

Report to Council



Date: May 30, 2022
To: Council
From: City Manager
Subject: City of Kelowna – Proposed New Zoning Bylaw 12375
Department: Development Planning

Recommendation:

THAT Council receives, for information, the report from the Development Planning Department, dated May 30, 2022 with respect to the City of Kelowna's proposed new Zoning Bylaw 12375;

AND THAT Zoning Bylaw No. 12375 be forwarded for reading consideration;

AND THAT the Zoning Bylaw No. 12375 be forwarded to Public Hearing for further consideration;

AND THAT Bylaw No. 12386 being Density Bonus for Public Amenities and Streetscape Reserve Fund be forwarded for reading consideration;

AND THAT Council temporarily waives the requirement for Development Permits and Development Variance Permits to be considered in conjunction with final adoption of rezoning bylaws to amend Zoning Bylaw No. 8000;

AND FURTHER THAT Council endorse the proposed new Zoning Bylaw Transition Plan, as outlined in the report from the Development Planning Department, dated May 30, 2022.

Purpose:

To approve the new Zoning Bylaw and the Density Bonus for Public Amenities and Streetscape Reserve Fund Bylaw and to direct staff to undertake the proposed Zoning Bylaw Transition Plan.

BACKGROUND:

Previous Council Resolution

Resolution	Date
THAT Council endorse the proposed new Zoning Bylaw process, as outlined in this report from the Development Planning Department Manager, dated October 4, 2021.	October 4, 2021
THAT Council receives, for information, the report from the Development Planning Department, dated January 17, 2022, with respect to the City of Kelowna's current Density Bonus Program.	January 17, 2022
THAT Council receives, for information, the report from the Development Planning Department, dated April 11, 2022, with respect to the City of Kelowna's proposed new Density Bonus Program; AND THAT Council endorse the proposed new Density Bonus Program in concept, as outlined in this report from the Development Planning Department Manager, dated April 11, 2022	April 11, 2022
THAT Council receives, for information, the report from the Development Planning Department, dated April 11, 2022, that outlines the public and stakeholder consultation efforts for the new Zoning Bylaw.	April 11, 2022
THAT Council receives, for information, the report from the Development Planning Department dated May 9, 2022, with respect to amending the Official Community Plan and Zoning Bylaw to allow for second residences on properties in the Agricultural Land Reserve; AND FURTHER THAT Council direct Staff to bring forth changes to the 2040 Official Community Plan Bylaw No. 12300 and Zoning Bylaw No. 8000 as outlined in the report from the Development Planning Department dated May 9, 2022.	May 9, 2022

INTRODUCTION:

A zoning bylaw is the principal way that local governments can regulate land use and along with an OCP, a zoning bylaw is one of two primary tools for a City to realize growth and development objectives across a community. Zoning bylaws assign a zone to all land within a local government and stipulate specific land uses, density, siting, and size of buildings, as well lot area and dimensions of properties for subdivision. A zoning bylaw consists of a set of rules that determine how land can and cannot be used, what can and cannot be built within each zone, and sets out the regulations intended to ensure the orderly development of the community and avoid conflicts between incompatible uses.

The OCP is a high-level community-based vision, a long-range plan that sets out the vision and overall management of growth of a city. It is a set of policies and guidelines that are used to generally influence decisions and guide the overall direction of a city. A zoning bylaw is a more specific tool to implement land use planning visions expressed in OCPs and growth strategies. The new city-wide zoning bylaw takes direction from the OCP and conforms with its policy direction. However, an effective zoning bylaw

should remain broad-based, often considered a “blunt” tool, and provide a specific property owner or developer a degree of flexibility in the way their project uses the zone.

Since a zoning bylaw is a technical document that is regulatory in nature, its impact on a community is significant. A zoning bylaw directly influences the form of the community as well guides opportunities, activities and land uses that are permitted. Given these characteristics, a zoning bylaw should be considered a living, or an organic document that provides a degree of continuity to past land use frameworks as well as continues to evolve to respond to the changing nature of the city. It should be flexible enough to respond to new initiatives with regular updates and revisions.

DISCUSSION:

Project Objectives:

The City’s first Zoning Bylaw (Bylaw No. 740) was adopted in 1938 and was updated four times¹ over the decades. The current Zoning Bylaw 8000 was adopted in 1998 and largely replicated its precursor, Bylaw No. 4500, from 1976. As the City looks to implement its strategic visioning document, Imagine Kelowna and the new 2040 Official Community Plan (OCP), a new and modern zoning bylaw is required that provides relevant and progressive land use regulations for the development industry and the needs of Kelowna residents. Staff have completed a comprehensive review and rewrite of the current Zoning Bylaw No 8000 through an inclusive process with both internal and external stakeholders.

