

Report to Council



Date: June 19, 2017
File: 1210-24
To: City Manager
From: Community Planning and Strategic Investment (TG/MS)
Subject: Temporary Farm Worker Housing Bylaw Amendments OCP16-0022, TA16-0015, TA16-0016

Recommendation:

THAT Council receives, for information, the Report from Community Planning and Strategic Investment dated June 19, 2017 to amend the Official Community Plan Bylaw No. 10500, Zoning Bylaw No. 8000 and the Development Application Procedures Bylaw No. 10540;

AND THAT Council amend at first reading TA16-0022 Temporary Farm Worker Housing Official Community Plan Amending Bylaw No. 11373 as per Schedule 'A';

AND THAT Council amend at first reading TA16-0015 Temporary Farm Worker Housing Zoning Amendment Bylaw No. 11374 as per Schedule 'B';

AND THAT Council considers the public process outlined in the Report from Community Planning and Strategic Investment dated June 19, 2017, to be appropriate consultation for the purpose of Section 475 (1) and (3) of the Local Government Act;

AND THAT the Official Community Plan text amending bylaw and Zoning Bylaw text amending bylaw be forwarded to a Public Hearing for further consideration;

AND FURTHER THAT Council amend at third reading Bylaw No. 11375 being Amendment No. 5 to Development Applications Procedures Bylaw No. 10540 as per Schedule 'C'.

Purpose:

To amend the Official Community Plan, Zoning Bylaw and Development Application Procedures Bylaw to provide updates to temporary farm worker housing policy, regulation and procedures.

Background:

Council provided first reading for bylaw amendments on temporary farm worker housing at the April 10, 2017 meeting. Following the May 2 Public Hearing, however, Council deferred 2nd and 3rd reading and directed staff to bring back the proposal to a Monday afternoon meeting with amendments based on input heard at the public hearing (R334/17/105/02).

Farm worker housing is commonly built on agriculture land in the ALR and typically generates concerns with the immediate neighbourhood or community. These include:

- Potential misuse of farm worker housing (i.e. as rental housing for non-farm uses to generate revenue);
- Loss of agricultural land (i.e. permanent conversion of agricultural land to a residential footprint);
- Changes to the agricultural landscape (i.e. the increased density of people and structures clutters the rural aesthetic quality of the landscape);
- Increased demands on municipal infrastructure; and
- A perceived 'detachment' of the workers having no connection to the community.

Central Okanagan communities are not immune to these issues, and as a result several challenging applications have been brought forth to house workers on farm land in the past 18 months.

Following the Public Hearing, staff have met with the BC Fruit Growers Association to discuss their concerns and examined opportunities to revise the proposed amendments to meet the BCFGA's four main concerns as outlined in Table 1.

Further, over the past month, staff have met with the Ministry of Agriculture on several occasions to discuss options to meet the concerns of the BCFGA as well as to ensure the proposed revisions remain consistent with the Ministry's "Guide for Bylaw Development in Farming Areas."

Table 1: BCFGA Concerns

BCFGA Concern	How it was addressed
Definition of farm unit	The definition for farm unit remains intact as per direction from the Ministry of Agriculture, however, policy has been revised to allow farms to have TFWH in each City sector (i.e. to allow more than one TFWH location per farmer).
Public hearing threshold	A site specific zoning amendment and associated public hearing would only be required for TFWH applications for structures to accommodate more than 40 temporary farm workers on parcels up to 8 hectares; and for TFWH applications for structures to accommodate more than 60 temporary farm workers on parcels eight hectares or more in each City sector. Allowing TFWH in each city sector provides more opportunities to locate TFWH across the City before requiring a site specific zoning amendment.
Annual term of occupation	Annual occupation has increased from eight months to ten months.
Placement of temporary farmworker housing	A clause has been added to allow location to "maximize agricultural potential and limit negative impacts on the farm parcel" with the intent of ensuring that location is sited to minimize the impact on agricultural productivity.

