



WHISTLER

AGENDA

**PUBLIC HEARING OF MUNICIPAL COUNCIL
TUESDAY, JULY 10, 2018 STARTING AT 6:00 P.M.**

**Franz Wilhelmsen Theatre at Maury Young Arts Centre
4335 Blackcomb Way, Whistler, BC V0N 1B4**

This Public Hearing is convened pursuant to section 464 of the *Local Government Act* to allow the public to make representations to Council respecting matters contained in "Zoning Amendment Bylaw (Personal Cannabis Home Cultivation) No. 2195, 2018" (the "proposed Bylaw").

Everyone present shall be given a reasonable opportunity to be heard or to present written submissions respecting matters contained in the proposed Bylaw. No one will be discouraged or prevented from making their views known. However, it is important that remarks be restricted to matters contained in the proposed Bylaw.

When speaking, please commence your remarks by clearly stating your name and address.

Members of Council may ask questions following presentations; however, the function of Council at a Public Hearing is to listen rather than to debate the merits of the proposed Bylaw.

"Zoning Amendment
Bylaw (Personal
Cannabis Home
Cultivation) No. 2195,
2018"

PURPOSE OF "ZONING AMENDMENT BYLAW (PERSONAL CANNABIS HOME CULTIVATION) NO. 2195, 2018"

As stated in the Notice of Public Hearing, the purpose of the "Zoning Amendment Bylaw (Personal Cannabis Home Cultivation) No. 2195, 2018" is to amend the zoning bylaw to permit the personal growing of cannabis in homes in accordance with section 56 or 58 of the Cannabis Control and Licencing Act.

Submissions from the
Public

Submissions by any persons concerning the proposed Bylaw.

Correspondence

Receipt of correspondence or items concerning the proposed Bylaw.

MOTION TO CLOSE THE PUBLIC HEARING

PUBLIC HEARING DOCUMENT INDEX

Zoning Amendment Bylaw (Personal Cannabis Home Cultivation) No. 2195, 2018		
Document Type	Date	Details
Public Hearing Document Index		
Notice of Public Hearing		Notice of Public Hearing (scheduled for July 10, 2018)
Proposed Bylaw		Zoning Amendment Bylaw (Personal Cannabis Home Cultivation) No. 2195, 2018
Council Report 18-072		Administrative Report to Council requesting consideration of first and second reading of the proposed bylaw and permission to schedule a public hearing of July 10, 2018
Presentation Slides	5-Jun-18	Presentation slides for report to Council
Council Minutes		Minutes of the Regular Meeting of Council of June 5, 2018
Correspondence		Correspondence will be added to the package as it is received

**RESORT MUNICIPALITY OF WHISTLER
ZONING AND PARKING AMENDMENT BYLAW NO. 2195, 2018**

A BYLAW TO AMEND THE WHISTLER ZONING AND PARKING BYLAW NO. 303, 2015

WHEREAS Council may, in a zoning bylaw pursuant to Section 479 of the *Local Government Act*, divide all or part of the area of the Municipality into zones, name each zone and establish the boundaries of the zones, and regulate the use of land, buildings and structures within the zones;

NOW THEREFORE the Council of the Resort Municipality of Whistler, in open meeting assembled, **ENACTS AS FOLLOWS:**

1. This Bylaw may be cited for all purposes as “Zoning Amendment Bylaw (Personal Cannabis Home Cultivation) No. 2195, 2018”.
2. Resort Municipality of Whistler “Zoning and Parking Bylaw No. 303, 2015” is amended in “Part 4 General Prohibitions” by replacing section 1(8) with the following:

“No person shall use any land or building for the retail sale of cannabis, and except as specifically permitted by this Bylaw no person shall use any land or building for the production of cannabis other than the personal growing of cannabis in accordance with section 56 or 58 of the *Cannabis Control and Licencing Act*, or for the distribution of cannabis.”
3. This Bylaw comes into force on the latter of the date the *Cannabis Control and Licencing Act* is enacted or the date the *Cannabis Act* is enacted.

GIVEN FIRST AND SECOND READINGS this 5th day of June, 2018.

Pursuant to Section 464 of the *Local Government Act*, a Public Hearing was held this ___ day of _____, 2018.

GIVEN THIRD READING this ___ day of _____, 2018.

Approved by the Minister of Transportation and Infrastructure this ___ day of _____, 2018.

ADOPTED by the Council this ___ day of _____, 2018.

Nancy Wilhelm-Morden,
Mayor

Brooke Browning,
Municipal Clerk

I HEREBY CERTIFY that this is a true
copy of “Zoning Amendment Bylaw
(Personal Cannabis) No. 2195, 2018.”

Brooke Browning,
Municipal Clerk



THE RESORT MUNICIPALITY OF WHISTLER
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NOTICE OF PUBLIC HEARING

TUESDAY, JULY 10, 2018 – 6:00 P.M.

MAURY YOUNG ARTS CENTRE

Franz Wilhelmsen Theatre, 4335 Blackcomb Way, Whistler BC

ZONING AMENDMENT BYLAW (PERSONAL CANNABIS HOME CULTIVATION) NO. 2195, 2018

SUBJECT LANDS: The proposed bylaw applies to all residential properties in Whistler.