The new Zoning Bylaw and the zoning map can be accessed on the City of Kelowna’s website here, [New Zoning Bylaw 12375](#).

Key objectives of the new Zoning Bylaw were as follows:

1. Align with the 2040 OCP, other key City initiatives and projects, and meet current Provincial legislative requirements;
2. Conduct internal and external stakeholder consultation throughout the process to help inform decision-making.
3. Responds to current planning and development trends;
4. Improves document consistency and provides a format that is user-friendly, easily interpreted, enforceable and effective in regulating land use in the City;
5. Reduces the number of commonly supported variance requests; and,
6. Allows for easy maintenance and updates in the future and a foundation to build upon.

Adoption of the new 2040 OCP earlier this year resulted in numerous land use designation name changes. As a result, the zones in the new Zoning Bylaw 12375 were changed to reflect the new terminology in the 2040 OCP. For example, the 2040 OCP designates five Urban Centres, defined as the City’s most intense activity hubs. The associated zone names in the new Zoning Bylaw were named accordingly to reflect the 2040 OCP land use designation (ex. UC1 to UC5). Attachment B outlines the zone name changes as proposed in the new Zoning Bylaw 12375.

Process to Date:

The new Zoning Bylaw project was a six-stage process that began in Fall of 2020 (Attachment C). Stages 1 and 2 consisted of defining the project team, scope and timelines, and developed the Project Charter as well as the Communication and Stakeholder Engagement Plan. The project team formed technical

¹ Bylaw No. 2293 was adopted in 1961; Bylaw No 3500 was adopted in 1973; Bylaw No 4500 was adopted in 1976.

work groups, held, and lead regularly scheduled focused work group meeting. Through inter-departmental collaboration, the team tackled each section of the Zoning Bylaw. Early on in Stage 3, the project team engage with the Ministry of Agriculture (MoA), the Agriculture Land Commission (ALC), the Agriculture Advisory Committee (AAC), and the Ministry of Transportation and Infrastructure (MoTI), receiving input, guidance, and direction from each stakeholder through series of meetings and workshops. Staff worked closely with each stakeholder in developing the new Zoning Bylaw. These key milestones lead to the completion of first draft of the new Zoning Bylaw. The first Council touch point was completed at the end of Stage 3.

The public engagement and consultation process for the new Zoning Bylaw built on the efforts first initiated in fall of 2019 in conjunction with 2040 OCP engagement events. Public, industry and internal stakeholder engagement activities took place for one-month in Fall of 2021, and then for a second time with a focused group of stakeholders in early 2022. During Stage 4, the project team engaged with internal and external stakeholders, processed, and reviewed close to one thousand comments, refined the draft Zoning Bylaw based on stakeholder feedback, and completed the second draft of the document. A second Council touch point was completed at the end of Stage 4. With the final refinements of the draft new Zoning Bylaw completed following the end of Stage 4, the project has moved to Stage 5. During this stage Staff will present and introduce to Council, and the Public the proposed new Zoning Bylaw, and if endorsed, will be followed by Public Hearing.

Proposed New Zoning Bylaw - Big Moves:

The changes in the updated Zoning Bylaw are the result of detailed research, countless internal and external meetings, community consultation, and review and discussion of feedback and comments. Through this collaborative process, a comprehensive update of the zoning bylaw was achieved, while meeting and realizing the main objectives of the project. An executive summary of key changes to the new Zoning Bylaw is provided in Attachment A and the highlights are summarized below:

1. *Height and Grade:*
Regulations for building height were updated and will now be measured by absolute height in metres rather than the number of storeys. Height will be measured from finished grade based on the proposed site plan.
2. *Site Coverage:*
Regulations have been updated to ensure reasonable expectations of on-site storm water infiltration. Impermeable surfaces that were previously excluded from site coverage calculations have now been included (ex: swimming pools, sidewalks).
3. *Minimum Buildable Area:*
Subdivision regulations in Single and Two Dwelling zones and Rural Residential zones now have a minimum buildable area requirement. The intention is to ensure that there is an adequate buildable area for new proposed lots that are not limited by areas with geotechnical or environmental restrictions.
4. *Use Categories:*
Use categories have been updated and simplified. The permitted uses were reviewed in coordination with the City's Business Licensing Department to ensure consistency and reviewed with respect to development cost charge implementation to clarify differences between commercial and industrial uses. A variety of retail uses (ex: convenience, service commercial, general retail, thrift stores, liquor

stores) that used to be separate have been consolidated into “Retail” as well as refinements to office and professional services for easier administration and clarity to property and business owners. The introduction of land use charts helps to format the Zoning Bylaw and better communicate to users of the Zoning Bylaw.

