

REPORT TO COUNCIL



Date: August 8, 2016
RIM No. 1210-10
To: City Manager
From: Community Planning Department (MS)
Application: TA16-0006
Subject: Agri-tourist Accommodation (A1t)

1.0 Recommendation

THAT Zoning Bylaw Text Amendment Application No. TA16-0006 to amend City of Kelowna Zoning Bylaw No. 8000 as outlined in the Report from the Community Planning Department dated August 8, 2016 be considered by Council;

AND THAT the Text Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND FURTHER THAT effective August 8, 2016, in accordance with Development Applications Bylaw No. 10540 Section 2.1.2 (d), Council directs staff to not accept new zone amending applications for Agri-tourist Accommodation in the Agriculture 1 - A1t zone until Text Amendment Bylaw No. 11265 has had final reading consideration.

2.0 Purpose

To amend Zoning Bylaw No. 8000 by prohibiting the use of Agri-tourist Accommodation within the A1 - Agriculture 1 Zone, from the date of adoption of the Text Amendment, with the exception of existing conforming operations and those applications currently in process.

3.0 Community Planning

Community Planning supports the amendment to prohibit future use of agri-tourist accommodation as a permitted use in Section 11 - A1t-Agriculture 1 with Agri-tourist Accommodation Zone from Zoning Bylaw No. 8000. Staff notes that this would not impact current conforming operations, nor applications currently in process.

This is in response to challenges agri-tourist accommodation presents with respect to maintaining compliance of the use with respect to:

- Seasonality;
- Temporary (no more than 30 days);
- For tourists; and
- Accessory and subordinate to agriculture.

4.0 Proposal

4.1 Background

Agri-tourist accommodation is a permitted non-farm use in the Agricultural Land Reserve (ALR) according to the Agricultural Land Reserve Use, Subdivision and Procedure Regulation (ALC Regulation). While the use is a permitted non-farm use by the Agricultural Land Commission (ALC), the activity is not designated as a "farm use" and therefore may be regulated or prohibited by a local government bylaw (see attached ALC Bulletin Policy #5)¹. Section 3(1) of the ALC Regulation states that agri-tourist accommodation is one of the uses:

'permitted in an agricultural land reserve unless otherwise prohibited by a local government bylaw'.

The City of Kelowna currently regulates this use by allowing agri-tourist accommodation as a secondary use if the accommodation is associated with an agri-tourism activity which is subordinate and secondary to the principal agriculture use. The intent of City of Kelowna's A1t zone has been to provide assistance to bona fide farmers who wish to provide seasonal accommodation proven to be in aid of and directly associated with established farm operations that include an agri-tourism component. Accommodations temporary in nature may be operated on a seasonal basis subordinate to the agricultural operation.

Staff continue to meet with members of the public regarding the use and misuse of existing agri-tourist accommodation operations in the City. It is clear that a number of residents are impacted by this land use and farm operators await clear direction on this matter.

Staff notes that Metro Vancouver has policy which prohibits municipal servicing, specifically sewer, into the Agricultural Land Reserve². This restriction has been a strong deterrent to requests for Agri-tourist Accommodation units in Metro Vancouver³.

4.2 Project Description

The proposed amendment will prohibit future agri-tourist accommodation within the A1 - Agriculture 1 Zone within the City. The prohibition amendment stems from the challenges for the City to maintain compliance of this permanent secondary use that must be accessory to agriculture, which by nature is a use that can change from year to year. Additional challenges to enforcement and compliance are met with the requirements of seasonality, a maximum 30 day stay, and intended for tourists only. City enforcement resources has been challenged to maintain compliance on existing operations. While some operations are compliant, the expectation is that additional operations would require additional enforcement efforts overall.

The use became a permitted use under the ALC Regulation in 2003. Since then, the City of Kelowna has 15 existing agri-tourist operations operating under the ALC Regulation prior to the City of Kelowna Agri-tourist Accommodation (A1t) Zoning Amendment passed by Council in 2010. Two properties have been zoned A1t since 2010, both of which are under development but have not started operation. Of the 15 that were in operation prior to 2010:

- 5 operations are in court proceedings with the City regarding non-compliance;
- 4 operations have outstanding non-compliance concerns;
- 4 operations are compliant; and
- 2 operations are zoned, but under development / yet to develop.

¹ ALC, March 2003. Permitted Uses in the ALR: Agri-tourism Accommodation – Policy #5 – Bulletin.

² Metro Vancouver, 2010. Metro Vancouver 2040 Regional Growth Strategy. p. 29.

³ K. Grout, February, 2016. CEO, Agricultural Land Commission, personal communication.

