

ADMINISTRATIVE REPORT

TO: Planning and Development Committee
FROM: B. Newell, Chief Administrative Officer
DATE: July 21, 2016
RE: Update of Agriculture Zones and Regulations



Administrative Recommendation:

THAT the RDOS proceed with Amendment Bylaw No. 2728, being a bylaw to update agricultural regulations and zones.

Purpose:

The purpose of this report is to review feedback from the Electoral Area Advisory Planning Commissions (APCs) regarding proposed amendments to the Electoral Area Zoning Bylaws that pertain to an update of agricultural regulations and zones.

Background:

At its meeting of October 3, 2013, the Planning and Development (P&D) Committee directed staff to introduce a uniform definition of “winery” into the Electoral Area Zoning Bylaws in order to allow for the sale of other “made in BC” alcoholic beverages (i.e. beer).

At its meeting of July 17, 2014, the P&D Committee further directed staff to undertake the following amendments to the Electoral Area Zoning Bylaws:

- *updating the “Keeping of Livestock” regulations;*
- *updating the “Setbacks for Buildings, Structures & Farm Areas for Farm uses” regulations and applying these to the Resource Area (RA), Agriculture (AG1, AG2 & AG3); Large Holdings (LH) and Small Holdings One (SH1 & SH2) Zones;*
- *introducing General Regulations related to kennel facilities;*
- *introducing a new definition of “agriculture, limited” to be applied to Small Holdings (SH3, SH4 & SH5) Zones.*

The issue before the P&D Committee was pending enforcement action against a property owner on the West Bench (Electoral Area “F”) who had exceeded the number of horses permitted on a parcel less than 1.0 hectare (ha) in area.

Earlier, in 2012, a legal review of the new zoning bylaw for Electoral Area “H” highlighted a number of updates that are applicable to the other Electoral Area Zoning Bylaws (i.e. deletion of references to the ALC Act & Riparian Assessment Area, updated definitions, etc.) that are now proposed to be carried forward.

In addition, between 2011 and 2014 the Regional District adopted two Agriculture Area Plans (AAPs) for Electoral Areas “C” (Oliver) and “A” (Osoyoos) which introduced new zoning provisions for

“temporary farm labour accommodation”. Administration considers there to be merit in extending these provisions to the other Electoral Areas.

Finally, through the day-to-day use of the zoning bylaws, staff have identified a number of minor textual errors, inconsistencies or outdated references that require amendment (i.e. expansion of the “winery and cidery” use in the AG Zones to include a reference to breweries, distilleries and meaderies following changes to the ALR regulations in 2015).

Between March and April of 2016, the proposed zoning amendments were considered by the Electoral Area “A”, “C”, “D”, “E”, “F”, and “H” Advisory Planning Commissions (APCs), while Public Information Meetings were held in Okanagan Falls (March 8, 2016) and Penticton (March 10, 2016).

Analysis:

Due to the scope of the proposed changes to the various Electoral Area Zoning Bylaws, an annotated version of the proposed amendment bylaw is included at Attachment No. 4. However, for discussion purposes, this section of the report will provide an overview of the more substantive policy issues:

Keeping of Livestock Regulations:

With regard to the Keeping of Livestock regulations that are currently comprised at Section 7.23 of the Electoral Area “A” Zoning Bylaws, Administration is recommending that:

1. the ability to keep livestock (i.e. chicken, horses, ducks, rabbits, etc.) be based upon “single detached dwellings” being a permitted use in a zone, as opposed to the current requirement that “agriculture” be a permitted use; and
2. the ratio of animals to land area is modified in accordance with the table shown at Attachment No. 1.

By tying these regulations to the occurrence of “single detached dwellings” as a permitted use in a zone as opposed to “agriculture”, the zoning bylaws would now allow for small livestock (i.e. chickens, rabbits, peacocks, etc.) in low density residential zones.

With regard to the number of livestock that may be kept on a parcel, the proposed amendments would not affect the current regulations for large livestock (i.e. one animal for every 0.4 ha of land area) but would introduce a more graduated approach for smaller livestock (see Attachment No. 1).

Administration is aware of the strong desire expressed by residents of the West Bench to be afforded the opportunity to have 2 horses on parcels between 0.4 ha and 1.2 ha in area on the basis this improves animal welfare. If the Committee is of an opinion that this is a suitable ratio, Administration would propose applying this across all of the Electoral Areas.

Administration is also aware of submissions requesting that roosters be a permitted form of small livestock. While Administration supports roosters on larger agricultural parcels, it is not seen to be appropriate in a rural-residential or low density area (NOTE: the City of Penticton is not proposing to allow roosters in residential neighbourhoods under its draft bylaw).