PURPOSE:

In general terms, the purpose of the proposed Bylaw is to amend the zoning bylaw to permit the personal growing of cannabis in homes in accordance with section 56 or 58 of the Cannabis Control and Licensing Act.

INSPECTION OF DOCUMENTS:

A copy of the proposed Bylaw and relevant background documentation may be inspected at the Reception Desk of Municipal Hall at 4325 Blackcomb Way, Whistler, BC, during regular office hours of 8:00 a.m. to 4:30 p.m., from Monday to Friday (statutory holidays excluded) from June 28, 2018 to and including July 10, 2018.

PUBLIC PARTICIPATION:

All persons, who believe their interest in the property is affected by the proposed Bylaw, will be afforded a reasonable opportunity to be heard by Council at the Public Hearing.

Written comments must be addressed to “Mayor and Council”, and may be submitted prior to the public hearing (by 4:00 p.m. on July 10, 2018):

Email: corporate@whistler.ca
Fax: 604-935-8109
Hard Copy: Legislative Services Department
4325 Blackcomb Way
Whistler BC V0N 1B4

Submissions received for the proposed Bylaw will be included in the information package for Council’s consideration, which will also be available on our website at www.whistler.ca with other associated information.

After the conclusion of this Public Hearing, Council cannot receive representations from the public on the proposed Bylaw.



REPORT | ADMINISTRATIVE REPORT TO COUNCIL

PRESENTED: June 5, 2018
FROM: Resort Experience
SUBJECT: ZONING AMENDMENT BYLAW (PERSONAL CANNABIS HOME CULTIVATION) NO. 2195, 2018

REPORT: 18-072
FILE: RZ1149

COMMENT/RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICER

That the recommendation of the General Manager of Resort Experience be endorsed.

RECOMMENDATION

That Council consider giving first and second readings to “Zoning Amendment Bylaw (Personal Cannabis Home Cultivation) No. 2195, 2018”; and

That Council authorize staff to schedule a Public Hearing regarding “Zoning Amendment Bylaw (Personal Cannabis Home Cultivation) No. 2195, 2018”.

REFERENCES

Appendix “A” – RMOW Response to the Cannabis Legalization and Regulation Secretariat

PURPOSE OF REPORT

This Report presents “Zoning Amendment Bylaw (Personal Cannabis Home Cultivation) No. 2195, 2018”, for first and second reading and authorization to proceed to public hearing. The proposed bylaw is being brought forward in anticipation of the federal legalization of “recreational” cannabis. Currently, home cultivation of recreational cannabis is illegal in Canada. However, proposed federal and provincial legislation, specifically the *Cannabis Act* and the *Cannabis Control and Licensing Act* respectively, will permit home cultivation of recreational cannabis of up to four plants either indoors or outdoors. The proposed bylaw will amend the Zoning Bylaw to authorize home cultivation of recreational cannabis done in accordance with federal and provincial rules, but will not take effect until both these pieces of legislation are in force. The proposed bylaw will have no effect on home medical cultivation currently permitted under the *Access to Cannabis for Medical Purposes Regulation* (ACMPR).

DISCUSSION

Background

On April 13, 2017, the Government of Canada introduced the *Cannabis Act* which, if adopted, will make recreational cannabis legal for adult purchase, use, possession and home cultivation. Prior to the *Cannabis Act* home cannabis cultivation was only permitted for medical purposes under the ACMPR and its predecessor legislation. Under the *Cannabis Act* provinces have been granted the power to further restrict home cultivation and other aspects of the cannabis industry. Municipalities, landlords and strata corporations can also restrict home cultivation of recreational cannabis within the powers granted to them through provincial legislation. In February of this year, Council approved Zoning Amendment Bylaw (Cannabis Retail, Production and Distribution) No. 2159, 2017 which

clarified existing rules for cannabis production, distribution and retail in Whistler in anticipation of the adoption of the *Cannabis Act*. The most significant aspect of Bylaw 2159 was that it maintained and clarified an existing prohibition on cannabis retail in Whistler. The proposed bylaw has no effect on the zoning regulations enacted under Bylaw 2159.

Bylaw 2159 did not contain any zoning amendments related to home cultivation of cannabis. At the time, the Province had yet to announce its own rules for home cultivation, meaning there was no certainty that the Province would permit this use, nor a provincial framework for the RMOW to develop its own home cultivation rules. Had the Province decided to prohibit home cultivation, there would be no need for the RMOW to address this use in the zoning bylaw and for the sake of clarity, zoning bylaw rules should, where practical, align with Provincial regulations.

Home cultivation of recreational cannabis has been described as a contentious issue within the broader context of cannabis legalization. Results from provincial and federal stakeholder consultation suggest strong support for legal home cultivation, but also identified concerns from some stakeholders, including landlords and strata corporations, such as property damage, health and safety risks, odour and other nuisances. Many of the concerns related to home cultivation have been strongly influenced by criminal cannabis production, the final report from the federal government task force on legalization noted that:

“Arguments against allowing for personal cultivation are largely shaped by current experience with large-scale grow-ops operating in a clandestine fashion in communities across Canada. We heard from law enforcement, municipal officials, landlords, neighbours and parents of uncontrolled, intrusive and dangerous commercial-scale operations that damage properties and threaten the safety of neighbourhoods. The concerns were numerous: risks associated with mould when large-scale growing occurs in buildings not designed or properly equipped to do so; improper electrical installation and associated fire hazards; unchecked use of pesticides and fertilizers; and break-ins and thefts—all of which result in dangers to neighbouring residences and first responders. Instances of explosions resulting from attempts to manufacture concentrates in a home-cultivation setting were also referenced.”