In response to balancing industry concerns, the public and Ministry of Agriculture interests, the amended proposal of OCP amendments (Schedule A, attached), Zoning Bylaw amendments (Schedule B, attached) and Development Application Procedures Bylaw amendments (Schedule C, attached) provide a balanced approach that will meet the needs of both industry and other interests. Staff have endeavored to provide a policy framework that promotes certainty for farmers while acknowledging the land use implications and aim to minimize conflicts with broader community issues. Table 1 provides a summary of the revisions made since the May 2 Public Hearing.

Table 2 – Changes to Draft Temporary Farm Worker Housing Policy since May 2 Public Hearing

Bylaw	Initial Draft Policy	Revised Draft Policy	Comments
Official Community Plan	Temporary Farm worker housing footprint should be contiguous with the residential footprint (i.e. homeplate and/or within 50 metres of the road.	Temporary farm worker housing footprint should be contiguous with the residential footprint (i.e. homeplate) and/or within 50 metres of the road <i>and/or located to maximize agricultural potential and limit negative impacts on the farm parcel.</i>	Provides the ability to locate TFWH on a parcel such to maximize agricultural potential.
Zoning Bylaw	<p>On-farm processing means the undertaking of processes, including mixing, drying, canning, size reduction, fermentation, heat treatments, cold treatments, and biological treatments on a farm unit to:</p> <ul style="list-style-type: none"> • Prepare value added products from farm products to sell, or • Prepare feed for livestock, poultry, farmed game, located on the farm <p>But excludes on-farm composting, on-farm soil preparation, and on-farm soilless medium production.</p>	<p>On-farm processing means the undertaking of processes, including <i>grading, packing,</i> mixing, drying, canning, size reduction, fermentation, heat treatments, cold treatments, and biological treatments on a farm unit to:</p> <ul style="list-style-type: none"> • Prepare value added products from farm products to sell, or • Prepare feed for livestock, poultry, farmed game, located on the farm <p>But excludes on-farm composting, on-farm soil preparation, and on-farm soilless medium production.</p>	Added the terms “grading” and “packing” to reflect the processing that happens on many Kelowna orchards.
	9.13.1 (b) Minimum parcel size is 3.8 ha	9.13.1 (b) Minimum <i>farm unit</i> size is 3.8 ha	Allows for smaller farms to utilize TFWH if their total farm unit is at least 3.8 ha.

Bylaw	Initial Draft Policy	Revised Draft Policy	Comments
Zoning Bylaw con't	9.13.1 (f) A statutory declaration must be filed with the City of Kelowna annually, by January 31 st , stating that the building will be used only for TFWH and specify the time(s) of year when the TFWH will be occupied. The specified period of time may be no greater than eight months per calendar year.	9.13.1 (f) A statutory declaration must be filed with the City of Kelowna annually, by January 31 st , stating that the building will be used only for TFWH and specify the time(s) of year when the TFWH will be occupied. The specified period of time may be <i>no greater than ten months per calendar year.</i>	Amended from eight months to ten months as per input from the BCFGA.
	9.13.2 (a) TFWH footprint may not exceed 0.20 ha.	9.13.2 (a) TFWH footprint may not exceed 0.20 ha for structure(s) to accommodate a maximum of forty temporary farm workers and may not exceed 0.30 ha for structure(s) to accommodate a maximum of sixty temporary farm workers .	Increased TFWH footprint size to be proportional with increase in maximum TFWH.
	9.13.3 (a) Structure(s) to accommodate a maximum of forty temporary farm workers per farm unit. (b) Farm units with greenhouses and/or on-farm processing structures may increase allowable number of workers by 1 worker per each 1000 m2 of greenhouse and/or on-farm processing structures. (c) Where a farm unit comprises of multiple parcels of land, TFWH may be clustered on a single parcel, subject to: i. A restrictive covenant be registered on all other parcels of the farm unit restricting the development of further TFWH on said parcels, and transferring the	9.13.3 (a) Structure(s) to accommodate a maximum of forty temporary farm workers per each city sector as identified on Official Community Plan Map 5.4 for parcels up to eight hectares. For parcels eight hectares or more, structure(s) to accommodate a maximum of sixty temporary farm workers per each city sector as identified on Official Community Plan Map 5.4. (b) Farm units with greenhouses and/or on-farm processing structures may increase allowable number of workers by 1 worker per each 1000 m2 of greenhouse and/or on-farm processing structures. (c) Where a farm unit comprises multiple parcels of land, a restrictive	Increased structures to accommodate a maximum sixty TFW for those parcels 8 ha or more. Proposal allows for structure(s) in each City sector (Schedule F) to minimize neighbourhood impacts. The City sector map was chosen for the geographical boundaries for ease of staff administration and certainty for farm operators.

