

# Report to Council



**Date:** June 5, 2023  
**To:** Council  
**From:** City Manager  
**Subject:** Proposed Amendments to Second Residences in the ALR  
**Department:** Development Planning

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**Recommendation:**

THAT Council receives, for information, the report from the Development Planning Department dated June 5, 2023, with respect to amending the Zoning Bylaw for changes to regulation for second residences on properties in the Agricultural Land Reserve;

AND FURTHER THAT Council direct staff to bring forth changes to the Zoning Bylaw No. 12375 as outlined in the report from the Development Planning Department dated June 5, 2023.

**Purpose:**

To facilitate a discussion with Council regarding second residences in the Agricultural Land Reserve and review options to regulate the secondary uses based on Council Priorities.

**Background:**

In May 2022, staff brought forward a report to Council which reviewed options for second residences in the ALR based on provincial regulation changes. Staff recommended a balanced approach of adopting the changes to ALR regulations with further restrictions with the intent of protecting ALR land in the City. At that time, Council endorsed the option, and the changes were subsequently made in the new Zoning Bylaw 12375. As part of this Council’s strategic priorities, staff are reviewing the agricultural plan and related bylaws regarding secondary uses.

*Council Priorities 2023-26 – Agriculture “Review the Agriculture Plan with respect to secondary uses.”*

Province and Agricultural Land Commission

On July 12<sup>th</sup>, 2021, the Province introduced new legislation to allow increased housing flexibility within the ALR, which is intended to help both farmer and non-farmers support families and businesses. Effective December 31<sup>st</sup>, 2021, the new ALR Use Regulation permits property owners to have an additional residence (e.g. carriage house, garden suite, manufactured home, etc.) conditional upon the size of the principal dwelling and the size of the property as outlined below, without an application to the

Agricultural Land Commission (ALC). Proposals that deviate from these restrictions will continue to be required to submit a Non-Adhering Residential Use Permit Application to the ALC.

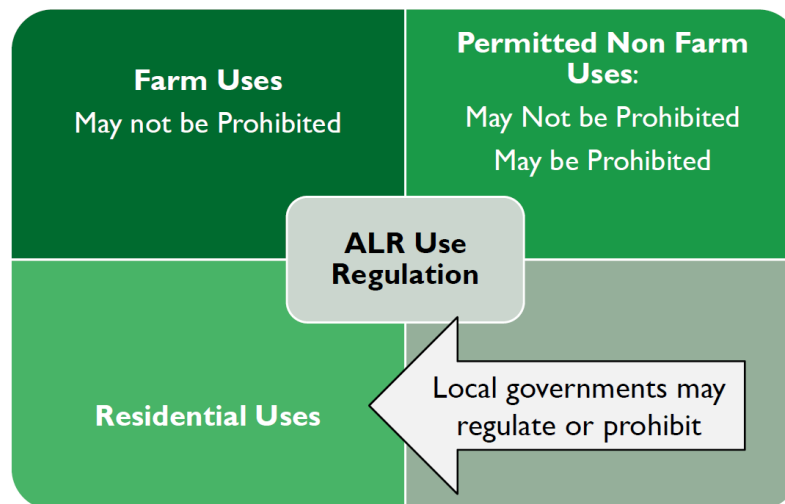
- For properties up to 40.0 ha and that have a principal dwelling that is less than 500m<sup>2</sup>, a 90m<sup>2</sup> additional residence is permitted.
- For properties that are over 40.0 ha, a second residence up to 186m<sup>2</sup> is permitted. There are conditions associated with the size of the principal dwelling.

The Provincial intent is that the additional residence can be used for several purposes including rental (long or short term), agri-tourism accommodation, family, or farm-help. There is no longer a requirement that the additional residence must be used by the landowner or immediate family members.

As the ALR Use Regulation allows local governments to regulate or prohibit residential uses within the ALR, provided that those regulations are not more permissive, a decision needs to be made on if and how these new regulations will be applied in Kelowna.

#### Existing Considerations for Secondary Residences

Residential uses within the ALR are different than farm uses because local governments have the ability to decide how they want to regulate them.



There are several regulations the City has in place through policy or bylaws that can help formulate the City of Kelowna's approach to the new residential regulations.