Bylaw complaints from neighbours and compliance issues include:

- Noise;
- Visual impacts (unsightly premises);
- Permanent use (additional decks, RVs not on wheels);
- Difficulty to enforce the continuation of farming;
- No supporting agri-tourism activities (e.g. tours or farm experience);
- Complaints of residents and guests of RV site to neighbouring farms regarding normal farm practice (e.g. spraying, early morning noise, dust); and
- Additional illegal RV storage.

Given the challenges of maintaining compliance with the bylaw regulations of this use, and an understanding that additional operations, overall, will likely pose similar challenges and bylaw enforcement resources, the text amendment proposes to prohibit further agri-tourist accommodation operations within the City of Kelowna.

Staff notes that, with this text amendment:

- The A1t zone and use will remain for those properties currently zoned;
- The prohibition would apply going forward from the date of the report; and
- Operations conforming to the ALC Regulation prior to 2010 could remain, within the compliance requirements of the Regulation.

The details of the text amendment are outlined in Schedule "A".

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Future Land Use⁴

With respect to lands outside the Permanent Growth Boundary, Chapter 4 of the OCP states:

- Lands outside the permanent growth boundary will not be supported for urban uses.

Farm Protection Development Permit Guidelines⁵

Farm Protection Development Permit Guidelines include:

- Protect farm land and farm operations;
- Minimize the impact of urban encroachment and land use conflicts on agricultural land;
- Minimize conflicts created by activities designated as farm use by ALC regulation and non-farm uses within agricultural areas.

⁴ City of Kelowna Official Community Plan, Chapter 4.7 (Future Land Use).

⁵ City of Kelowna Official Community Plan, Chapter 15.2 (Farm Protection DP Guidelines).

Objective 5.33 Protect and enhance local agriculture⁶.

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 .3 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.

Policy .7 Non-farm Uses.

Support non-farm use applications on agricultural lands only where approved by the ALC and where the proposed uses:

- are consistent with the Zoning Bylaw and OCP;
- provide significant benefits to local agriculture;
- can be accommodated using existing municipal infrastructure;
- minimize impacts on productive agricultural lands;
- will not preclude future use of the lands for agriculture;
- will not harm adjacent farm operations.

Objective 5.34 Preserve productive agricultural land⁷.

5.2 City of Kelowna Agriculture Plan

ALR Application Criteria⁸

Exclusion, subdivision, or non-farm use of ALR lands will generally not be supported. General non-support for ALR applications is in the interest of protecting farmland through retention of larger parcels, protection of the land base from impacts of urban encroachment, reducing land speculation and the cost of entering the farm business, and encouraging increased farm capitalization.

5.3 City Development Applications Bylaw No. 10540

Bylaw Amendments Section 2.1.2.(d)

Notwithstanding Schedule '2' of this bylaw, Council may, by resolution, agree to postpone giving consideration to individual amendments to an Official Community Plan Bylaw or Zoning Bylaw until completion of any major review that the said bylaw may be undergoing at the time of the request.

6.0 Authority and Considerations

Legal/Statutory Authority:

Agricultural Land Reserve Use, Subdivision and Procedure Regulation (BC Reg. 171/2002), the "Regulation", Section 3 (1) (a)

Section 3 (1) "the following land uses are permitted in an agricultural land reserve unless otherwise prohibited by a local government bylaw:

(a) accommodation for agri-tourism on a farm if

⁶ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.33.

⁷ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.34.

⁸ City of Kelowna Agriculture Plan (1998); p. 130.

- (i) all or part of the parcel on which the accommodation is located is classified as a farm under the Assessment Act,*
- (ii) the accommodation is limited to 10 sleeping units in total of seasonal campsites, seasonal cabins or short term use of bedrooms including bed and breakfast bedrooms under paragraph (d), and*
- (iii) the total developed area for buildings, landscaping and access for the accommodation is less than 5% of the parcel;*

Considerations not applicable to this report:

Financial/Budgetary Considerations
Personnel Implications
Alternate Recommendation
Communications

Report prepared by:

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Reviewed by: Todd Cashin, Subdivision, Suburban and Rural Planning Manager

Reviewed by
Approved for Inclusion: Ryan Smith, Community Planning Department Manager

Approved for Inclusion: Doug Gilchrist, Divisional Director, Community Planning & Real Estate

Attachments:

Schedule "A" - Text Amendment TA16-0006
ALC Regulation Policy #5

Cc:

Divisional Director of Community Planning & Real Estate
Divisional Director of Corporate and Protective Services
Divisional Director of Communications and Information Services
Director Development Services
Bylaw Services Manager
Building & Permitting Manager
City Clerk
Policy & Planning Manager