



# STAFF REPORT TO COMMITTEE

**DATE OF REPORT** June 18, 2021  
**MEETING TYPE & DATE** Special Electoral Area Services Committee Meeting of July 7, 2021  
**FROM:** Community Planning Division  
Land Use Services Department  
**SUBJECT:** CVRD Bylaw No. 4349 Cannabis Uses, 2021  
**FILE:** 6410 – Zoning Bylaw Modernization

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## PURPOSE/INTRODUCTION

The purpose of the staff report is to present for consideration:

- CVRD Bylaw No. 4349 - Cannabis Uses, 2021
- CVRD Cannabis Production Facility Land Use Application Policy, 2021
- CVRD Cannabis Retail Store Application Criteria Policy, 2021

## RECOMMENDED RESOLUTION

That it be recommended to the Board:

1. That “CVRD Bylaw No. 4349 - Cannabis Uses, 2021” be forwarded to the Board for consideration of 1<sup>st</sup> and 2<sup>nd</sup> reading.
2. That “CVRD Bylaw No. 4349 - Cannabis Uses, 2021” be referred to the Ministry of Agriculture, Agricultural Land Commission, RCMP, Municipality of North Cowichan, City of Duncan, Town of Lake Cowichan, Town of Ladysmith, Cowichan School District 79, Ladysmith-Nanaimo School District 68, the following First Nations: Cowichan Tribes, Ditidaht, Halalt, Lyackson, Malahat, Pauquachin, Penelakut, Stz’uminus and Ts’uubaa-asatx.
3. That the revised CVRD Cannabis Production Facility Land Use Application Policy be approved.
4. That the revised CVRD Cannabis Retail Store Application Criteria Policy be approved.
5. That CVRD Cannabis Regulation Bylaw Enforcement Policy 2018 be rescinded.

## BACKGROUND

The proposed Cannabis Uses Bylaw No. 4349 and policies presented in this staff report are in response to Board resolutions:

### Resolution 19-391, October 9, 2019

2. *That Part 1, 1 (Application Procedure) (e) of the CVRD’s Cannabis Retail Store Policy be changed from “the CVRD will refer all applications to School District No. 79” to “the CVRD will refer all applications to the relevant School District”.*
3.
  1. *That the Cannabis Retail Store Policy, as amended, be approved; and*
  2. *That staff prepare a report and draft zoning bylaw amendments to add “cannabis retail” as a principal permitted use to zones where “retail” is a principal permitted use and to update cannabis-related definitions.*

### Resolution 19-393, October 9, 2019

5.
  1. *That the Cannabis Production Land Use Application Policy be approved; and*

2. *That staff bring forward a future report regarding the current status of cannabis production facilities in the Agricultural Land Reserve, and consider options regarding the regulation of cannabis production and related uses on Agricultural Land Reserve.*

## **Analysis**

### **Bylaw No. 4349 Summary**

CVRD Bylaw No. 4349 - Cannabis Uses addresses the Board's resolutions noted above to add cannabis retail as a principal permitted use to zones where retail is a permitted use, updates cannabis related definitions, and provides consistency with the regulation of cannabis production facilities in the Agricultural Land Reserve. Provided below is an overview of Bylaw No. 4349 by topic.

See Attachment A – CVRD Bylaw No. 4349 Cannabis Uses, 2021 and Attachment B – CVRD Bylaw No. 4349 Cannabis Uses and Policies Explanatory Table for further details on the bylaw and policies.

### Retail Sales

- Allow cannabis retail as a principal use in zones that permit retail or convenience store use. Exceptions are retail zones that restrict the types of products sold; cannabis retail will not be permitted in those zones. Note that cannabis retail sales also require a provincial licence, which cannot be issued without a positive recommendation from the Board, regardless of the zoning bylaw; licences are required to be considered on a case by case basis.
- Permit cannabis retail in zones where “cannabis storefront retailing” is already allowed.
- Cannabis retail in other zones will require a site-specific zoning amendment.