Conversely, through their consultation the federal and provincial governments indicate there is support for home cultivation undertaken by law-abiding adults as a safe means of supplying cannabis and combatting criminal cultivation. Again findings from the final report from the federal government task force on legalization are worth noting:

“Proponents of personal cultivation argue that, once a regulated, legal market for cannabis is established, the demand for illicitly produced cannabis should significantly decline and, over time, disappear. It follows that, as demand for illicit cannabis declines, so too will the number of large, commercial-scale illicit grow-ops and the risks they pose to public health and safety.

Proponents of personal cultivation further argue that, similar to alcohol, the majority of consumers will purchase from the legal market and few will choose to cultivate their own cannabis. Those who choose to cultivate will largely be law-abiding adults who grow a limited number of plants in a safe and responsible manner for their personal use (again, similar to the current circumstance with home brewing of alcohol). From responses to the online consultation, there was widespread support for the inclusion of personal cultivation in a regulated regime. In fact, 92% of those who responded to the question were in favour of personal cultivation. Proponents cited a variety of arguments for allowing personal cultivation, including cost, personal preferences and access for those in rural and remote communities.”¹

¹ A Framework for the Legalization and Regulation of Cannabis in Canada: The Final Report of the Task Force on Cannabis Legalization and Regulation

Home cultivation rules (e.g. the four plant limit) adopted by the federal government were informed by the federal task force's report and were developed with the intention of maintaining criminal prohibitions on unauthorized large-scale production, while allowing personal cultivation by law-abiding citizens in a way that has relatively minor, localized impacts.

In December of 2017 the Province announced its public consultation summary and first "policy decisions" for cannabis regulation hinting at allowing home cultivation but provided no clear indication as to what the rules for home cultivation in BC would be. The *Cannabis Control and Licensing Act* was eventually tabled in the legislature in late April of 2018. The Act mirrors the federal four plant limit, allowing four plants per household either indoors or outdoors. The Act also requires that the plants must not be visible from public spaces off the property, and prohibits home cultivation in homes used as daycares. At time of writing, the *Cannabis Control and Licensing Act* has been given third reading and is awaiting Royal Assent.

The *Cannabis Control and Licensing Act* is a key milestone in developing RMOW rules for home cultivation. The Act outlines key provincial regulations and consequential amendments to existing legislation (e.g. the *Residential Tenancy Act*), that set the stage for how municipalities, landlords, strata corporation and property owners can restrict or regulate home cultivation. Municipal powers to regulate home cultivation and other aspects of the cannabis industry (e.g. retail) have been maintained and landlord, strata corporation and property owner powers to regulate or outright prohibit home cultivation within their scope of authority have also been maintained, with some modifications to further protect landlords. Staff had been waiting to see the precise wording of the provincial legislation before bringing forward rules for home cultivation to Council for consideration. The Act's effects on strata corporation governance, landlord powers and property owner rights are described in greater detail below. It is important to note that this is for summary and contextual purposes only, and that landlords, property owners, tenants and strata corporations must consult the appropriate legislation, provincial agencies and their own legal counsel to determine their rights and responsibilities related to home cultivation of cannabis.

- **Strata Corporations:** Under Part 7 of the *Strata Property Act* strata corporations can enact bylaws for the "control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation" and rules "governing the use, safety and condition of the common property and common assets". RMOW legal counsel has advised that these powers include the power to regulate home cultivation of recreational cannabis. The *Cannabis Control and Licensing Act* contains no provisions or consequential amendments that would restrict these powers. With the help of their own legal counsel, strata corporations can enact their own bylaws prohibiting or restricting recreational cannabis cultivation or smoking in strata lots or on common property. Strata corporations also have the power to impose fines and other penalties on strata lot owners who do not comply with strata bylaws.
- **Landlords:** Under the *Residential Tenancy Act* landlords and tenants can negotiate terms prior to entering a tenancy and either party can refuse to enter the tenancy if their terms are not met. Consequential amendments to the *Residential Tenancy Act* allows permission to cultivate recreational cannabis to be a negotiated term of tenancy, meaning landlords can prohibit home cultivation in the same way they can prohibit pets i.e. by refusing to enter a tenancy unless home cultivation is a prohibited activity in a tenancy agreement. Landlords can also allow home cultivation or allow it under certain restrictions, for example by allowing only outdoor cultivation of one plant. A key consequential amendment to the *Residential Tenancy Act* is a new rule establishing a default prohibition on home recreational cannabis cultivation in tenancies entered into before the *Cannabis Control and Licensing Act* comes into force.

The rule establishes that tenancy agreements entered into prior to the adoption of the *Cannabis Control and Licensing Act* are deemed to prohibit home cultivation in essence, “backdating” a prohibition to landlords and tenants who entered tenancy agreements prior to recreational cannabis’s legalization. The RMOW (and likely other stakeholders) recommended this amendment to the *Residential Tenancy Act* in its response to the Province’s stakeholder engagement process in the fall of 2017 (Appendix “A”). Staff note that where recreational cannabis cultivation is prohibited or restricted in a tenancy agreement, landlords can evict a tenant who doesn’t comply and seek remedies (such as keeping damage deposits and recovering additional costs for severe damages) through the Residential Tenancy Branch.

