Governance & Services Committee Report

TO: Governance & Services Committee

FROM: Ron Fralick, Planning Manager

DATE: November 4, 2013

SUBJECT: Update on the Marihuana for Medical Purposes Regulations (MMPR) and Implications Regarding District Bylaws (File: ZBL Review)

Prepared by: David Widdis, Regional Growth Strategy Coordinator

Recommendation: That the Governance and Services Committee receives this report of November 4, 2013 for information.

Purpose:

To provide the Governance and Services Committee with an update on the Marihuana for Medical Purposes Regulations (MMPR) and Implications Regarding District Bylaws

Background:

On June 10, 2013, the Federal government enacted the Marihuana for Medical Purposes Regulations (MMPR) for the prescription, production and distribution of medical marihuana in Canada. The new MMPR came into force on June 19, 2013 replacing the Marihuana for Medical Access Regulations (MMAR) and will be implemented through a phased approach, to be completed in March 2014 (http://www.laws-lois.justice.gc.ca/englregulations/SOR-2013-119/).

Until March 2014, both the MMPR and MMAR are in force. Personal Use Production Licenses and Designated Person Production Licenses will be abolished under the new MMPR in favour of for-profit production facilities. A potential producer, under the new MMPR, must obtain a license from Health Canada and comply with all federal regulations. Licenses are valid for a maximum of three years, and may be renewed.

As of October 1, 2013, Health Canada discontinued the issuance of personal-use and dedicated-person production licenses for the production of medical marihuana within private dwellings that is permitted under the MMAR regulations. In place of these licenses, Health Canada will be issuing permits to licensed producers to yield medical marihuana only within commercial operations under the MMPR. The new regulations would also only permit the indoor production and storage of medical marihuana.

The goal of the regulations is to treat marihuana, as much as possible, like any other narcotic used for medical purposes by creating conditions for a new, commercial industry that is
responsible for its production and distribution. The regulations will provide access to quality controlled marihuana for medical purposes, produced under secure and sanitary conditions, to those Canadians who need it, while strengthening the safety of Canadian communities. In addition, the new regulations will provide more options with regard to marihuana strains and commercial suppliers. The changes are intended to improve the overall health, safety, and security of Canadians by:

- Creating a licensing scheme for commercial production and distribution of dried marihuana for medical purposes;
- Phasing out Health Canada's role in the production and distribution of marijuana and creating a process whereby individuals would be prescribed marijuana through healthcare practitioners;
- Eliminating the production of marijuana by individuals in their homes, thus addressing health, safety and security concerns;
- Authorizing 3 key activities: 1) the possession of dried marijuana for medical purposes by individuals who have the support of an authorized health care practitioner; 2) the production of dried marijuana by licensed producers; and 3) the sale and distribution of dried marijuana by regulated parties to individuals; and,
- Creating a process that regulate producers to address security issues, as well as production practices, packaging, labelling, shipping, record keeping and reporting, and distribution. Producers would be subject to inspections by Health Canada.

**Highlights of New Regulations - MMPR**

The intent of the MMPR is to treat medical marihuana as much as possible as a medication by creating a licensing scheme for the commercial production of medical marihuana. Under the MMPR:

- applicants for federal licenses must give notice of their application to the local police force, local fire authority, and local government informing the location of production and storage facilities; (as of November 1, 2013, the RDCO has received three letters identifying potential locations under the new regulations)
- production and storage activities must take place indoors;
- Health Canada will require extensive security measures, site monitoring, and security clearances;
- delivery of medical marihuana must be via secure courier only (storefronts or retail outlets are prohibited); and
- doctors and other health practitioners will prescribe medical marihuana while Health Canada will no longer be the authorizing body for individuals to possess marihuana for medical purposes;
- The process for applicants and health care practitioners will be streamlined, eliminating the need for individuals to provide Health Canada with their personal information or apply to the department for an authorization to possess;
- Personal and designated production by individuals in their homes will be prohibited as of March 31, 2014;
- Current options to access marihuana for medical purposes will be replaced by regulated, commercial-licensed producers that will be able to produce a variety of strains, thereby offering more choice to individuals who use marihuana for medical purposes;
- Licensed producers will be required to provide municipal government officials with the original federal MMPR licence, of which a copy will be made and kept on file;
Licensed producers will have to demonstrate compliance with regulatory requirements, such as quality control standards, record keeping of all activities, inventories of marihuana, and physical security measures to protect against potential diversion; and,

For the first time, nurse practitioners will be able to support access to dried marihuana for medical purposes, if permitted within their respective province or territory.

