



REPORT | ADMINISTRATIVE REPORT TO COUNCIL

PRESENTED: March 18, 2014

REPORT: 14-028

FROM: Resort Experience

FILE: RZ1081 & 1082, 7600.1

SUBJECT: ZONING AMENDMENT BYLAW (MARIHUANA PRODUCTION) NO. 2042, 2014
AND BUSINESS REGULATION AMENDMENT BYLAW 2043, 2014

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 (Marihuana Production) No. 2042, 2014;

That Council authorize the Corporate Officer to schedule a public hearing regarding Zoning Amendment Bylaw (Marihuana Production) No. 2042, 2014; and further,

That Council consider giving first, second and third readings to Business Regulation Amendment Bylaw No. 2043, 2014.

REFERENCES:

Appendix A - Location Map

Appendix B - Summary of commercial license activities

Appendix C - Security and Odour Control requirements

PURPOSE OF REPORT

This report presents a proposed zoning amendment bylaw to limit the location and size of facility where federally approved production and distribution of marihuana for medical purposes can occur within Whistler for Council's consideration of first and second reading. This report also presents a proposed business regulation bylaw amendment to implement security and odour control requirements applicable to the holder of a business license issued by the municipality for the production and distribution of marihuana for medical purposes.

DISCUSSION

Background

In 2001, Health Canada introduced the Marihuana Medical Access Regulation Program (MMAR) so that people with a demonstrated medical need could possess and cultivate marihuana for medical purposes. The MMAR program has grown significantly and has resulted in concerns regarding public safety and security as a result of allowing individuals to produce marihuana in their homes.

In June 2013, Health Canada announced the new Marihuana for Medical Purposes Regulations (MMPR), which changes the way Canadians, are able to access marihuana for medical purposes. Some key points of the new MMPR include:

- Personal and designated production of medical marihuana by individuals in their homes will expire on March 31, 2014;
- All medical grow licences under the current regime will expire on March 31, 2014;
- Access to medical marihuana for medical purposes will be replaced by regulated commercial Licensed Producers;
- As of October 1, 2013, applications for personal use and designated person production licences were no longer accepted by Health Canada;
- During the transition period, individuals can move their current means of accessing marihuana for medical purposes to purchasing it from Licensed Producers under the new regulations;
- Applications to become a Licensed Producer of Medical Marihuana became available on Health Canada's website on June 19, 2013;
- Applicants to become a Licensed Producer of Medical Marihuana are required to notify the local government, Fire Chief and RCMP of their intent to become a Licensed Producer;
- Every Licensed Producer of Medical Marihuana under the new regime must comply with local government zoning bylaw in regard to permitted use; and
- Licensed Producers could be in a position to commence legal Medical Marihuana Grow Operations prior to April 1, 2014, subject to licensing by the federal government.

Health Canada licensing does not review local government land use regulations in its approval process. Health Canada inspects for compliance with the MMPR and any related federal legislation. Applicants are required to "show" Health Canada that they have notified the local government, law enforcement officials and the fire department of their application. Although licensed activities are subject to local government land use regulations. Health Canada relies on the applicants to discuss their zoning requirements with the local government. A zoning bylaw may prohibit use; it is up to the local government to enforce their zoning bylaw.

It is important to note that where the Municipality is aware or made aware of personal medical marihuana grow operations that are not compliant with the law and/or a public safety concerns, that immediate action will be undertaken to ensure that remediation is made and/or the operation is ceased.

In January 2013, an operator notified the municipality, Fire Chief and RCMP of their intention to pursue a medical marihuana license at 113-1300 Alpha Lake Road. The operator had previously received a building permit to construct new warehouse space for units 111, 112 - 1300 Alpha Lake Road that was authorized in July 2012. Unit 113 - 1300 Alpha Lake Road received a building permit in September 2013 to construct a second floor and new improvement in existing industrial space. A warehouse is a permitted use in the IL2 zone along with nursery or greenhouse. The building is classified medium hazard industrial by the BC Building Code.

On November 19, 2013, Council directed staff to initiate the preparation of a zoning bylaw amendment to regulate activities related to the research, development, production and distribution of medical marihuana.

On February 26, 2014, the operator received a license from Health Canada to a licensed commercial producer of Medical Marihuana at 113-1300 Alpha Lake Road (<http://www.hc-sc.gc.ca/dhp-mps/marihuana/info/list-eng.php>). The operator submitted a business licence to the municipality on February 28, 2014.