- **Property Owners:** Owners of strata property are required to comply with any strata bylaws related to home cultivation and property owners who rent homes are subject to the rights and rules of the *Residential Tenancy Act* noted above. Except for tenanted properties, property owners generally have the “final say” as to whether something occurs on their land. For example, if a home owner discovers their neighbour has planted cannabis plants on the homeowner’s property (which is also prohibited under the *Cannabis Act*), the homeowner can have these plants removed.

Staff also note that, as expected, other provincial laws and regulations that indirectly apply to home cultivation will remain in effect and unaltered by the legalization of home cultivation. Examples include child protection laws, which generally require parents to take reasonable steps to protect their children from harm, including exposure to harmful substances (e.g. a cannabis plant, dried cannabis, household chemicals, alcohol or prescription painkillers in the home) and provincial health and safety codes including the Fire, Plumbing, Electrical and Building Codes which dictate safety requirements for buildings and building systems (e.g. lighting installations).

Home cultivation of recreational cannabis will remain illegal throughout Canada until the *Cannabis Act* comes into force. However, it is important for Council to consider this issue now. Doing so establishes RMOW policy prior to cannabis legalization, serving as advance notice to residents, strata corporations, tenants, property owners and landlords as to what RMOW rules will be in place when home cultivation becomes legal under federal and provincial law. Although they should already be doing so regardless of any RMOW rules, these stakeholders will have time to research their rights and responsibilities under the federal, provincial, and municipal framework and where necessary enact their own rules to meet their specific needs.

Staff note that licensed home cultivation of medical cannabis pursuant to the ACMPR is regulated differently than home cultivation of recreational cannabis. Generally speaking, municipalities, landlords and strata corporations are quite restricted in regulating medical home cultivation because doing so restricts a person’s rights to access medication.

Proposed Bylaw

The proposed zoning amendment bylaw permits home cultivation of recreational cannabis, but only up to 4 plants, and otherwise in accordance with provincial and federal regulations. As noted above, landlords, property owners and strata corporations will be able to further restrict or prohibit this activity as they see fit. The bylaw does not impose any restrictions on medicinal cannabis home cultivation undertaken in accordance with the ACMPR.

The proposed bylaw does not take effect until provincial and federal cannabis laws come into force, meaning the existing zoning rules remains in place, unaltered, until both the federal *Cannabis Act* and the provincial *Cannabis Control and Licensing Act* are enacted. Nor do the rules override any

landlord or strata regulations. **Anyone growing recreational cannabis at home before federal legalization of recreational cannabis or contrary to landlord/strata rules risks serious consequences including criminal prosecution, fines and eviction.** Staff will make this point clear on the RMOW's webpage dedicated to cannabis (www.whistler.ca/cannabis) and when answering inquiries from prospective home growers.

As noted above, zoning regulations allowing this use will not exempt anyone from health and safety codes. If the proposed zoning amendment bylaw is adopted, the RMOW will not cease enforcing safety codes that fall within its mandate (e.g. the BC Building Code) and will continue to advise other regulatory authorities if it observes contraventions of other health and safety codes (e.g. notifying the BC Safety Authority of suspect lighting installations).

Staff are supportive of the zoning bylaw amendments to authorize home cultivation of up to 4 plants for the following reasons:

Minimal, localized land use impacts

Staff note that a great deal of federal and provincial research has gone into developing the federal/provincial "four plant" limit, including considering the effect of mirroring similar rules for legal home cultivation adopted in other jurisdictions (e.g. Colorado, Washington, Oregon) in the Canadian context². The use of homes for large-scale production, the kind that has historically been associated with health and safety risks, will still be illegal, and the legal activity of home cultivation is not expected to generate significant land use impacts. Done responsibly, four plants can be grown indoors with similar humidity levels as houseplants, off-the-shelf household lighting installations, and contained odour. In outdoor cultivation, these impacts are virtually non-existent. Most impacts of small scale home cultivation are limited to a small area and are not likely to impact neighbours. Where neighbours are living in close proximity or sharing common property, these living arrangements are typically regulated either by a single landlord (e.g. un-stratified rental apartment) or a strata corporation. As noted below, these parties have the power to enact rules or prohibitions to prevent the localized impacts of home cultivation from affecting neighbours.

In terms of the hazardousness of live cannabis plants in the home, staff note that the risk are the same as or less than other household substances and activities such as a home beer/wine making and prescription medication use. These other activities are not regulated or prohibited by zoning. This does not obviate measures to protect cannabis plants, but speaks to the level of risk of cannabis plants in the household and the greater effectiveness of a regulatory approach that relies on responsible, law-abiding adults and parents.

Lawful access to cannabis

Allowing home cultivation will allow Whistler's residents to cultivate cannabis in the home which, for many residents, may be the preferred option, particularly with the current absence of legal retail in Whistler. When combined with the option of purchasing from the Province's online retailer, it is hoped that these options will help discourage residents from obtaining cannabis from the illicit market.