Bylaw	Initial Draft Policy	Revised Draft Policy	Comments
	<p>allocation of TFWH to the parcel being developed with TFWH.</p>	<p><i>covenant shall be registered on all farm unit parcels within the same sector of the temporary farm worker housing as identified on Official Community Plan Map 5.4 restricting the development of further TFWH on said parcels within that sector.</i></p>	
<p>Development Application Procedures Bylaw</p>	<p>Temporary Farm Worker Housing Permit Minor Direct means a permit authorized by Section 15 (1) of the Community Charter, issued by the Department Manager, Community Planning that applies to development that meets the following criteria:</p> <ul style="list-style-type: none"> • Is for eight or fewer sleeping units in one or more Temporary farm worker agricultural dwellings; and • Is consistent with the applicable guidelines and policies of the Official Community Plan and regulations of the Zoning Bylaw. 	<p>Temporary Farm Worker Housing Permit Minor Direct means a permit authorized by Section 15 (1) of the Community Charter, issued by the Department Manager, Community Planning that applies to development that meets the following criteria:</p> <ul style="list-style-type: none"> • Is for eight or fewer sleeping units in one or more Temporary farm worker agricultural dwellings for the accommodation of an employee(s) paid to work for no greater than 10 months per calendar year; and • Is consistent with the applicable guidelines and policies of the Official Community Plan and regulations of the Zoning Bylaw. 	<p>Amended to reflect the changes to the Zoning Bylaw which allows up to 10 months of occupation by temporary farm workers.</p>
	<p>'Temporary Farm Worker Housing Permit Major' means a permit authorized by Section 15(1) of the <i>Community Charter</i> for the accommodation of an employee(s) paid to work on a farm for less than eight months per calendar year</p>	<p>'Temporary Farm Worker Housing Permit Major' means a permit authorized by Section 15(1) of the <i>Community Charter</i> for the accommodation of an employee(s) paid to work on a farm for no greater than ten months per calendar year.</p>	<p>Amended to reflect the changes to the Zoning Bylaw which allows up to 10 months of occupation by temporary farm workers.</p>

Next Steps:

Kelowna is one of only four farm bylaw communities in the province, and consequently, once the proposed amendments have received Third Reading by Council, they must be forwarded to the Minister of Agriculture for approval prior to Final Adoption.

Summary:

In summary, the proposed regulations are comprehensive, thoughtful and have been arrived at through best practice research and farm operation evaluation. Given the potential negative impacts that housing can have on agricultural land, the proposed regulations and approval streams are deemed the best approach to regulate farm housing for farm workers and provide a framework that will support farm operators for a wide variety of farm operations at different scales of economies while at the same time, avoid unwarranted development from occurring under the pretense of farm help.

The discussions with industry and resulting amendments represent a softened approach to reflect the agricultural industry needs, but also aim to provide the necessary land use, compatibility and servicing analysis to ensure they fit within each city sector with minimal impact.

Internal Circulation:

Divisional Director, Community Planning and Real Estate
Community Planning Department Manager
Divisional Director, Communications and Information Services
Divisional Director, Corporate and Protective Services
Building and Permitting Manager
Long Range Planning Manager
Communications Advisor

Legal/Statutory Authority:

Local Government Act Part 14, Division 4 – Official Community Plans
Local Government Act Part 14, Division 4 – Zoning Bylaws

Legal/Statutory Procedural Requirements:

Local Government Act Section 475 specifies that a local government must, during the development, repeal or amendment of an official community plan, provide one or more opportunities it considers appropriate for consultation with persons, organizations and authorities it considers will be affected. This consultation is required in addition to a required public hearing.