Licensed producers will have to meet extensive security and quality control requirements. For example, when potential licensed producers apply for a licence from Health Canada, they must demonstrate that:

- They employ a quality assurance person with appropriate training, experience, and technical knowledge to approve the quality of its dried marihuana;
- The production site is indoors and not in a private dwelling, which would reduce the risk of diversion posted by outdoor production as well as reduce health and safety risks associated with producing marihuana in a private dwelling;
- The production site includes restricted-access areas, which would include all areas where a licensed activity is conducted with marihuana and cannabis (e.g. laboratory, production room, etc.);
- Access to the production site is controlled at all times, including 24/7 visual monitoring systems and an intrusion detection system to detect unauthorized access;
- Key personnel hold a valid security clearance, issued by the Minister of Health; and
- Applicants will provide written notification of their application with details regarding the location of the production site to the local police force, local fire authority, and local government.

A more detailed background description can be accessed at the following web link that provides full information prepared by Health Canada (http://www.hc-sc.gc.ca/dhp-mps/marihuana/index-eng.php). Recent legal publications and opinions argue that federally licensed marihuana producers would have to comply with all applicable provincial and local government regulations, including building and zoning bylaws. However, it needs to be noted, local governments cannot prohibit this use/activity outright. While the MMPR requires local government notification, the legislation does not require Health Canada to confirm compliance with local government regulations prior to issuing a license.

**Impact on local government bylaws**

Municipalities and regional districts are considering a variety of bylaw amendments to address medical marihuana production use under zoning regulation. The scale of production for these facilities will be larger commercial operations that require separate building(s). Many municipalities are working towards restricting medical marihuana grow operations to industrially, agricultural and/or rural zoned lands. The various approaches across the province will be varied depending on opinions and the type of setting of a local government (urban or rural).

There is a variety of factors the RDCO should consider with development of land use policy and regulation for medical marihuana operations. For example, these factors include:

- Proximity to residential dwellings;
- Proximity to adjacent land uses, especially those that promote a high degree of human activity;
- The size and configuration of the property;
- Access to the property;
- Parking;
• Proposed scale of the production facility and any accessory use (i.e. storage);
• Utility requirements (i.e. electrical power, water);
• Potential noise generation;
• Visual impact;
• Traffic impacts;
• Building ventilation and potential odors;
• Environmental impacts such as the storage and disposal of contaminated waste, air quality, water quality and quantity;
• Safety and security; and
• Landscaping screening.

Despite the scale of operation, the growing and processing of marihuana is recognized primarily as an agricultural and horticultural use (albeit one with onerous security requirements). To that end, in mid-2013 the Agricultural Land Commission (ALC) issued a bulletin advising local governments that the lawfully sanctioned production of marihuana for medical purposes is considered a “farm use” under the Agricultural Land Commission Act. “Farm use” can be regulated but must not be prohibited by any local government bylaw. Therefore, without Bylaw change the farming of medical marihuana (including at a commercial/industrial scale) could conceivably be permitted on all ALR lands in the RDCO, in addition to rural zoned properties not in the ALR. Staff recommends that provisions should be added to the Zoning Bylaw to limit and regulate this farm use on ALR lands and applicable rural zoned lands (e.g. setbacks and minimum parcel area) despite that it cannot be prohibited outright. The ALC asks that any bylaws intended to regulate farm use be forwarded for their review prior to adoption.

Zoning Bylaw:
Zoning Bylaw No. 871 does not currently define or reference medical marihuana grow operations as a permitted or prohibited use. As we were not made aware of medical marihuana production operations under the MMAR, we cannot confirm how many facilities exist in the RDCO or where they are located. The future commercial production of medical marihuana could potentially fall within the following permitted uses: 'agriculture', 'greenhouse' or 'plant nursery' as these terms do not specifically prohibit the production of medical marihuana. Table 1 is a list of zoned properties that permit agriculture and/or greenhouse and plant nurseries.