Staff note that lawful home cultivation and illegal production should not be conflated in the context of establishing zoning regulations. Growing more than four plants in a home and drug trade related activities (e.g. selling home grown cannabis) will still be illegal federally, and those who choose to do

² Because cannabis has not been legalized nationwide in the United States, the impacts experienced in states where home cultivation has been legalized are not expected to occur to the same extent in Canada, as legalization in Canada is occurring nationwide.

these things will continue to risk criminal prosecution and other significant penalties. There is no evidence that anyone risking these consequences would be dissuaded by an additional layer of zoning regulation.

Similarly, lawful home cultivation and cannabis use and possession should also not be conflated in the context of establishing zoning regulations. The RMOW does not have the power to prohibit cannabis use or possession. Once legal, ready-to-use cannabis will be available from a number of convenient sources. A zoning prohibition or restrictions on home cultivation would not stop residents from using or keeping cannabis in the home or limit the amount of use or cannabis in homes. Staff also note that strata's and landlords have the power to prohibit or restrict cannabis smoking.

Costs of enforcing a prohibition or regulations

Unlike cannabis retail, home cultivation often goes unnoticed. Adopting and enforcing zoning rules prohibiting or restricting home cultivation would place an additional demand on enforcement resources and would likely create an expectation that the RMOW enforce provincial and/or federal regulations (e.g. the number of plants). As noted in the RMOW's response to the Province in Appendix "A", the Province or federal government should assume responsibility for enforcing federal and provincial laws. A permitting or notification system would also create an unwarranted demand on resources with minimal benefit, as those wishing to disobey home cultivation rules can simply conceal their cultivation activities to avoid permit requirements and those responsible enough to apply for permits would otherwise be likely to follow applicable laws and responsible growing practices.

Landlord, strata and property owner controls

The provincial framework for regulating home cultivation of recreational cannabis provides or maintains significant powers for property owners, landlords and strata corporations to address their concerns and needs on a case-by-case basis and as they see fit. Conversely, municipal zoning rules would be broadly applicable and as such unlikely to align with the wide variety of interests and concerns of residents, tenants, landlords, property owners and strata corporations. Further, municipal bylaws, unlike tenancy and strata regulations, do not allow the RMOW seek remedies for strata corporations or landlords. For example, unlike landlord rights under the *Residential Tenancy Act*, a municipal bylaw cannot force a tenant to reimburse a landlord for damages to a rental unit or evict a tenant.

Additional provincial and federal regulations

Existing criminal laws, health and safety and child protection laws will continue to apply as will new federal and provincial rules preventing home-grown cannabis from being sold, visible from public spaces, exceeding four plants, being processed using dangerous compounds and being grown in home daycares. These rules are similar to or exceed required safety measures for other theft attractants and household substances such as recreational equipment, prescription or over-the-counter drugs, alcohol and household cleaners.

Fairness

While some municipalities and stakeholders have, advocated for (or enacted) regulations that allow home cultivation within additional restrictions (e.g. prohibition on growing in multi-family dwellings, prohibiting renters from home cultivating, allowing only indoor or outdoor cultivation) staff do not feel that a further narrowing of who may be eligible (by way of the type of property they live in or tenure) is suitable for Whistler. 40% of Whistler's households rent, 45% of households live in stratified homes, and over 70% of households live in some form of multifamily housing³. Identifying and prescribing, "proper" home cultivation practices (e.g. specifying the types of homes and tenures are suitable for home cultivation) is likely to deprive landlords, strata corporations and home owners of the ability to

find site-specific solutions that best suit their interests and develop their own rules. Such rules may not only be regarded as unfair, overbearing, or ineffective they may support the illicit market or encourage concealed and undesired cultivation practices both of which are likely to be more harmful to the community than open, legal home cultivation.

Discourages covert cultivation

As noted above, provincial and federal discussion papers on the impacts of home cultivation note that the known impacts of home cultivation are based largely on illegal “grow ops”. The act of concealing cannabis cultivation is often the factor that causes the greatest impacts (e.g. not hiring a certified electrician to install proper lighting systems, failing to create proper ventilation to avoid detection, hiding plants in areas not suitable for growing). Staff note that restricting or prohibiting home cultivation would likely continue to encourage this type of behavior and thus the damage associated with it. From a land use perspective, home cultivation of cannabis plants is not dissimilar to home cultivation of any other plants, which is permitted as an auxiliary use in all residential zones.

WHISTLER 2020 ANALYSIS

W2020 Strategy	TOWARD Descriptions of success that resolution moves us toward	Comments
Health and Social	Community members understand and respect diverse views and are encouraged to do so through a variety of initiatives.	Provincial and federal consultation efforts related to home cultivation suggest there will be a multitude of differing viewpoints on the appropriateness of home cultivation in Whistler. In approving the proposed bylaw, Council is recognizing these diverse views and allowing residents to decide for themselves what is and is not appropriate in their homes, tenancies and strata properties. The proposed rules will place the onus of responsible home cultivation on everyone, requiring residents to work together to establish cultivation practices that are within the confines of federal and provincial regulations and neighbourly relations.
Health and Social	Community members and visitors are civil and law abiding, and they respect each other's physical space and emotional boundaries	
Health and Social	Community members eat healthy food, exercise and engage in leisure and other stress relieving activities that assist in preventing illness and they avoid the abusive use of substances that evidence indicates have negative effects on physical and mental health.	
Health and Social	Community members accept responsibility for their own health, and that of other members of the community, by participating in the activities identified in this description of success	
Resident Affordability	Residents have access to affordable goods and services that meet their needs.	For some residents, home cultivation will prove to be the most affordable means of obtaining legal recreational cannabis, similar to home brewing of beer and wine or cultivating one's own vegetables.
Health and Social	Whistler organizations and stakeholders work together to meet the health and social needs of community members and visitors.	The amendments will not limit access to medicinal cannabis.
Built Environment	The built environment is attractive and vibrant, reflecting the resort community's character, protecting views and evoking a dynamic sense of place.	Provincial regulations will require cannabis plants, which some may find unsightly, to be screened from public view. Security requirements for cannabis plants will be no less restrictive than those for substances that are equally or more harmful such as prescription painkillers, alcohol, tobacco plants, and household chemicals.
Built Environment	The built environment is safe and accessible for people of all abilities, anticipating and accommodating wellbeing needs and satisfying visitor expectations.	