#### Okanagan Basin Water Board (OBWB) - 1.0 Hectare Policy

The City's Zoning Bylaw and Subdivision, Development & Servicing Bylaw as well as the Okanagan Basin Water Board's Policies do not support the development of carriage houses on lots less than 1.0 hectare that rely on on-site sewage disposal. Since 2014, the Okanagan Basin Water Board (OBWB) has required grant recipients, including the City of Kelowna, to have bylaws in place restricting carriage houses to properties greater than 1.0 hectare or to properties with community sewer connections. As per the OBWB

Sewage Facilities Assistance Grants' Terms of Reference, OBWB will only fund sewage infrastructure applications in communities that comply with its 1.0 Hectare Policy.

This policy has been built into the Zoning Bylaw under **Section 10.3 – Footnote .8:**

A carriage house shall be connected to a community sanitary sewer unless the lot is at least 1.0 ha and meets the requirements of the City and the Medical Health Officer for septic disposal capacity.

Since the ALC's new regulations for second dwellings would fall under the same size requirements, the OBWB 1.0 ha policy should be implemented to avoid conflict with any future funding opportunities.

#### Farm Residential Footprint Covenant

The City of Kelowna requires Farm Residential Footprint covenants for all new residential buildings including additions to principal dwellings (exceeding 50m<sup>2</sup>). This Farm Residential Footprint covenant allows the Approving Officer more discretion when permitting new residential development. The goal is to limit the residential driveway access to one, as well as create a defined Homeplate, so residential uses are spread throughout the site. This regulation has been defined in the Zoning Bylaw under **Section 10.5 – Footnote .1:**

*.1 For any lot 8,000 m<sup>2</sup> or greater in lot area, a residential footprint must be registered on title for any residential development triggered by a Farm Protection Development Permit. The maximum residential footprint is 2,000 m<sup>2</sup>. A second residential footprint up to 1,000 m<sup>2</sup> may be registered for carriage houses.*

If a new residential policy allowing second dwellings is adopted, it would be fair to adjust the above bylaw to require the Farm Residential Footprint covenant for all new residential development. The second dwelling would be required to be in a contiguous area with the principal dwelling and would instruct against having residential uses spread across the property.

#### Total Number of ALR Properties Affected

A GIS analysis of the City shows that there are 1946 properties that are either wholly or partially within the ALR. Total number of properties by size are as follows:

Property size	Number of properties
Less than 1 ha	617
1 ha to 40 ha	1296
> 2 ha (current minimum size for secondary residence)	1087
Greater than 40 ha	33

GIS analysis shows that 1,329 parcels in the ALR are over 1 ha in size. This means that should the City choose to amend its bylaws to reduce the minimum size, approximately 1,329 parcels could be affected with 1.0 ha minimum, however a number of properties have two dwellings located on them already.

Given the approximate construction rate of carriage houses within the City’s urban areas (20-30 per year), it is estimated that about 25% or 332 units of the possible 1,329 would be constructed over a twenty-year period. It is anticipated that there may be 10-15 units built per year for the first few years of the policy. In the first eight months of the new regulations being adopted, one permit has been issued with an estimated 5-10 in varying levels of the process. Due to the limited number of units, it is not considered to have any additional servicing needs from the City.

**Discussion:**

Staff have considered the existing requirements and proposed changes to adjust secondary residences in the ALR regulation. An outline of the existing and proposed regulations is provided in the table below.

	<u>Regulations</u>	<u>Pros</u>	<u>Cons</u>
1. Current Regulations	<p>Permitted uses and restrictions:</p> <ul style="list-style-type: none"> <li>• One secondary suite (within the principal dwelling) or one carriage house/mobile home will be permitted on a property;</li> <li>• The property must be 2 ha in size or greater;</li> <li>• All secondary residences must be located within the designated and covenanted residential footprint area as per the OCP’s Farm Protection DP Guidelines;</li> <li>• The maximum floor area of the secondary residences is 90m<sup>2</sup> or 986ft<sup>2</sup>;</li> <li>• The maximum size of the principal dwelling must be 500m<sup>2</sup> or less; and</li> <li>• The secondary residence could not be subdivided or strata titled.</li> </ul>	<ul style="list-style-type: none"> <li>- Limits the number of units per parcel</li> <li>- Limits size of unit</li> <li>- Creates a minimum parcel size to emphasize agricultural focus</li> <li>- Allows for housing flexibility for legitimate farmers while ensuring protection of viable agricultural land</li> </ul>	<ul style="list-style-type: none"> <li>- adds limited additional units outside of the PGB</li> <li>- Does not allow for as much flexibility as what the province/ALC allows</li> </ul>
2. Proposed Regulations (as per provincial regulation)	<p>Proposed uses and restrictions:</p> <ul style="list-style-type: none"> <li>• Both one secondary suite (within the principal dwelling) and one carriage house/mobile home or suite within an accessory building would be permitted on a property;</li> </ul>	<ul style="list-style-type: none"> <li>- Consistent with provincial legislation</li> <li>- Reduced property size from 2 ha to 1 ha</li> <li>- More permitted units per property</li> </ul>	<ul style="list-style-type: none"> <li>- Increased number of units outside of the PGB</li> <li>- Most potential to impact agriculturally productive land and increase</li> </ul>

