

**Date:** January 17, 2017  
**To:** Nikki Gilmore, Chief Administrative Officer  
**From:** Lisa Pedrini, Planner  
**Subject:** Zoning Amendment (Marihuana Operation) Bylaw No. 809, 2017

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### **PURPOSE**

This report presents a proposed Zoning Bylaw (Marihuana Operation) Amendment Bylaw No. 809, 2017, a Village-initiated amendment (OR121), to address medical marihuana dispensary and/or operations in Pemberton, for consideration of First and Second Reading.

### **BACKGROUND**

In October 2016, Council received correspondence from Mr. Joseph Le, owner of the S.W.E.D Society, requesting an amendment of the Village of Pemberton Zoning Bylaw to explicitly allow medical cannabis dispensaries in the downtown core. As a result, Village Council passed the following resolutions:

*Moved/Seconded*

**THAT** staff be directed to prepare a zoning amendment bylaw to define and regulate medical marihuana dispensary use within the Village of Pemberton.

**CARRIED**

*Moved/Seconded*

**THAT** a moratorium on the issuance of a Business Licence for a medical marihuana dispensary be put in place until the adoption of the zoning amendment bylaw respecting regulation of medical marihuana dispensaries.

**CARRIED**

*Moved/Seconded*

**THAT** correspondence be sent to Mr. Le advising of this direction.

**CARRIED**

On October 18, 2016, Council reviewed the October 4<sup>th</sup> meeting minutes with respect to the Mr. Le's request to consider zoning amendments to allow for a medical marihuana dispensary. It was noted that at this time under Federal and Provincial law medical marihuana dispensaries are not legal. The Village of Pemberton Business Licence Bylaw stipulates that any businesses within the Village of Pemberton must be able to demonstrate federal/RCMP approval. Given that currently medical marihuana dispensaries are not legal, the Village may shut down such a business via the *Community Charter*, Section 274 Statutory Injunction. As a result, Council considered and passed the following resolution directing staff to seek an injunction if a dispensary operation should open for business:

*Moved/Seconded*

**THAT** in the event of the opening of an unauthorized medical marihuana dispensary within the Village of Pemberton, staff be authorized to seek a Section 274, statutory injunction against the dispensary.

**CARRIED**

On December 13, 2016, Mr. Adam Blender, Director of Operations for the S.W.E.D. Society, and Ms. Ginny Stratton, Store Manager for the proposed Pemberton Retail store attended as a Delegation at the Regular Council meeting. Mr. Blender spoke about the operations of the S.W.E.D Society, their commitment to provide medical cannabis to their members and the Society's operating guidelines including how the products are marketed and monitored. Ms. Stratton provided updated information on the current status of the proposed legislation noting that the Federal Governments Task Force on Marihuana Legalization and Regulation released its final report, "A Framework for Legalization and Regulations of Cannabis in Canada" earlier in the day.

Ms. Stratton also spoke about how other communities have addressed medical marihuana dispensaries and referenced the City of Vancouver, Victoria and most recently Penticton (which have adopted a Temporary Use Permit approach) and requested that the Village consider similar approaches. Council asked questions related to the choice of Pemberton for a dispensary, testing protocols on products, where product is sourced from, what will the store front look like if sale for recreational purposes is approved, other communities' approaches and the zoning amendment process. No Council resolutions were passed following the delegation's presentation.

### **DISCUSSION & COMMENTS**

Council has asked staff to bring forward a Zoning Amendment Bylaw that addresses land use with respect to medical cannabis/marihuana dispensaries in Pemberton. Staff undertook research on the issue and sought a legal opinion with respect to the legality of medical marihuana dispensaries in general, and approaches to land use restrictions that could be applied in Pemberton.

The Village of Pemberton amended its Zoning Bylaw in 2014 to permit medical marihuana production facilities in the Industrial Zone (M-1) and Agriculture Zone (A-1). The facility must be used solely for the cultivation, growth, storage, distribution or destruction of marihuana under the current federal regulations. The Zoning Bylaw is silent on the retail sale of marihuana. Given that the dispensing of medical cannabis is not currently legal in Canada, it is in contravention to the Village's Business Licence Bylaw, and therefore the Village is unable to issue a business license to the S.W.E.D. Society if its intention is to offer for sale medical marihuana at a storefront. In the corridor, the District of Squamish recently amended their Zoning Bylaw and their Business Licence Bylaw to enable the use of dispensaries in their municipality, while the Resort Municipality of Whistler continues to permit medical cannabis production facilities but does not permit dispensaries.