		Cannabis cultivation will be illegal in properties that are not used as a residence (e.g. tourist accommodation)
Built Environment	Landscaped areas consist of native plant species that eliminate the need for watering and chemical use.	<p>By definition, growing 1-4 cannabis plants is more like gardening than landscaping, however it's worth noting that cannabis plants are not native to the region and do require substantial amounts of water. In terms of water demands, staff note that water use impacts may be offset by energy savings from outdoor cultivation. In some cases, energy savings from selecting cannabis grown at home instead of purchasing cannabis grown elsewhere may also offset local water use impacts.</p> <p>Staff have verified that the cannabis plant is not likely to be an invasive species, (it cannot withstand periods of prolonged cold temperatures or heavy snow), not likely to be a bear attractant and, in an unprocessed state, not likely to harm animals.</p>
Energy	Energy is generated, distributed and used efficiently, through market transformation, design and appropriate end uses.	Indoor cannabis production can be an energy intensive process. By not prohibiting outdoor home cultivation the RMOW will enable home growers to select an option that is less energy intensive than indoor production.

W2020 Strategy	AWAY FROM Descriptions of success that resolution moves us away from	Comments
Health and Social	Community members eat healthy food, exercise and engage in leisure and other stress relieving activities that assist in preventing illness and they avoid the abusive use of substances that evidence indicates have negative effects on physical and mental health.	Arguably, the proposed bylaw will increase exposure and availability of cannabis in the community. However, with legalization occurring nationally it appears doubtful that prohibiting home cultivation would prevent the harmful cannabis use considering ready-to-use cannabis will be widely available through other, more convenient sources.
Built Environment	The built environment is safe and accessible for people of all abilities, anticipating and accommodating wellbeing needs and satisfying visitor expectations.	Some residents living in close proximity (e.g. stratified buildings or rental apartments) may find home cultivation to impact the enjoyment of their residences. Staff expect that with the limited scale of legal home cultivation and landlord/strata powers, neighbours have the ability to work together to determine appropriate solutions..
Energy	Energy is generated, distributed and used efficiently, through market transformation, design and appropriate end uses.	Indoor cannabis cultivation is more energy intensive than outdoor cultivation. By permitting this subtype of home cultivation it is possible more energy will be consumed in homes. However, when considering the number of residents expected to cultivate in the home, additional prohibitions that will

		likely be put in place by landlords and stratas, and the scale of legal home cultivation (e.g. four plants) staff expect the energy increases to be relatively minor when compared to other energy consuming/GHG producing aspects of residential use. Moreover, as noted above allowing outdoor cultivation gives residents a less energy intensive home cultivation option for part of the year.
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OTHER POLICY CONSIDERATIONS

Staff reviewed Official Community Plan Bylaw No. 1021, 1993 and the 2017 Corporate Plan and found no relevant polices that specifically relate to the home cultivation of recreational cannabis.

BUDGET CONSIDERATIONS

As the RMOW is initiating this zoning amendment, rezoning application and processing fees do not apply. All costs associated with staff time for the rezoning application will be covered within existing staff budgets.

COMMUNITY ENGAGEMENT AND CONSULTATION

Prior to approval a Public Hearing must be held for “Zoning Amendment Bylaw (Personal Cannabis Home Cultivation) No. 2195, 2018” and statutory public notice requirements must be met.

SUMMARY

This Report presents “Zoning Amendment Bylaw (Personal Cannabis Home Cultivation) No. 2195, 2018” that updates existing zoning regulations related to recreational cannabis to permit home cultivation undertaken pursuant to anticipated provincial and federal regulations. These amendments are considered to be a reasonable, warranted, flexible and fair approach to home cultivation of recreational cannabis, allowing residents, property owners, tenants, strata corporations and landlords to determine if and how home cultivation is appropriate for their specific circumstances. Staff recommend giving the proposed bylaw first and second readings and authorization to proceed to public hearing.