Table 1: Zoning Bylaw No. 871 Permitted Uses and Zones

<table>
<thead>
<tr>
<th>Permitted Use</th>
<th>Zone</th>
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<tbody>
<tr>
<td><strong>Plant Nurseries</strong></td>
<td>Agricultural Zone (A 1)</td>
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<td><strong>Greenhouses</strong> – subject to Section 3.17 Accessory, building and structures that limits the floor area to 100 m² (use is not defined in Bylaw 871)</td>
<td>Rural 1 Zone (RU1)</td>
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<tr>
<td><strong>Agriculture</strong></td>
<td>Agricultural Zone (A 1)</td>
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<td>(defined in Bylaw 871 as 'the use of land for the husbandry of plants and livestock and includes the storage and sale of agricultural products and the storage and repair of farm machinery and implements used on the individual farm on which the storage and repair is taking place')</td>
<td>Rural 1 Zone (RU1)</td>
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Table 2: RDCO Lots that permit Agriculture, Greenhouse or plant nursery

<table>
<thead>
<tr>
<th>Zone</th>
<th>Count</th>
<th>Average Lot Size (ha)</th>
<th>Minimum – Maximum Lot Size (ha)</th>
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<tr>
<td>A1</td>
<td>316</td>
<td>10.144</td>
<td>0.06 – 256.30</td>
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<tr>
<td>RU1</td>
<td>173</td>
<td>61.61</td>
<td>0.1 – 259.07</td>
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<tr>
<td>RU2</td>
<td>249</td>
<td>6.31</td>
<td>0.3 – 49.34</td>
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<td>RU3</td>
<td>93</td>
<td>1.68</td>
<td>0.12 – 4.41</td>
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<tr>
<td>RU4</td>
<td>53</td>
<td>0.67</td>
<td>0.49 – 1.04</td>
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<tr>
<td>RU6</td>
<td>9</td>
<td>3.45</td>
<td>2.45 – 4.23</td>
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<tr>
<td>I5</td>
<td>0</td>
<td>0</td>
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**Business Licensing and Regulations Bylaw No. 689**
Medical marihuana grow operations under the new federal regulations will be required to obtain a business license as per the Business Licensing Bylaw as it would fall under the definition of 'business'.

**Options**
1. **Maintain Status Quo - No amendments to the zoning bylaw at this time**
   The Board can opt to leave Zoning Bylaw No. 871 unchanged, which means medical marihuana production could occur in all zones where agriculture, greenhouse/plant nursery is permitted (seven zones) and subject to the setback or parcel size limitations in each zone. This could also result in medical marihuana grow operations developing on parcels as small as 4,000 m² (43,057 ft²) in the I5 zone.

2. **Amend zoning bylaw - Permit MMGOs as a form of “intensive agriculture”**
   Adding a MMGO to the intensive agriculture definition will limit the use to A1, RU1 and RU2 zones. The minimum parcel size and significant setback requirements for the intensive agriculture use significantly restrict locations in the RDCO to accommodate a licenced grow operation and will allow further separation from any residential use.

**Implications for all Options**
If the Board directs staff to initiate a bylaw amendment all future applicants will be directed to the permitted zone and/or ALR lands for the commercial production of medical marihuana. Any producers with licenses under the MMAR (the previous federal regulations) will be required to cease operations after March 31, 2014 and be required to obtain a commercial license under the new regulations (MMPR) if they wish to continue to produce medical marihuana. As the new federal legislation is being implemented through a phased approach, some license holders may be grandfathered under existing zoning depending on the timing of the bylaw amendments and the timing of the issuance of federal licenses (the application form is currently online and potential commercial producers are able to apply).

Regardless of which option the RDCO pursues, the following items will be required under the new licensing:
1. A business license will be required for the commercial production of medical marihuana as it falls under the definition of 'business';
2. A building permit will be required to ensure the requirements of the British Columbia Building Code are adhered to;
3. A development permit may be required as per the applicable OCP and/or Rural Land Use Bylaw; and,
4. Consultation with the Agricultural Land Commission will be necessary to determine if operations fall within the definition of 'farm use'.

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Conclusion:

Staff recommend the region focus on the 'Intensive Agriculture' use for MMGO's that have larger site areas (e.g. 4 or more hectares), and where regulations can be developed that will ensure that MMGOs operate in stand-alone buildings that are well setback from any residential buildings.

Planning staff previously indicated to the Board that the department would be pursuing a key change to the Zoning Bylaw that would introduce provisions for temporary farm worker housing. In recognition of timing of the new Federal regulations, staff believe it prudent to also include proposed changes to the zoning bylaw to accommodate medical marihuana operations should the Board concur.

This is for your consideration.

Submitted by:

R. Fralick
Planning Manager

C. Radford
Director of Community Services

Attachments:

Considerations not applicable to this report:
General
Financial
Policy
Alternatives

Approved for Board's Consideration

Brian Reardon, CAO