Zoning Amendment Bylaw (Marihuana Production) No. 2042, 2014

Currently a number of zones, primarily located in Function Junction, Mons, and RR1 lands (e.g., Edgewater) may allow for marihuana production under different types of uses. Zones such as RR1, RR4, CI1, IS1, IL2, IL3, IS4, ILR and IS5 zones permit uses that cover the “research and development” and “commercial production and distribution” activities (“agriculture” and auxiliary uses, “nursery or greenhouse” and auxiliary uses, and “laboratory, scientific and research”).

The following amendments are proposed to the Zoning Bylaw to implement Council's November 19, 2013 direction to staff:

- A new definition is proposed to define marihuana production and distribution as follows: “marihuana production” and “marihuana distribution” mean, respectively, the growing and distribution of any plant that contains any of the substances listed in Schedule II to the Controlled Drugs and Substances Act (Canada), and includes any research or development activity associated with such uses.”
- Limit marihuana production and distribution to the existing facility at 111, 112 and 113 -1330 Alpha Lake Road with building permits issued under existing zoning. As such, the IL2 zone is proposed to be amended by adding the following under permitted uses: “on Strata Lots 11, 12 and 13 in Strata Plan BCS4326, the production and distribution of marihuana under a licence issued pursuant to the Marihuana for Medical Purposes Regulation (Canada) provided that the total amount of building floor area used for all such uses shall not exceed 560 square metres.”

Business Regulation Amendment Bylaw 2043, 2014

The Business Regulation Bylaw is proposed to be updated to ensure that as a condition of every business licence issued by the municipality for the production and distribution of marihuana for medical purposes that the licence holder complies with the security and odour control requirements in Division 3 of Part 1 of the Marihuana for Medical Purposes Regulation under the Controlled Drugs and Substances Act (Canada). The security and odour control requirements are listed in Appendix C. Any person contravening any provisions of the Business Regulation Bylaw may be issued a fine not exceeding \$2000, and the costs of prosecution or imprisonment for not more than six months, or both.

WHISTLER 2020 ANALYSIS

W2020 Strategy	TOWARD Descriptions of success that resolution moves us toward	Comments
Economic	Locally owned and operated businesses thrive and are encouraged as an essential component of a healthy business mix.	The commercial production facility is locally owned and operated.
W2020 Strategy	AWAY FROM Descriptions of success that resolution moves away from	Mitigation Strategies and Comments
Economic	Effective partnerships with government and tourism organizations support economic health	Federal Government brought in the MMPR and does not allow local governments to provide meaningful comments or object to an application within their licensing process.
Economic	Whistler has a healthy economy that generates revenue to contribute to the resort's funding base	Federal Government receives revenue for medical marihuana. Tax revenue may be lower if BC Assessment classifies the operation as agricultural use despite being located in an

		industrial zone.
Energy	Energy is generated, distributed and used efficiently, through market transformation, design and appropriate end uses.	Marihuana production is an energy intensive process.

OTHER POLICY CONSIDERATIONS

Official Community Plan

There is limited community benefit to having marihuana production within the Resort Municipality. There are potential impacts on services such as water and waste. There may be impacts on the electrical grid as marihuana production requires more energy than a typical business.

Objective/Policy	Comments
Objective 3.1.2 – Optimize the use and function of existing and approved development.	
Policy 3.1.1.2 – Contain Whistler urban development within the boundary of the Whistler Urban Development Containment Area.	The subject lands are within the boundary of the Whistler Urban Development Containment Area.
Policy 3.1.2.1 – Support flexibility, diversity, adaptability and efficiency in land use and development so the resort community can derive the greatest benefit from existing development	The rezoning supports this Policy by providing increased clarity around the permitted uses for marihuana production and distribution.
Objective 3.2.1 – Reinforce Whistler’s mountain resort character, compact development pattern, social fabric, economic viability and diversity.	
Policy 3.2.1.4 – Support land uses and development that contribute to a diversified tourism economy compatible with Whistler’s resort character and values.	Marihuana production and distribution does not support the Whistler resort economy and could potentially displace space from other complementary uses. In addition, “agriculture” is not an industry Whistler is looking to attract; therefore, the proposed zoning bylaw amendment limits marihuana production and distribution to the existing facility at 111, 112 and 113 -1330 Alpha Lake Road.
Objective 4.9.4 – Reinforce Function Junction as Whistler’s general purpose business district and “Back-of-House” area for the resort community.	
Policy 4.9.4.1 – Review and rationalize zoning designations to provide flexibility and compatibility for a wide range of uses appropriately located in Function Junction.	Allowing for the existing medical marihuana production facility provides for flexibility in the IL2 zone and is compatible with similar warehouse/light industrial uses.
Policy 8.4.1.3 – Lead a community-wide effort to reduce total energy consumption to a level 10% below 2007 levels by 2020.	There may be impacts on the electrical grid as marihuana production requires more energy than a typical business.