Respectfully submitted,

Jake Belobaba
SENIOR PLANNER
for
Jan Jansen
GENERAL MANAGER OF RESORT EXPERIENCE

RZ1149 ZONING AMENDMENT BYLAW (PERSONAL CANNABIS HOME CULTIVATION) NO. 2195, 2018

Council Presentation

June 5th 2018

RESORT MUNICIPALITY OF WHISTLER

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Background

- On April 13, 2017, federal *Cannabis Act* introduced:
 - ✓ Legalizes “recreational cannabis” including home cultivation of up to four plants.
 - ✓ No changes to rules allowing medical home cultivation.
 - ✓ Provinces can also further restrict recreational home cultivation.
 - ✓ Municipalities, landlords and strata corporations can also restrict recreational home cultivation.
- February 2018 Council approved Zoning Amendment Bylaw (Cannabis Retail, Production and Distribution) No. 2159, 2017
 - ✓ Clarified existing rules for cannabis production, distribution and retail in Whistler
 - ✓ Maintained and clarified an existing prohibition on cannabis retail in Whistler.
 - ✓ Did not contain any zoning amendments related to home cultivation of cannabis.
 - Province had yet to announce its own rules for home cultivation
 - No certainty that the Province would permit this use
 - No provincial framework to align RMOW rules with.

Background

- April 2018 Provincial *Cannabis Control and Licensing Act* tabled in the legislature
 - ✓ Mirrors the federal “four plant” limit: Four plants per household either indoors or outdoors.
 - ✓ Cannabis plants cannot be visible from public spaces off the property.
 - ✓ Prohibits home cultivation in homes used as daycares.
 - ✓ Has been given third reading and is awaiting Royal Assent.
 - ✓ Municipal, strata corporation, landlord and property owner powers to regulate or prohibit have been maintained or enhanced.

Background

Strata, landlord and property owner powers maintained or enhanced

- ✓ Strata Corporations:
 - Strata rules and bylaws under the *Strata Property Act*
 - Can prohibit home cultivation or smoking in strata units or on common property
 - Can impose fines and other penalties on strata lot owners who do not comply
- ✓ Landlords:
 - Existing powers to impose tenancy terms under the *Residential Tenancy Act*
 - Can prohibit home cultivation or impose restrictions (e.g. one plant and only outside).
 - Can seek remedies e.g. recover cost of damages, eviction etc.
 - New rules added to the *Residential Tenancy Act*:
 - Backdated prohibition on recreational cannabis cultivation in existing tenancies
 - Prohibition on smoking in tenancy agreement automatically extends to smoking cannabis
- ✓ Property Owners:
 - Must comply with strata and tenancy rules if applicable
 - Generally have the “final say” as to whether home cultivation occurs on their land

Background

- Other provincial/federal laws and regulations
 - ✓ May directly/indirectly apply to home cultivation and will remain in effect e.g. :
 - Criminal law/Cannabis Act prohibitions:
 - Selling cannabis, large-scale cultivation without licenses
 - Trafficking, providing to minors, impaired driving etc.
 - Child protection laws:
 - Reasonable steps to protect children from exposure to harmful substances (e.g. cannabis plant, store-bought cannabis, household chemicals, alcohol or prescription painkillers in the home)
 - Health and safety codes (e.g. Fire, Plumbing, Electrical and Building Codes)

Considerations

Concerns

- Property damage.
- Health and safety risks.
- Odour and other nuisances.

Many of these concerns have been strongly influenced by large-scale, clandestine criminal cannabis production

Support for home cultivation

- Reduce/eliminates demand for illegal cannabis
- Most people will purchase rather than cultivate
- Similar to home brewing alcohol
- Cost and personal preferences
- Form of legal access when retail opportunities are limited

Strong support (e.g. 92% of federal online respondents) for home cultivation noted in provincial and federal consultation processes.

Proposed RMOW Bylaw

- Permits home cultivation of recreational cannabis of four plants in accordance with provincial and federal regulations.
- Does not:
 - ✓ Take effect until provincial and federal cannabis laws come into force
 - ✓ Impose any restrictions on medicinal cannabis home cultivation
 - ✓ Prevent landlords and strata corporations from enacting their own rules.
 - ✓ Override any landlord, strata, health and safety or other regulations

Anyone growing recreational cannabis at home before federal legalization or contrary to federal, provincial, municipal, landlord or strata rules risks serious consequences including criminal prosecution, fines and eviction.

Analysis

- *Minimal, localized land use impacts*
 - ✓ “Four plant” limit
 - ✓ Indoor cultivation can be done responsibly with minimal impact; Outdoor impacts are virtually non-existent.
 - ✓ The use of homes for large-scale production will still be illegal
 - ✓ Strata and landlords have powers to address localized impacts.
 - ✓ Live cannabis plants have an equal or lesser risk than other household substances and activities
 - e.g. home beer/wine making and prescription medication use—these are not restricted by zoning.
 - Greater effectiveness of a regulatory approach that relies on responsible, law-abiding adults and parents.

Analysis

- *Lawful access to cannabis*
 - ✓ Home cultivation may be the preferred option for some residents
 - ✓ Current absence of legal retail in Whistler.
 - Online provincial sales + home cultivation; may discourage purchase from the illegal market.
 - ✓ Not expected to increase cannabis use in homes
 - Ready-to-use cannabis will be available from a number of convenient sources.
 - Zoning prohibition or restrictions on home cultivation would not stop residents from using or keeping cannabis in the home
 - ✓ Strata's and landlords have the power to prohibit or restrict cannabis smoking.

Analysis

- *Costs of enforcing a prohibition or permit/notification system*
 - ✓ Home cultivation easy to conceal.
 - ✓ Demand on RMOW resources:
 - Cost of inspections, monitoring, permitting, enforcement etc.
 - Requirement to enter into/onto property
 - Likely create an expectation that the RMOW enforce provincial and/or federal regulations (e.g. the number of plants).

