

**Bylaw 10-2021 text amendment to LUB 6-2015 – Cannabis production facility use in the AG – Agriculture: General District****Report Purpose**

To provide information to Council to make a decision on readings of a bylaw that proposes to amend Land Use Bylaw (LUB) 6-2015 to remove Cannabis Production Facility from the list of discretionary uses in the AG – Agriculture: General zoning district.

**Recommendation**

No recommendation.

**Our Prioritized Strategic Goals**

Goal 7 - Provide opportunities for public engagement and communication

**Report**Background

As part of the February 23, 2021 written Council report and presentation, *Cannabis Production Facilities in the AG - Agriculture General District*, administration advised Council that there are currently two development permits issued for cannabis production facilities in the AG - Agriculture: General zoning district (the "AG district"), and that one of these is a temporary, three-year development permit.

On February 23, 2021, Council passed the following motion:

THAT administration prepare a bylaw to remove the 'cannabis production facility' use from the AG - Agriculture: General district, the bylaw to include transitional provisions for approved cannabis production facilities; and

THAT a public hearing for the proposed bylaw be held on March 23, 2021 at 7:00 p.m.

As directed by that motion, administration has prepared Bylaw 10-2021 which is attached to this report as Enclosure 1. Further information on the implications of this approach to the bylaw is provided below under the heading 'Option 1'.

As of the writing of this Council report, the County has neither:

- received any other applications for development permits for cannabis production facilities in the AG district; nor
- approved the issuance of any other development permits for cannabis production facilities in the AG district that are still within the time period for appeal under the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA").

Accordingly, administration has not included any transitional provisions for "in progress" applications nor for approved cannabis production facilities that could still be appealed.

Administration is uncertain of the transitional provisions or 'site specific' provisions desired by Council related to the removal of the 'cannabis production facility' discretionary use in the AG district. Two options are provided below for Council's consideration.

Non-conforming use and non-conforming building per MGA

A consequence of amending the LUB is that the amendment can operate to make certain uses or buildings 'non-conforming'. This happens when those uses or buildings do not comply with the LUB once the amendment takes effect. The *MGA* at Section 643 strikes a balance in this situation by providing certain protections for such uses and buildings that were in place before the new rules in a land use bylaw come into force. Section 643(1) of the *MGA* operates so that:

*"once a [development] permit is in hand, the holder's right are crystallized and cannot be defeated by a subsequent change in the land use bylaw",*

and further that:

*"...since the permit continues in effect notwithstanding the change in the law, the holder need not have commenced the use nor be in the course of constructing a building on the date of change in order to invoke s. 643. He has the time allotted in the permit or in the land use bylaw governing the permit to do what is authorized by the permit".*

Frederick A. Laux, Q.C. and Gwendolyn Stewart-Palmer, *Planning Law and Practice in Alberta*, 4th ed (Edmonton: Juriliber Limited, 2019) at 15-31

The above-described entitlement is subject to the 'rules' set out in the remainder of *MGA* Section 643. Some of these rules are summarized as follows:

- if discontinued for six months, then any future use of the land or building must conform with the current land use bylaw (s. 643(2));
- a building containing a non-conforming use cannot be enlarged, added to, or have structural alterations (s. 643(3));
- a non-conforming use of a part of the land cannot extend or be transferred to another part of the land and no additional buildings (s. 643(4)); and
- a non-conforming building cannot be enlarged, added to, rebuilt, or structurally altered with certain exceptions (s. 643(5) and (6)).

Option 1 - Bylaw 10-2021

If passed by Council, Bylaw 10-2021 would remove 'cannabis production facility' as a discretionary use from the AG district. The consequences of such amendment include:

- no development permits for cannabis production facilities can be issued after Bylaw 10-2021 comes into force since 'cannabis production facility' will no longer be a listed permitted use or discretionary use in the AG district; and
- after Bylaw 10-2021 comes into force any cannabis production facilities in the AG district for which a development permit has already been issued will only be able to continue in accordance with and subject to their issued development permits and section 643 of the *MGA*.

For clarity, once Bylaw 10-2021 is in effect it will preclude the development authority from issuing a development permit related to a cannabis production facility:

- to (for example) allow expansion with new or enlarged buildings or expansion to other parts of the land (except as provided for in *MGA* s. 643); and

- to effectively allow a temporary cannabis production facility to continue with a (new) permanent development permit in place (either of the same size and area of the lands as existing or of a size and area that is expanded or enlarged).