BUDGET CONSIDERATIONS

As the Municipality is initiating the rezoning, 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

Zoning Amendment Bylaw (Marihuana Production) No. 2042, 2014 will be subject to a public hearing adhering to statutory public notice requirements. Business Regulation Amendment Bylaw 2043, 2014 does not require a public hearing.

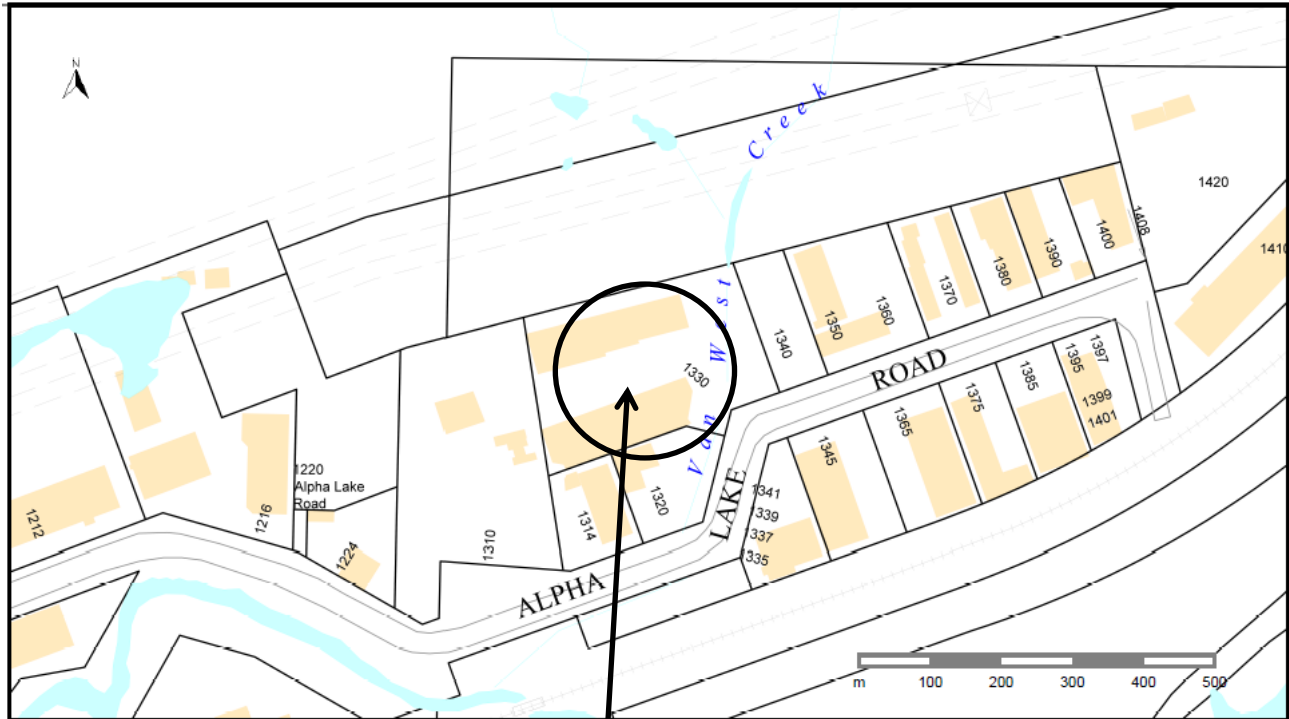
SUMMARY

In June of 2013, the Federal Government brought in new regulations regarding the access to medical marihuana by individuals who were licensed to grow marihuana for medical purposes. As of April 1, 2014, new Health Canada regulations permit only licensed commercial producers to produce Medical Marihuana.

In accordance with the direction of Council on November 19, 2013, staff has prepared Zoning Bylaw amendments to limit marihuana production and distribution within Whistler to an existing facility at 111, 112 and 113 -1330 Alpha Lake Road with building permits issued under existing zoning.