5. *Density Bonus Program:*

As it was outlined in Staff’s report to Council on the proposed density bonus program (dated April 11, 2022) there is a clear need for more rental and affordable housing options in Kelowna. There is also a significant need for investment in the public sidewalk system in the City’s Urban Core to help support the density and connect people with local amenities, shops and services, parks, schools, and transit. Staff recommend that the re-established density bonus program in the new Zoning Bylaw be aimed at achieving two key urban planning directions as outlined in the 2040 OCP:

- i. Increasing the supply of rental housing and affordable housing stock.
- ii. Improving the quantity and quality of public amenities through investments to sidewalks and the pedestrian realm.

A density bonus program is a tool provided to municipalities by the Province that can help achieve those objectives and can represent a significant source of revenue. The increase in density is well supported by the 2040 OCP in the urban core areas and the new Zoning Bylaw creates an important opportunity to overhaul the existing density bonus program to bring it into alignment with the OCP. This will ensure important public objectives are achieved for the community.

6. *Site Layout:*

Formerly the “Landscaping and Screening” section, the new Zoning Bylaw has introduced minimum ground cover and tree requirements within the front and rear yard setback areas. This is intended to ensure that setbacks are appropriately landscaped and provide opportunities to increase Kelowna’s urban tree canopy.

7. *Urban Centres (UC) and Village Centres:*

New Urban Centre zones apply to each separate Urban Centre. This allows differences between regulations for each Urban Centre and will allow further refinement of Urban Centre zones as detailed individual Urban Centre plans occur. They are intended to translate 2040 OCP height, density, and commercial frontage policies into regulations. The Urban Centre zones and the Village Centre zone aligns with the locations of the various Urban Centres and Village Centres as described in the 2040 OCP Future Land Use Designations. The Village Centre Zone provides different height and density regulations between the different Village Centres identified in the 2040 OCP, but the rest of the development regulations remain consistent.

8. *Core Area Zones:*

The purpose of the Core Area Mixed Use zone is to provide an intensive, mixed-use zone, for developments outside of Urban Centres. This zone will primarily be used adjacent to Transit Supportive Corridors or a Provincial highway. It is similar to the MF3 – Apartment Housing Zone but provides a larger floor area ratio and higher heights, based on 2040 OCP Policy.

9. *Multi-Dwelling Zones:*

The Multi-Dwelling zones were overhauled and simplified in accordance with the new 2040 OCP and aligned with the 2040 OCP Future Land Use designation of C-NHD – Core Area Neighbourhood. The

zones were created per typology of Multi-Dwelling development (infill, townhouses, and apartment forms). Selective commercial uses have been added to the MF3 – Apartment Housing zone on Transit Supportive Corridors to provide more flexibility within this zone for mixed use developments. This allows the zone to be applicable to more situations and follow the direction of the 2040 OCP that supports commercial space on key corridors. Office uses were intentionally excluded as being inconsistent with 2040 OCP direction. The new land use, Home-Based Business, Urban Centre & Corridor, is intended to facilitate home-based business on Transit Supportive Corridors within ground-oriented townhouses or apartments with direct access to the sidewalk. They do not have a restriction on the number of visiting clients or require any additional parking stalls.

10. *Agriculture and Rural Residential Zones:*

In keeping with aligning the new Zoning Bylaw with Provincial legislation, regulations, Staff allocated the appropriate agricultural zones to all parcels based on their ALR status and created two Agriculture zones:

- i. The A1 – Agriculture zone will apply to all properties that are within the ALR.
- ii. The A2 – Agriculture / Rural Residential zone, will apply to agricultural properties that are not within the ALR

Additionally, permitted land uses in the Agriculture zones were revised to comply and align with Provincial legislation, regulations, and policies and current internal policies and processes. This includes the recent changes to the ALC Act and Regulations for second residences in the ALR. As it was outlined in Staff's report and recommendation to Council (dated May 9, 2022), the new Zoning Bylaw is proposing to allow a carriage house on a property that is 2 hectares or greater.

11. *Commercial and Industrial Zones:*

The new commercial and industrial zones represent a consolidation and simplification of existing zones. They are intended to translate 2040 OCP height and density policy into regulation. For example, the C2 – Vehicle Oriented Commercial zone primarily aligns with the 2040 OCP Future Land Use designation of RCOM – Regional Commercial and the C1 – Local & Neighbourhood Commercial zones aligns with a variety of 2040 OCP designations. As well, in both C1 and C2, permitted uses have increased permissibility; for instance both zones allow office uses in upper storeys. Comparatively, liquor tasting rooms have a restricted floor area in industrial zones; this is to limit the overabundance of commercial uses (liquor service) in industrial areas. In collaboration with MoTI staff, a new subzone has been established for the drive-thrus and car washes to provide specific regulations to those intensive commercial land uses.