Analysis

- *Landlord, strata and property owner controls*
 - ✓ Property owners, landlords and strata powers to prohibit/regulate home cultivation and smoking cannabis maintained or enhanced.
 - ✓ Municipal zoning restrictions or prohibitions would be:
 - Unlikely to align with varying interests and concerns of residents, tenants, landlords, property owners and strata corporations.
 - RMOW cannot seek same remedies as strata corporations or landlords (e.g. RMOW cannot force a tenant to reimburse a landlord for damages to a rental unit or evict a tenant).

Analysis

- *Additional provincial and federal regulations*
 - ✓ Large scale home cultivation of recreational cannabis still illegal federally
 - Risk of criminal prosecution and other significant penalties.
 - No evidence that anyone risking these consequences would be dissuaded by additional zoning rules.
 - ✓ Use of dangerous compounds to make extracts prohibited under federal rules
 - ✓ No home cultivation in homes used as daycares
 - ✓ Child protection laws and health and safety codes continue to apply.
 - ✓ Federal/provincial rules similar (in some cases more strict) than for similar household substances/activities (e.g. over-the-counter drugs, alcohol, home brewing, tobacco cultivation and household cleaners).

Analysis

- *Fairness*

- ✓ Additional restrictions (e.g. prohibiting cultivation in multi-family or renter dwellings, or indoor/outdoors) not considered suitable for Whistler
 - Types of tenures and homes
 - 40% of Whistler's households rent.
 - 45% of households live in stratified homes.
 - Over 70% of households live in multifamily housing.
 - Climate rules out outdoor cultivation for large part of the year
 - Would remove opportunity for landlords, strata corporations and home owners to find their own solutions.
 - Such rules may be regarded as unfair, overbearing, or ineffective
 - May support the illicit market or encourage concealed and undesired cultivation practices

Analysis

- *Discourages covert cultivation*

- ✓ Known impacts of home cultivation are based largely on illegal “grow ops”.
- ✓ The act of concealing cannabis cultivation is often the factor that causes the greatest impacts e.g.
 - Not hiring a certified electrician to install proper lighting systems
 - Failing to create proper ventilation to avoid detection
 - Hiding plants in areas not suitable for growing.
- ✓ Restricting or prohibiting home cultivation may encourage concealed cultivation and damage associated with it.
- ✓ Home cultivation of cannabis plants is not dissimilar to home cultivation of any other plants, which is permitted as an auxiliary use in all residential zones.

Recommendation

- **That** Council consider giving first and second readings to “Zoning Amendment Bylaw (Personal Cannabis Home Cultivation) No. 2195, 2018”; and
- **That** Council authorize staff to schedule a Public Hearing regarding “Zoning Amendment Bylaw (Personal Cannabis Home Cultivation) No. 2195, 2018”.

LUC008 – Alpine
Meadows Land
Use Contract
Termination
File No. LUC008
Report No. 18-075

Moved by Councillor J. Grills
Seconded by Councillor J. Ford

That Council consider giving third reading to “Land Use Contract Termination Bylaw (Alpine Meadows) No. 2166, 2017” as revised.

That Council authorize staff, subject to approval of “Land Use Contract Termination Bylaw (Alpine Meadows) No. 2166, 2017”, to give written notice of termination to the Registrar of Land Titles, pursuant to section 548(6) of the *Local Government Act*; and further,

That Council authorize staff, subject to approval of “Land Use Contract Termination Bylaw (Alpine Meadows) No. 2166, 2017”, to give written notice of termination to all owners subject to the Alpine Meadows Land Use Contract pursuant to Section 549 of the *Local Government Act*.

CARRIED

Waste Water
Treatment Plant
Lease Renewal
File No. 0336383
Report No. 18-074

Moved by Councillor J. Ford
Seconded by Councillor J. Crompton

That Council endorse a Crown Land replacement application for the waste water treatment plant Crown lease.

CARRIED

2018 Water Tax
Bylaw
File No. 2192
Report No. 18-073

Moved by Councillor J. Crompton
Seconded by Councillor J. Ford

That Council consider giving first, second and third readings to “Water Tax Bylaw No. 2192, 2018”.

CARRIED

BYLAWS FOR FIRST AND SECOND READINGS

**Zoning
Amendment Bylaw
(Personal
Cannabis Home
Cultivation) No.
2195, 2018**

Moved by Councillor S. Maxwell
Seconded by Councillor J. Grills

That “Zoning Amendment Bylaw (Personal Cannabis Home Cultivation) No. 2195, 2018” be given first and second readings.

CARRIED

BYLAWS FOR FIRST, SECOND AND THIRD READINGS

Housing
Agreement Bylaw
(Creekside Plaza)
No. 2193, 2018

Moved by Councillor J. Crompton
Seconded by Councillor J. Ford

That “Housing Agreement Bylaw (Creekside Plaza) No. 2193, 2018” be given first, second and third readings.

CARRIED

Water Tax Bylaw
No. 2192, 2018

Moved by Councillor S. Anderson
Seconded by Councillor J. Crompton

That “Water Tax Bylaw No. 2192, 2018” be given first, second and third readings.

CARRIED