New federal legislation legalizing aspects of cannabis use (medical and potentially recreational) is anticipated to be brought forward in the next few months. Based on the legal advice provided by the Village's Solicitor, staff is recommending that the Village of Pemberton put in place a blanket prohibition related to dispensary use prior to federal legislative changes, to ensure the Village has some control over the use before businesses establish themselves in the municipality. This approach can be seen as an interim means of banning medical marihuana operations prior to federal legislative changes, whereby business owners interested in setting up a dispensary in Pemberton would need to seek a site specific zoning amendment. This approach provides the Village more control over the operation and location of this type of land use, based on feedback from the community gained through the rezoning process.

As such, staff recommends that the Village amend the Village Zoning Bylaw No. 466, 2001 via the Zoning Amendment (Marihuana Operations) Bylaw No. 809, 2017, attached as **Appendix A**, which proposes to:

- (1) Add a definition of "marihuana operation" to **Section 104 – Definitions**, and
- (2) Add "marihuana operation" to the list of prohibited uses listed in **Section 202- Prohibited Uses of Land, Buildings and Structures and Water**.

Staff also recommends setting a date for the Public Hearing, and has suggested Tuesday, January 31, 2017 at 7:00pm as a potential date, in order to allow third reading to occur at the Regular Council meeting scheduled for Tuesday, February 7, 2017 and fourth and final, potentially at the Regular Meeting scheduled for Tuesday, February 21, 2017.

In the meantime, the Village will be monitoring and reviewing new information once it is available to understand future regulations/restrictions and guidelines that will be put in place federally once the sale and distribution of cannabis/marihuana for medical purposes is approved and legal. Once this happens, the issue can be explored in more depth as part of the ongoing Zoning Bylaw Review.

#### **REFERRAL AGENCY COMMENTS**

The attached Zoning Amendment Bylaw was referred to a list of external agencies and the Village's Advisory Land Use Commission. The following summarizes referral comments that were received.

##### Advisory Land Use Commission

The Commission reviewed the proposed amendment to the Zoning Bylaw at their meeting held November 24, 2016 and passed the following recommendation:

*Moved/Seconded*

**THAT** the ALUC recommend to Council to support the proposed amendment bylaw (Marihuana Operation) as presented and;

**THAT** the ALUC recommend to Council to:

*Consider establishing a policy for marihuana operations that includes criteria that would guide Council decision making once the federal legislation authorizes the sale of marihuana products.*

**CARRIED**

## RCMP

In an email, dated November 23, 2016, from Neil Cross, Inspector, Sea to Sky Detachment, it was stated that the Village's proposed approach would be consistent with the RCMP policing position as these activities are not legal and only facilities approved/regulated by Health Canada can operate commercial marihuana grow operations and can legally sell marihuana based on certain criteria that must be met. The email also notes that as future changes are made to the legislation then policing will adapt and investigate matters based on changes.

## Vancouver Coastal Health Authority

In an email dated November 17, 2017, Peter Lu, Environmental Health Officer, Health Protection notes that the Medical Health Officer's comments on cannabis dispensaries is as follows: "*VCH does not regulate medicinal marihuana products and does not support the sale of food products containing cannabis. Also we do not inspect nor permit premises where medicinal marihuana food products are sold.*"

## Other Referral Agencies

The Lil'wat Nation, Stl'atl'imx Tribal Police, School District No. 48, Lil'wat Nation, Sea to Sky Community Services, Pemberton and District Chamber of Commerce and Tourism Pemberton were all sent referral requests but did not provide responses.

## **COMMUNICATIONS**

As per Section 466 of the *Local Government Act [RSBC2015]*, notice of public hearing will be issued in the local newspapers following first and second reading. Notice will also be provided through the eNEWS, posted on the Village Notice Boards and on the Village Website.

