatherings for events, and farm retail sales in accordance with the ALC regulations and the Zoning Bylaw.

It should be noted that cannabis production and processing is not considered a qualifying agricultural use for the purposes of a property being classified as a farm by the BC Assessment Authority. Some uses permitted under the ALR Use Regulation, such as agri-tourism and gatherings for events, require that a property be classified as a farm, which could be achieved with other agricultural uses.

Federal Licencing

All cannabis production, processing, and sales operations must have a licence from Health Canada, in addition to the required provincial and local approvals. As of May 2019, new applicants for federal licences must now have a fully built facility prior to submitting their application. This presents a risk that fully constructed facilities may not meet licencing requirements.

Minister of Agriculture's Advisory Committee for Revitalizing the ALR and the ALC

The Minister of Agriculture formed an independent committee in 2018 to provide recommendations to the provincial government to revitalize the ALR and the ALC. In its interim and final reports, the Committee identified cannabis as an item of significant concern for the protection of land in the ALR. Committee members heard from stakeholders and the public calling for restrictions on cannabis production in the ALR. Key concerns raised by the Committee include:

- Unknown impacts of a relatively new industry;
- Speculation of ALR land, increasing costs for farmers;
- Lack of knowledge about 'normal' cannabis production practices as it relates to farming; and
- Proliferation of ancillary activities, including substantial processing facilities, agri-tourism, and farm retail sales.

The Committee's recommendation regarding cannabis in the ALR is attached for reference (Attachment B).

2.4 Regulatory Options

With the recent changes to the *ALC Act* and associated regulations, the City needs to consider its direction in regulating cannabis production in the ALR. Staff propose three options, each of which is outlined below.

⁴ ALR Use Regulation, s. 11(2)

Option 1: Allow All Forms of Cannabis Production

This option would not restrict any forms of cannabis production and would have the least oversight. Staff could consider more specific development regulations for siting, setbacks, site coverage, etc. for structures related to cannabis production and processing.

This also opens up more opportunities for cannabis-related agri-tourism activities and processing facilities in the ALR. For example, the City would have limited oversight over gatherings for events, tourist accommodations (e.g., bed and breakfasts, short-term rentals), and agri-tourism activities catering to cannabis tourism.

Option 2: Limit Cannabis Production to Soil-Based as per the ALR Use Regulation

This option would generally restrict cannabis production in the ALR to those identified in section 8 of the ALR Use Regulation: soil-based production outdoors in a field, in a structure with a base entirely of soil, or in a pre-existing structure constructed for the purposes of crop production. Associated development regulations could be developed to determine appropriate setbacks, site coverage, siting, and other considerations.

This option comes with several challenges around defining soil-based structures and determining the appropriate regulations. Few structures meet the requirement to have a base consisting entirely of soil, as this includes both footings and foundation. Further, a soil-based structure does not mean the crop is being grown in native soil, and staff are aware of several proposals for cannabis to be grown in planters or other means that are outside of the regulatory intent for soil-based cannabis production to take place on productive agricultural land.

Option 3: Require Council Approval for all Cannabis Production in the ALR

This option would require that all proposed cannabis production and processing facilities apply for a site-specific rezoning to be considered by Council. This approach would give the City the opportunity to review the merits of applications for cannabis production in the ALR and provide a greater level of oversight to this process. Applicants may be required to provide detailed plans for items such as servicing (e.g., hydro, water, wastewater), scale of production, ancillary uses, parking, and site context to be considered. The specific details of a proposal could be reviewed against City policies, guidelines, and regulations.

3.0 Current Development Policies

3.1 Official Community Plan

Objective 5.33 Protect and enhance local agriculture

Policy .1 Protect Agricultural Land. Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, except as otherwise noted in the City of Kelowna Agricultural Plan. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.

Policy .2 Urban Uses. Direct urban uses to lands within the urban portion of the Permanent Growth Boundary, in the interest of reducing development and speculative pressure on agricultural lands.

3.2 Agriculture Plan

Theme 1: Strengthening local policies and actions to protect agriculture.

Theme 2: Stewarding natural resources and the environment for food production.

Theme 3: Improving awareness of local agriculture and access to local food.

Theme 4: Fostering and sustaining farm business and farmland.

4.0 Community Planning

Staff have concerns that without a level of oversight, cannabis production in the ALR may have adverse impacts on the local agricultural community. Ancillary uses (e.g., processing, tourism, farm retail sales, etc.) present a risk to the City's policies to have agriculture as the primary use on a property, and speculation and servicing needs may further increase the cost of farmland in Kelowna.

As with any bylaw regulating farm uses in Kelowna, a Zoning Bylaw amendment regulating cannabis production in the ALR would require approval of the Minister of Agriculture. The current bylaw standards for cannabis production in the ALR were developed in 2015 based on the previous regulations for medical cannabis production facilities. City staff would work with Ministry and ALC staff to develop appropriate regulations for Kelowna.

Staff are seeking a recommendation from the Agricultural Advisory Committee to present options to Council regarding the regulation of cannabis production in the ALR.

Report prepared by: Laura Bentley, Community Planning Supervisor

Reviewed by: Terry Barton, Development Planning Department Manager

Attachments:

Attachment A – ALC Info Bulletin 04: Cannabis Production in the ALR

Attachment B – Minister of Agriculture's Advisory Committee for Revitalizing the ALR and the ALC Final Report [excerpt]