	<ul style="list-style-type: none"> <li>• The property must be 1 ha in size or greater;</li> <li>• All secondary residences must be located within the designated and covenanted residential footprint area as per the OCP's Farm Protection DP Guidelines;</li> <li>• For properties up to 40ha, a 90m<sup>2</sup> additional residence is permitted;</li> <li>• For properties that are over 40ha, a second residence up to 186m<sup>2</sup> is permitted;</li> <li>• The maximum size of the principal dwelling must be 500m<sup>2</sup> or less; and</li> <li>• The secondary residence could not be subdivided or strata titled.</li> </ul>	<ul style="list-style-type: none"> <li>- Increased size second dwellings for larger properties</li> <li>- Can be constructed in accessory buildings</li> <li>- Provide the most flexibility for agricultural land owners and businesses</li> </ul>	<p>residential footprints</p> <ul style="list-style-type: none"> <li>- Less likely for smaller properties to be used primarily for agriculture</li> </ul>
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As part of the Council Priorities, a measure of progress is identified as monitoring the percent of farmland that is being actively farmed, being maintained or is increasing (i.e. the percent of agricultural land that is actively farmed). Allowing more residences on a larger number of properties will cause further pressure on farmland and may increase residential impacts. However, the potential increased impacts will still be mitigated through existing City policy, specifically the Farm Residential Footprint requirements.

Allowing secondary suites within accessory structures makes it more difficult to have the residential footprints contiguous and may spread out farm footprint areas. This includes expanding or second utility lines, driveways and septic systems. Current OCP policies require the footprints to be contiguous, maintaining this policy would be a challenge to implement and enforcement.

**Conclusion:**

After review of the secondary uses, current regulations and Council strategic direction, Staff are proposing to align directly with the ALC Act and Regulations with the exception of the 1.0 ha minimum of the Okanagan Basin Water Board requirements. This would include the following regulations and restrictions:

- Both one secondary suite (within the principal dwelling) and one carriage house/mobile home or suite within an accessory building will be permitted on a property;
- The property must be 1 ha in size or greater;
- All secondary residences must be located within the designated and covenanted residential footprint area as per the OCP's Farm Protection DP Guidelines;
- The maximum floor area of the secondary residences is 90m<sup>2</sup> or 986ft<sup>2</sup> for properties under 40 ha in size;

- The maximum floor area of the secondary residences is 186m<sup>2</sup> or 2,002 ft<sup>2</sup> for properties over 40 ha in size;
- The maximum size of the principal dwelling must be 500m<sup>2</sup> or less; and
- The secondary residence could not be subdivided, or strata titled.

Staff are proposing to align City bylaws with the ALC Act and Regulations which would allow for a greater number of properties to be permitted for second dwellings in addition to an increased number of potential units on those properties. This would give even greater flexibility to agricultural property owners and producers. Additionally, this regulatory change adds rental housing options on farm properties which may indirectly support Council's Priority of Affordable Housing.

Potential impacts to agricultural land include increased pressure from added residential densities to smaller properties that may not be used primarily for agriculture. However, all second residence options would be required to be within the Farm Residential Footprints similarly to what is required now.

**Internal Circulation:**

Department of the City Clerk

**Considerations applicable to this report:**

Legal/Statutory Authority:

**Agricultural Land Commission Act, S.B.C. 2002**

**Agricultural Land Reserve Use Regulation, B.C. Reg. 30/2019**

**Considerations not applicable to this report:**

Legal/Statutory Procedural Requirements

Existing Policy

Financial/Budgetary Considerations

External Agency/Public Comments

Communications Comments

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