Attachment C – CVRD Bylaw No. 4349 Cannabis Uses – Illustrative Mapping Retail Sales

### Commercial Production: ALR

- Expressly permit cannabis cultivation/processing in the ALR in zones that include ALR land, as open field cultivation or cultivation in a greenhouse with soil floor (subject to s. 8(2) ALR Use Regulation – existing greenhouses used for cannabis production before 13/7/2018).
- Remove distinction between medicinal and recreational use of cannabis.
- All buildings, greenhouses and other structures used for *cannabis production and processing* must be located not less than 30 metres from all parcel lines and not less than 150 metres from any residential building located within the Agricultural Land Reserve.
- All parcels used for cannabis production and processing must be located not less than 150 metres from any park and from the nearest portion of any parcel on which a school or child care facility is located, and not less than 150 metres from any residential or rural residential zone, park zone, institutional zone, comprehensive development zone or mixed-use zone.
- With regards to farm gate sales, producers holding a federal licence are not allowed by the federal regulator to sell at retail on the same premises. The BC Ministry of Public Safety and Solicitor General is undergoing a consultation process to explore farm gate sales of cannabis from licensed producers. The process is in early stages, and is expected to be completed in the fall 2022. Bylaw No. 4349 is written to anticipate farm gate sales in the ALR, while also noting that existing provincial policy includes a referral to the CVRD Board.

Attachment D – CVRD Bylaw No. 4349 Cannabis Uses – Illustrative Mapping Production and Processing

Commercial Production: Non-ALR

- Expressly permit cannabis production and processing in Industrial zones that have preexisting allowance. Update terminology.
- Remove distinction between medicinal and recreational use of cannabis.
- All buildings, greenhouses and other structures used for cannabis production and processing must be located not less than 30 metres from all parcel lines and not less than 150 metres from any residential building located within the Agricultural Land Reserve
- All parcels used for cannabis production and processing must be located not less than 150 metres from any park and from the nearest portion of any parcel on which a school or child care facility is located, and not less than 150 metres from any residential or rural residential zone, park zone, institutional zone, comprehensive development zone or mixed-use zone.
- Commercial production outside the ALR and outside the specified Industrial zones will require a zoning amendment.

Attachment D – CVRD Bylaw No. 4349 Cannabis Uses – Illustrative Mapping Production and Processing

Own-Use Production (in residential premises)

- Amended bylaws will be silent

Personal production of up to four plants is expressly excluded from the “cannabis production” use category and is permitted everywhere a residential use is permitted because it is expressly permitted through provincial legislation.

With regard to the status of personal production of cannabis for medicinal purposes, note that the definition of cannabis production contains the qualifier “commercial”. This means that a non-commercial activity does not come within the definition, and is therefore not prohibited by implication in zones that do not permit the defined cannabis production use. Health Canada has issued an authorization for personal production for medicinal purposes, regardless of the number of plants involved.

Cannabis consumption lounges

- Amended bylaws will be silent

The basic structure of all zoning bylaws is that uses are prohibited unless specifically permitted.

**Policies**

Cannabis Production Facility Land Use Application Policy, 2019 & 2021

This policy is intended for use when the Board is considering rezoning applications to permit a cannabis production facility. Only minor changes to clarify language have been made to the 2019 version.

See Attachment E - CVRD Cannabis Production Facility Land Use Application Policy 2019 and Attachment F - CVRD Cannabis Production Facility Land Use Application Policy 2021

Cannabis Retail Store Application Criteria Policy, 2019 & 2021

This policy is intended to inform the Board's response to a request for comment on all applications for a cannabis retail store license from the Liquor and Cannabis Regulation Branch. Minor changes to clarify language have been made, as well as adjustments for consistency with Bylaw No. 4349.

See Attachment G - CVRD Cannabis Retail Store Application Criteria Policy 2019 and Attachment H - CVRD Cannabis Retail Store Application Criteria Policy 2021

#### Cannabis Regulation Bylaw Enforcement Policy, 2018

This policy was adopted in 2018, prior to the *Federal Cannabis Act*. The policy background acknowledges the temporary application of the policy in light of the evolving nature of cannabis regulations. This policy is now outdated, and is recommended to be rescinded.

Attachment I - CVRD Cannabis Regulation Bylaw Enforcement Policy 2018

#### **Mapping (Illustrative Purposes Only)**

Explanatory maps (Attachment C & D) demonstrate to the Board the geographic impact of Bylaw No. 4349 should it be fully utilized for cannabis use. These maps do not form part of the bylaw, but are included for illustrative purposes. The maps reflect information as of the date produced.

Attachment C illustrative retail maps show current zones that permit retail as principle use, and which will allow cannabis retail if Bylaw No. 4349 is approved. A buffer as described in CVRD Retail Store Application Criteria Policy is shown around certain uses and zones.