Existing Policy:

OCP Policy 5.33.1 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.¹

OCP Policy 5.34.2 Farm Help Housing. Accommodation for farm help on the same agricultural parcel will be considered only where:

¹ City of Kelowna. Kelowna 2030 Official Community Plan, Chapter 5: Development Process, page 5.35

- Agriculture is the principal use on the parcel, and
- The applicant demonstrates that the additional housing is necessary to accommodate farm employee(s) whose residence on the farm property is considered critical to the overall operation of the farm. The primary consideration is whether the scale of the farm operation is large enough that permanent help is deemed necessary.²

Temporary farm worker housing (e.g. bunkhouse accommodation on non-permanent foundations) is the preferred solution where the need for farm worker housing is justified.

Farm Protection DP Guidelines

Guideline 1.2: On agricultural lands, where appropriate, locate all buildings and structures, including farm help housing and farm retail sales, within a contiguous area (i.e. homeplate). Exceptions may be permitted where the buildings or structures are for farm use only.³

External Agency/Public Comments:

City of Kelowna staff collaborated with staff from Regional District of Central Okanagan, City of West Kelowna, District of Lake Country, Ministry of Agriculture and Agriculture Land Commission to develop the proposed policies and regulations.

City staff also consulted with the Agricultural Advisory Committee on two occasions (October 2016 and February 2017).

Since the April 10 Council meeting on TFWH, City staff have met with representatives from the BC Fruit Growers Association on three occasions (April 26, May 9, and May 24) and met with Ministry of Agriculture (via phone) on five occasions (May 3, 18, 25, 31 and June 2).

Communications Comments:

The requirements for consultation under Section 475 of the Local Government Act have been addressed in the following way:

- March 15, 2017 Official Community Plan webpage on kelowna.ca revised to explain proposed amendments and provide a contact for comments by March 31, 2017
- March 16, 2017 application file was referred to organizations affected (see previous section for list) with request for input by March 29, 2017.
- March 16, 2017 message forwarded to City of Kelowna e-subscribe recipients.
- March 17, 2017 ad placed in Kelowna Daily Courier, with comment deadline of March 31, 2017.
- March 24, 2017 ad placed in Kelowna Daily Courier, with comment deadline of March 31, 2017.
- April 21, 2017 ad placed in Kelowna Daily Courier, with Public Hearing and comment opportunities.
- May 2, 2017 Public Hearing

Submitted by:

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² City of Kelowna. Kelowna 2030 Official Community Plan, Chapter 5: Development Process, page 5.36

³ City of Kelowna. Kelowna 2030 Official Community Plan, Chapter 15: Farm Protection DP Guidelines, page 15.3

Approved for inclusion:



Danielle Noble-Brandt, Dept. Manager, Policy & Planning
Todd Cashin, Suburban and Rural Planning Manager

cc:

Divisional Director, Community Planning and Real Estate
Community Planning Department Manager
Divisional Director, Communications and Information Services
Divisional Director, Corporate and Protective Services
Building and Permitting Manager
Long Range Planning Manager
Communications Advisor
Regional District of Central Okanagan, Ron Fralick
City of West Kelowna, Brent Magnan
District of Lake Country, Mark Koch
District of Peachland, Cory Gain

Attachments:

Schedule A: OCP16-0022 List of Amendments to OCP Bylaw No. 10500 for TFWH
Schedule B: TA16-0015 List of Amendments to Zoning Bylaw No. 8000 for TFWH
Schedule C: TA16-0016 List of Amendments to Development Application Procedures Bylaw No. 10540 for TFWH
Schedule D: Temporary Farm Worker Housing Policy Development Process
Schedule E: Temporary Farm Worker Housing Policy Input Received
Schedule F: OCP Map 5.4 City Sector Map