## **LEGAL CONSIDERATIONS**

The *Local Government Act* Section 464 outlines the legal considerations for amending a Bylaw.

A legal opinion on how to address the use of marihuana operations has been sought from the Village's Solicitors.

## **IMPACT ON BUDGET & STAFFING**

The bylaw has been prepared in-house and has been incorporated into the daily operations of the Department of Operations and Development Services.

The cost associated with advertising the public hearing will be approximately \$400 and can be accommodated in the Operations & Development preliminary budget.

### **INTERDEPARTMENTAL IMPACT & APPROVAL**

The above noted project will not impact the day to day operations of the department and will be incorporated into the daily routine and can be accommodated.

There are no interdepartmental impacts or approvals required.

### **IMPACT ON THE REGION OR NEIGHBOURING JURISDICTIONS**

Consideration and adoption of Zoning Amendment (Marihuana Operations) Bylaw has no impact on other jurisdictions.

### **ALTERNATIVE OPTIONS**

Alternative Options for consideration are as follows:

- (1) Do not give the attached Bylaw First and Second Reading and refer back to staff with suggested changes to the draft bylaw.

Staff does not support this recommendation as no issues with the present approach have been recognized by the referral agencies that responded.

- (2) Do not proceed with a Zoning Amendment at this time and delve deeper into this topic during the Zoning Bylaw Review.

This approach is not recommended as time is of the essence to put regulations in place before federal legislation is adopted. Once federal changes are adopted, then this issue can be addressed in more detail as part of the Zoning Bylaw Review along with the appropriate public engagement.

- (3) Do not make any changes to the Zoning Bylaw at this time that would prohibit potential Marihuana Operations in Pemberton until the public is more thoroughly consulted.

Given Council's direction, this amendment is an interim alternative to having no regulations in place, and allows a prohibition of the use knowing that more consultation with the community will be undertaken as part of the Zoning Bylaw Review.

- (4) Consider using Temporary Use Permits to regulate the establishment of marihuana operations.

This approach is not recommended. Temporary Use Permits are a valid planning tool to consider uses that are not permitted under the Zoning if the local government has a clear understanding of the appropriate conditions to attach to such a permit. This should include a thorough review and identification of which zones the use would be appropriate as a temporary use, and where and how operations could be conducted. Until this issue is explored in more depth, staff recommends using a prohibition with the option of a site specific rezoning application (once the Zoning Review is complete) rather than the TUP process to consider the use on a site by site basis.

## **POTENTIAL GOVERNANCE CONSIDERATIONS**

As per the Village's Strategic Priorities, this initiative supports:

- Strategic Priority No. One: Economic Vitality – the Village values and supports a competitive and diversified economy with engaged corporate citizens;
- Strategic Priority No. Two: Good Governance –committed to citizen engagement, being an open, honest and accountable government, and fiscal responsibility; and
- Strategic Priority No. Four: Social Responsibility - the Village strives to create a strong and vibrant community recognizing the importance and benefits of both healthy and engaged citizens as well as an accessible and well managed natural environment.

## **RECOMMENDATIONS**

Recommendation One:

**THAT** Zoning Bylaw No. 466, 2001, Amendment (Marihuana Operations) Bylaw No. 809, 2017 be given First and Second Reading;

Recommendation Two:

**THAT** a Public Hearing for Zoning Amendment (Marihuana Operations) Bylaw No. 809, 2017 be scheduled for 7:00 pm on Tuesday, January 31, 2017;

Recommendation Three:

**THAT** if Zoning Amendment (Marihuana Operations) Bylaw No. 809, 2017 is adopted, that the Village not accept any rezoning applications to permit a marihuana operation until the Zoning Bylaw Review process is completed (anticipated by December 31, 2017).

## **Attachments:**

Appendix A – Proposed Zoning Amendment (Marihuana Operations) Bylaw No. 809, 2017

Submitted by:	Lisa Pedrini, Village Planner
Manager Approval by:	Tim Harris, Manager of Operations and Development Services
CAO Approval by:	Nikki Gilmore, Chief Administrative Officer