Note that the buffer does not include the location criteria "playgrounds, other areas where children and youth frequent or other cannabis retail stores" due to the difficulty in generating this data at an electoral area level. These location criteria can be assessed for site-specific license applications.

Attachment D illustrative commercial production and processing maps show the ALR boundary and zones that permit cannabis production and processing outside of the ALR. A buffer is shown around uses and zones that require a 150 setback per Bylaw No. 4349. Note that mapping does not show residential building footprints, so setbacks to residential uses would have to be determined on a site by site basis.

#### **Cannabis Production in Vulnerable Watersheds**

While the ALR Use Regulation allows cannabis production as a farm use in the ALR, local governments are able to regulate the siting and size of farm buildings. Limiting the size of farm buildings may reduce the potential impact of cannabis production in vulnerable watersheds. This is of particular interest for protection of the Koksilah watershed in electoral area E, which required a Ministerial Order to specific water users to cease using water in August 2019.

According to the Ministry of Agriculture, no other local governments in BC have placed restrictions on building size in rural areas (outside of City provided services). They further acknowledge that scientific data and peer-reviewed studies of cannabis production's water consumption compared to more conventional agricultural commodities is still very limited. Moreover, it's extremely difficult to generalize the water-usage of its production because there are so many different ways in which the crop can be cultivated that would greatly impact its seasonal water-usage.

These comments are supported by research from the University of California, Berkeley in 2020, which indicates that cannabis cultivation exhibits highly variable water use, based on factors such

as cultivation type, water sources and on-farm water storage capacity. Generally, cannabis water demands coincide with summer dry seasons, which is problematic for vulnerable watersheds. However, the same research from California shows that overall water usage in cannabis cultivation is not higher than in other crops<sup>1</sup>. An overly restrictive approach to cannabis production versus other forms of agriculture could be seen as discriminatory.

Admittedly, we do not have all the necessary planning knowledge at this time to correctly limit the size of agricultural buildings in relation to the scarcity/availability of water. Though it is possible to restrict the size of farm buildings, it is the square footage of floor-space where cannabis production would be occurring that would give the biggest indication of water use, not the building size in general. For example, a cannabis micro licence limits plant surface area to 200 m<sup>2</sup>, including multiple surfaces such as surfaces vertically arranged. Building size is somewhat irrelevant.

Other watersheds within the electoral areas also show vulnerability, notably including Electoral Area A and H. Options may be to proceed with building size restrictions in Bylaw No. 4349 in Electoral Area E, based on input from industry, and to address other vulnerable watersheds with bylaw amendments over time, or through the modernized zoning bylaw. Another option is to rely on the Province's authority in this regard, as provincial water licence or use approvals are required to divert, use or store surface water from streams or groundwater from aquifers, and when making changes in and around streams.

With the knowledge we have at this time, Bylaw No. 4349 does not propose building size restrictions for the sake of watershed protection. However, there will be a review of uses with respect to water use in Electoral Area E that may offer a more thorough form of protection for the Koksilah watershed.

### **Informal Referrals to Ministry of Agriculture and Agricultural Land Commission**

Bylaw No. 4349 was sent for informal referral to the Ministry of Agriculture (MOA) and Agricultural Land Commission (ALC). Setback distances applicable to commercial processing and production have been reduced in Bylaw 4349 to address MOA and ALC referral comments, which consistently state with regards to setbacks, *we would recommend reducing them to 150 metres from schools, parks and child care facilities and either 30 or 60 metres (depending on the presence of a buffer) from any residential or rural residential zone, park zone, institutional zone, comprehensive development zone or mixed-use zone.*

The 300-meter setback currently in place in the electoral area zoning bylaws has been reduced to not less than 150 metres from any park and from the nearest portion of any parcel on which a school or child care facility is located, and not less than 150 metres from any residential or rural residential zone, park zone, institutional zone, comprehensive development zone or mixed-use zone. Also proposed is a 30 metre setback for all buildings, greenhouses and other structures used for commercial production and process to all parcel lines, and not less than 150 metres from any residential building located within the Agricultural Land Reserve.

Staff agree that the 300 metre setback to all the above zones and uses, as exists in current electoral area zoning bylaws, is overly restrictive. The Board has taken the approach with respect to cannabis retail to treat it as any other retail use. The same logic could be applied to commercial production, that is, to treat it as an agriculture or industrial use of land with a nuanced, rather than prohibitive, approach.