Respectfully submitted,

Kevin Creery
PLANNING ANALYST
for
Jan Jansen
GENERAL MANAGER OF RESORT EXPERIENCE



Subject Property

Summary of Commercial License Activities

- Medical marihuana grown indoors;
- Harvesting and packaging marihuana and destroying marihuana that has passed its 'best before' date;
- Maintaining an inventory of marihuana for distribution;
- Clients seeking Medical Marihuana would submit a document obtained from their physician directly to a licensed commercial producer;
- Delivery of the medical marihuana is by registered mail and storefront (walk-in) purchasing is not permitted;
- The list of licensed commercial producers is listed on Health Canada's website: <http://www.hc-sc.gc.ca/dhp-mps/marihuana/info/list-eng.php>;
- Conducting ongoing research and development activities of a minor nature;
- Conducting related administrative duties including maintaining record required by Health Canada
- No retail sales are permitted:
 - Licensed producers may sell medical marihuana only to persons having a prescription for the drug;
 - Delivery of the drug to the customer only by a shipping method that involves a means of tracking the package during transit and the safekeeping of the package during transit (registered mail or courier);
 - Producers may accept both written and verbal order, but s. 119 of MMPR prohibits transfer of possession of marihuana to customer by means other than shipping it to them;

Appendix C - Security and Odour Control requirements

graphs 38(1)(a) to (c) in the area in which the site specified in the licence is located and provide a copy of the notice to the Minister.

sonnes visées aux alinéas 38(1)a) à c) de la région où se situe l'installation visée par la licence et fournit copie de cet avis au ministre.

Content of notice

(2) The notice must contain the following information:

(2) L'avis contient les renseignements suivants :

Contenu de l'avis

(a) the name of the licensed producer and the address of their site; and

a) le nom du producteur autorisé et l'adresse de son installation;

(b) a description of the applicable matter referred to in subsection (1) and its effective date and, in the case of an amendment to the licence, details of the amendment.

b) la description de l'événement en cause et sa date de prise d'effet et, s'il s'agit d'une modification de la licence, les précisions eu égard aux changements apportés.

Senior official

(3) The notice must be addressed to a senior official of the local authority to whom it is sent.

(3) Le destinataire de l'avis est un cadre supérieur de l'autorité locale en cause.

Cadre supérieur

DIVISION 3

SECTION 3

SECURITY MEASURES

MESURES DE SÉCURITÉ

General

Généralités

Compliance with security measures

41. A licensed producer must ensure that the security measures set out in this Division are carried out.

41. Le producteur autorisé veille au respect des mesures de sécurité prévues à la présente section.

Respect des mesures de sécurité

Unauthorized access

42. The licensed producer's site must be designed in a manner that prevents unauthorized access.

42. L'installation du producteur autorisé doit être conçue de façon à prévenir tout accès non autorisé.

Accès non autorisé

Perimeter of Site

Périmètre de l'installation

Visual monitoring

43. (1) The perimeter of the licensed producer's site must be visually monitored at all times by visual recording devices to detect any attempted or actual unauthorized access.

43. (1) Le périmètre de l'installation du producteur autorisé doit faire l'objet, en tout temps, d'une surveillance visuelle à l'aide d'appareils d'enregistrement visuel, de façon à détecter tout accès ou tentative d'accès non autorisé.

Surveillance visuelle

Visual recording devices

(2) The devices must, in the conditions under which they are used, be capable of recording in a visible manner any attempted or actual unauthorized access.

(2) Ces appareils doivent être adaptés aux conditions de leur environnement afin d'enregistrer visiblement tout accès ou tentative d'accès non autorisé.