12. *Comprehensive Development (CD) Zones:*

The CD section was significantly reduced in number of zones, from 23 in the existing to six in the new zoning bylaw. The remaining CD zones are those that are still under development or have future phases to be developed. The CD zones that were eliminated are those developments that have built out. The list of CD zones is:

- CD12 – Airport
- CD17 – Mixed Use Commercial – High Density
- CD18 - McKinley Beach Resort
- CD20 - University
- CD22 - Central Green
- CD26 - Capri Centre

As part of maintaining the new Zoning Bylaw, when each of the CD zones is completed, it will be the intention to remove the zone and apply the City's more general land use zones.

Public Amenity and Streetscape Reserve Fund:

The purpose of the proposed Public Amenity and Streetscape Reserve Fund is to collect payments associated with proposed density bonus provisions of the new Zoning Bylaw 12375. The Fund would be utilized for urbanization and streetscape amenities, including, sidewalks, curb and gutter, drainage, landscaping, street furniture, bus pullouts, improved on-street parking design and other boulevard streetscape components. The funds collected could be utilized in combination with other funding sources and initiatives including the City's deferred revenue program, extending a developer's immediate frontage improvements to an intersection or other connection point, or in combination with a City capital project. The funds will provide critical urbanization projects that will help support the densities proposed throughout the Core Area as identified within the City's 2040 OCP.

BYLAW TRANSITION PLAN:

The move from the current Zoning Bylaw 8000 to the new Zoning Bylaw 12375 requires a transition plan and process. The challenge is having to address amendment bylaws that are at various stages as they make their way through the bylaw approval process. Staff have drafted a transition plan to help the public understand the process and to make the move as seamless as possible. The recommended transition plan is as follows:

- 1) Establish a pause on new rezoning bylaws being forwarded to Council between First and Third readings of the new Zoning Bylaw.
- 2) New rezoning bylaws may come forward to Council following the Third reading of the new Zoning Bylaw.
- 3) Decouple new rezoning bylaw adoptions from DP/DVP during the transition period. The purpose is to secure technical requirements of the rezoning portion only and not unnecessarily rush the form and character process.
- 4) If a new rezoning bylaw is not adopted prior to the adoption of the new Zoning Bylaw, it will be rescinded and will return for initial consideration under the new Zoning Bylaw.
- 5) Any permits (DP/DVP, HAP, etc.) can proceed to Council without any of the aforementioned restrictions.
- 6) Should an applicant have an approved development permit under the existing Zoning Bylaw 8000 or made building permit application prior to the new Zoning Bylaw coming into effect, they will have 12 months to complete the requirements to be issued a building permit. After that timeframe, all applications and permits will be expected to conform with the new Zoning Bylaw.

Additionally, Staff will track any rezoning bylaw amendments that will be adopted under Zoning Bylaw 8000 and will bring forward any necessary amendments to Zoning Bylaw 12375. This is to ensure these applications receive accurate zoning allocations following the adoption of the new Zoning Bylaw.

NEXT STEPS:

Should Council grant First Reading, the bylaw would be forwarded to an upcoming Public Hearing. Should the bylaw receive Third Reading, Staff will request formal provincial ministerial approval of the new Zoning Bylaw, prior to Council granting final reading. If adopted, the bylaw will come into effect and will be posted on the City's website, making the document accessible to all users.

Anticipated timeframes for next steps are as follows:



Agriculture Advisory Committee May 13, 2021

THAT the Committee supports the updates to Agriculture development regulations as outlined in Schedule 'C' of the report *City of Kelowna Draft Zoning Bylaw Updates* presented by City staff.

Carried

Anecdotal Comments:

Thirty-five percent site coverage on A1 zoned land is too high for a building structure. The Committee requests that the City review this percentage and consider reducing it.

Staff confirmed the next steps of the Zoning Bylaw review and proposed update will be a workshop with Council and then further public consultation.

Staff and external stakeholders were thanked for their input on developing the proposed changes.

Considerations applicable to this report:

Legal/Statutory Authority: Local Government Act, s. 479 Zoning Bylaws

Existing Policy: 2040 OCP and Imagine Kelowna

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Submitted by: Terry Barton, Development Planning Department Manager

Approved for inclusion: Ryan Smith, Divisional Director, Planning & Development Services

cc:
Policy and Planning Department Manager
Development Services Director

ATTACHMENTS:

- Schedule A: Proposed New Zoning Bylaw Map
- Attachment A: Executive Summary of Key Changes
- Attachment B: Zone Comparison and Summary
- Attachment C: New Zoning Bylaw Project Stages