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<sup>1</sup> Dillis, C., Grantham, T., Butsic, V., Carah, J., Parker-Shames, P. 2020. Water Use in Cannabis Agriculture. Cannabis Research Center, University of California, Berkeley, CA.

Bylaw No. 4349 does not allow further reduction of the setback from 60 meters to 30 meters when buffering is provided for two reasons: development permit guidelines require a 15 meter minimum buffer on the non-ALR side and buffering specifications within the zoning bylaw will be difficult from an administrative perspective. A development variance permit is a reasonable option for proponents seeking to reduce the setback from 150 meters.

The ALC and MOA's comments are based on the [Minister's Bylaw Standards](#), which provides recommended bylaw criteria for local governments to adopt when developing their bylaws regarding medical cannabis production. The Bylaw Standards are currently under review by the Ministry of Agriculture. It is possible that CVRD setback regulations can be amended when updated Bylaw Standards are finalized.

### **Summary**

Draft Bylaw No. 4349 was developed to be consistent with federal regulations and to meet the Boards objectives as set out in the resolutions. The illustrative mapping of Bylaw No. 4349 is provided to the Board for clarity of location of retail sales and production facilities should Bylaw No. 4349 be fully maximized. Upon reviewing the mapping of Bylaw 4349 the Board may seek amendments to Bylaw No. 4349 to further restrict or expand retail sales. New economic development studies may provide further considerations in this regard. Given the still early days, staff recommends the Board reflect on the mapping while Bylaw No. 4349 is out on referral.

The staff recommendation does not include a referral to Advisory Planning Commissions, as we are responding directly to the Board's previous resolutions. If the Board directs APC referrals, then staff recommend joint electoral area APC meetings with staff support to explain the potential implications of the Bylaw.

Should Bylaw No. 4349 be adopted with or without amendments as presented in this staff report (July 7, 2021), cannabis regulations should be revisited as part of the modernization of the zoning bylaw as provincial and federal regulations and bylaws change and also to review location of retail sales and production for consistency with potential cannabis tourism studies.

In conclusion, staff recommend 1<sup>st</sup> and 2<sup>nd</sup> reading and referrals as outlined in the staff report.

### **FINANCIAL CONSIDERATIONS**

N/A

### **COMMUNICATION CONSIDERATIONS**

If Bylaw No. 4349 is adopted, we recommend development of an explanatory pamphlet to support understanding by community and industry on application of the bylaw.

### **STRATEGIC/BUSINESS PLAN CONSIDERATIONS**

N/A

### **GENERAL MANAGER COMMENTS**

☐ Not Applicable

Referred to (upon completion):

- ☐ Communications & Engagement
- ☐ Community Services (Cowichan Community Centre, Cowichan Lake Recreation, South Cowichan Recreation, Arts & Culture, Emergency Management, Facilities & Transit)

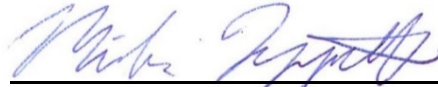
- ☐ Corporate Services (*Finance, Human Resources, Legislative Services, Information Technology, Procurement*)
- ☐ Engineering Services (*Environmental Services, Recycling & Waste Management, Water Management*)
- ☐ Land Use Services (*Community Planning, Development Services, Inspection & Enforcement, Economic Development, Parks & Trails*)

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Reviewed for form and content and approved for submission to the Committee:

Resolution:

Financial Considerations:

☒ Manager, Legislative Services

☒ Manager, Finance

**ATTACHMENTS:**

Attachment A – CVRD Bylaw No. 4349 Cannabis Uses, 2021

Attachment B – CVRD Bylaw No. 4349 Cannabis Uses and Policies Explanatory Table

Attachment C – CVRD Bylaw No. 4349 Cannabis Uses – Illustrative Mapping Retail Sales

Attachment D – CVRD Bylaw No. 4349 Cannabis Uses – Illustrative Mapping Cannabis Production and Processing

Attachment E - CVRD Cannabis Production Facility Land Use Application Policy 2019

Attachment F - CVRD Cannabis Production Facility Land Use Application Policy 2021

Attachment G- CVRD Cannabis Retail Store Application Criteria Policy 2019

Attachment H - CVRD Cannabis Retail Store Application Criteria Policy 2021

Attachment I - CVRD Cannabis Regulation Bylaw Enforcement Policy 2018