Appareils d'enregistrement visuel

Intrusion detection system	<p>44. The perimeter of the licensed producer’s site must be secured by an intrusion detection system that operates at all times and that allows for the detection of any attempted or actual unauthorized access to or movement in the site or tampering with the system.</p>	<p>44. Le périmètre de l’installation du producteur autorisé doit être sécurisé au moyen d’un système de détection des intrusions qui est fonctionnel en tout temps et permet la détection de tout accès non autorisé à l’installation ou mouvement non autorisé à l’intérieur de celle-ci ou toute altération du système, ou toute tentative à ces égards.</p>	Système de détection des intrusions
Monitoring by personnel	<p>45. (1) The system must be monitored at all times by personnel who must determine the appropriate steps to be taken in response to the detection of any occurrence referred to in section 43 or 44.</p>	<p>45. (1) Le système doit être surveillé en tout temps par du personnel qui doit déterminer les mesures qui s’imposent en cas de détection d’un événement visé aux articles 43 ou 44.</p>	Surveillance par le personnel
Record of detected matters	<p>(2) If any such occurrence is detected, the personnel must make a record of</p> <p>(a) the date and time of the occurrence; and</p> <p>(b) the measures taken in response to it and the date and time when they were taken.</p> <p style="text-align: center;"><i>Areas Within a Site where Cannabis is Present</i></p>	<p>(2) Le cas échéant, le personnel doit consigner les renseignements suivants :</p> <p>a) la date et l’heure auxquelles l’événement a été détecté;</p> <p>b) la description des mesures prises en réponse à ce dernier, ainsi que la date et l’heure auxquelles elles l’ont été.</p> <p style="text-align: center;"><i>Zones de l’installation où du chanvre indien est présent</i></p>	Constat des événements détectés
Restricted access	<p>46. (1) Access to areas within a site where cannabis is present (referred to in sections 46 to 50 as “those areas”) must be restricted to persons whose presence in those areas is required by their work responsibilities.</p>	<p>46. (1) L’accès aux zones de l’installation où du chanvre indien est présent (appelées « zones » aux articles 46 à 50) doit être limité aux seules personnes dont les fonctions y requièrent la présence.</p>	Accès restreint
Responsible person in charge present	<p>(2) The responsible person in charge or, if applicable, the alternate responsible person in charge must be physically present while other persons are in those areas.</p>	<p>(2) La personne responsable ou, le cas échéant, la personne responsable suppléante, doit être présente physiquement dans les zones lorsque d’autres personnes s’y trouvent.</p>	Présence de la personne responsable
Record	<p>(3) A record must be made of the identity of every person entering or exiting those areas.</p>	<p>(3) Il est tenu un registre de l’identité des personnes entrant dans les zones ou en sortant.</p>	Registre

Physical barriers	<p>47. Those areas must include physical barriers that prevent unauthorized access.</p>	<p>47. Les zones doivent comporter des barrières physiques qui empêchent tout accès non autorisé.</p>	Barrières physiques
Visual monitoring	<p>48. (1) Those areas must be visually monitored at all times by visual recording devices to detect illicit conduct.</p>	<p>48. (1) Les zones doivent faire l'objet d'une surveillance visuelle en tout temps, à l'aide d'appareils d'enregistrement visuel, de façon à détecter toute conduite illicite.</p>	Surveillance visuelle
Visual recording devices	<p>(2) The devices must, in the conditions under which they are used, be capable of recording in a visible manner illicit conduct.</p>	<p>(2) Ces appareils doivent être adaptés aux conditions de leur environnement afin d'enregistrer visiblement toute conduite illicite.</p>	Appareils d'enregistrement visuel
Intrusion detection system	<p>49. Those areas must be secured by an intrusion detection system that operates at all times and that allows for the detection of any attempted or actual unauthorized access to or movement in those areas or tampering with the system.</p>	<p>49. Les zones doivent être sécurisées au moyen d'un système de détection des intrusions qui est fonctionnel en tout temps et permet la détection de tout accès non autorisé aux zones ou mouvement non autorisé à l'intérieur de celles-ci ou toute altération du système, ou toute tentative à ces égards.</p>	Système de détection des intrusions
Filtration of air	<p>50. Those areas must be equipped with a system that filters air to prevent the escape of odours and, if present, pollen.</p>	<p>50. Les zones doivent être équipées d'un système de filtration de l'air qui empêche les odeurs et, le cas échéant, le pollen, de s'échapper.</p>	Filtration de l'air
Monitoring by personnel	<p>51. (1) The intrusion detection system must be monitored at all times by personnel who must determine the appropriate steps to be taken in response to the detection of any occurrence referred to in section 48 or 49.</p>	<p>51. (1) Le système de détection des intrusions doit être surveillé en tout temps par du personnel qui doit déterminer les mesures qui s'imposent en cas de détection d'un événement visé aux articles 48 ou 49.</p>	Surveillance par le personnel
Record of detected matters	<p>(2) If any such occurrence is detected, the personnel must make a record of</p> <p>(a) the date and time of the occurrence; and</p> <p>(b) the measures taken in response to it and the date and time when they were taken.</p>	<p>(2) Le cas échéant, le personnel doit consigner les renseignements suivants :</p> <p>a) la date et l'heure auxquelles l'événement a été détecté;</p> <p>b) la description des mesures prises en réponse à la détection de ce dernier, ainsi que la date et l'heure auxquelles elles l'ont été.</p>	Constat des événements détectés