If Council desires to remove 'cannabis production facility' as a discretionary use from the AG district, then Council may give Bylaw 10-2021 one or more readings following the conclusion of the public hearing.

#### Option 2 - Further direction to administration and new proposed amending bylaw

As stated above, at the time of writing this report there were not any "in progress" applications or decisions still within the appeal period that could be impacted by the passing of Bylaw 10-2021. Accordingly, no transitional provisions for approved cannabis production facilities were included. However, Council may wish to have transitional provisions that provide for 'site specific' provisions.

Along with other districts in the LUB, the AG district includes certain site-specific uses (e.g. Sections 9.5.2. and 9.5.3.). These sections operate to effectively add the 'use' to the list of possible permitted uses or discretionary uses for that district on certain conditions (such as the location being on expressly identified lands).

If Council prefers Option 2, it could direct administration to prepare a new proposed amending bylaw as set out above and to schedule a new public hearing.

#### **Council and Committee History**

- Feb. 23, 2021 Council approved the motion "THAT administration prepare a bylaw to remove the 'cannabis production facility' use from the AG – Agriculture: General district, the bylaw to include transitional provisions for approved cannabis production facilities; and THAT a public hearing for the proposed bylaw be held on March 23, 2021 at 7:00 p.m."
- Jan. 26, 2021 The Priorities Committee approved the motion: "THAT the January 26, 2021 report, Cannabis Production Facilities and Separation Distances to Existing Dwellings, be referred to Administration for a report, by the February 23, 2021 Council meeting, on options and implications for removing cannabis production facilities from the AG-Agriculture: General zoning districts.
- June 23, 2020 Council approved extending the deadline for the June 5, 2018 report on cannabis setbacks.
- Feb. 26, 2019 Council approved extending the deadline for the June 5, 2018 report cannabis setbacks.
- June 5, 2018 Council approved the motion "THAT Council direct administration to prepare a report on the advisability of an amendment to the Strathcona County LUB in AG-Agriculture: General district by the fourth quarter of 2018 that:
1. A cannabis production facility with a total area greater than 1000 m<sup>2</sup> shall meet the minimum separation distance of 500 meters between an existing dwelling and the cannabis production facility site.

2. The minimum separation distance between the existing dwelling and a cannabis production facility site shall be established by measuring the shortest distance between the external wall of the nearest dwelling and the boundary of the cannabis production facility site.”

Jan. 23, 2018 Council adopted Bylaw 68-2017 creating a definition in the LUB for “cannabis production facility” and for it to be listed as a discretionary use in the IM – Medium Industrial Zoning District and the AG – Agriculture: General District.

Dec. 12, 2017 Council approved the motion “THAT administration prepare a bylaw to amend the LUB to:

- define cannabis production facilities;
- add cannabis production facilities to the list of discretionary uses in the IM: Medium Industrial Zoning District; and
- exclude cannabis production facilities from the definitions for “agriculture, general”, “agriculture, intensive horticulture”, “agriculture, product processing” and “greenhouse” and

THAT the bylaw be advertised for a public hearing to be held on January 23, 2018”

Nov. 7, 2017 Council adopted Bylaw 63-2017 which amended the LUB to add agriculture, intensive horticulture and agriculture, product processing as discretionary uses in the IM – Medium Industrial zoning district.

Sept. 12, 2017 Council adopted Bylaw 55-2017 which amended LUB to move agriculture, intensive horticulture to a discretionary use in those districts where it was listed as a permitted use.

Aug. 14, 2017 Council approved the motion “THAT administration bring forward recommendations to change the LUB in order to address and place land use regulations on licensed cannabis growing, production, distribution and processing facilities, including consumption, to reflect current and proposed changes in federal regulations by the end of second quarter of 2018.”

### **Other Impacts**

**Policy:** n/a

**Legislative/Legal:** The *MGA* provides that Council may, by bylaw, amend the Land Use Bylaw. Section 643 of the *MGA* address non-conforming use and non-conforming buildings.

**Interdepartmental:** n/a

**Master Plan/Framework:** n/a

### **Communication Plan**

The public hearing has been advertised in accordance with the *MGA*.

### **Enclosure**

1 Bylaw 10-2021