Setbacks for Buildings, Structures & Farm Areas for Farm uses:

Since 1998, the Regional District has relied upon a table provided by the Ministry of Agriculture to establish setbacks for specific commercial agricultural operations (i.e. silos, incinerators, livestock structures, greenhouses, etc.) in order to avoid conflict between agricultural and residential uses.

These setbacks were designed for larger agricultural parcels (i.e. greater than 4.0 ha in area) and contain a potentially unworkable requirement that the setbacks be applied to “areas” (i.e. the land used by horses).

Compounding this situation is the Regional District’s previous linking of “agriculture” as a permitted use with the keeping of livestock (as mentioned above) in the rural-residential zones. This has created situations where it becomes impossible to keep horses, despite being a permitted use in the zone due to the 30.0 meter setback requirements for all structures and areas used by livestock.

The Ministry addressed this by releasing an updated setback table in 2013 which generally includes setbacks only for buildings and structures and a variable setback of 15-30 meters for livestock structures.

In response, Administration is proposing to delete the current setback table for commercial agricultural uses currently found at Section 7.22 of the Electoral Area “A” Zoning Bylaws, and to replace this with a limited number of setback provisions within each of the Rural Zones, including a reduction to the setback for livestock structures from 30.0 meters to 15.0 meters.

The Committee is asked to be aware that a number of comments made during the Public Information Meeting questioned the need to have an additional set of setbacks in agricultural zones, and proposed removing with the Ministry’s guidelines from the zoning bylaws.

Kennels:

While the revised Ministry setback standards no longer reference kennel uses, Administration considers there merit in retaining regulations for this use within the zoning bylaws. Accordingly, it is being proposed to introduce the following as a new set of general regulations:

Kennel Facilities

A kennel is permitted where listed as a permitted use, provided that:

- 1. No kennel shall be permitted on a parcel less than 2.0 hectares in size; and*
- 2. All buildings, structures and areas utilized in association with a kennel shall be sited a minimum of 30.0 metres from all parcel lines.*

Administration is further proposing that “kennels” be listed as an accessory use in a zone, thereby requiring a principal residential use (at present, kennels are generally listed as a principal use in many zones).

Floor Area Limitations for Agricultural Uses:

While each of the AG Zones comprise a maximum parcel coverage regulation, in the 1990s the Regional District introduced an additional regulation that significantly restricted the floor area that could be developed for retail sales, processing, packing and storage of farm products (i.e. wineries).

Administration is concerned, however, that these limits are overly restrictive given the adverse impact other permitted uses — such as residential, agri-tourism accommodation, kennels, farm implement buildings or equestrian centres — could have on the agricultural land base of a parcel.

Alternately, if the intent of these floor area restrictions is to protect the agricultural land base from being over-developed, a general reduction to the maximum parcel coverage would have been far more effective, and is precisely what was undertaken in Electoral Area “C” with the implementation of its Agricultural Area Plan (AAP) in 2011.

In that Electoral Area, the floor area restrictions on the processing, packing, storage or retail of farm products were deleted while the maximum parcel coverage in the AG Zones was simultaneously reduced from 15% to 3% or 3,600 m² (whichever was the lesser) with a separate 600 m² allowance provided for residential footprints.

In recognition that the Board has supported all previous applications by wineries and packing houses to exceed these floor area restrictions, Administration favours their deletion from the Zoning Bylaw and is also in favour of reducing maximum parcel coverage in the AG Zones.

Specifically, and as occurred in Electoral Area “C”, it is proposed to:

- reduce the maximum parcel coverage from 15% to 5% in the AG Zone; and
- introduce a 70% coverage allowance for greenhouses (in accordance with ALC Regulations).

The Committee is asked to be aware that the proposed 5% coverage represents an amalgamation of the 3% parcel coverage and the 600 m² residential footprint allowance introduced to Electoral Area “C” (see Attachment No. 2).

Temporary Farm Worker Housing:

It is being proposed to expand the concept of the “temporary farm worker housing” (TFWH) that originated in the Electoral Area “A” and “C” AAPs to the other Electoral Area Zoning Bylaws.

In support of this, Administration is further proposing to make the section dealing with the “maximum number of dwellings permitted per parcel” in the AG Zones consistent across Electoral Areas.

This will require the minimum parcel area required to qualify for an accessory dwelling or TFWH be standardized at 3.5 ha (at present, this regulation varies between 3.5 ha, 4.0 ha and 8.0 ha across Electoral Areas).

The second change would see the maximum floor area for an accessory dwelling be changed from the current provision of 140 m² for the first unit and 70 m² for each additional unit to a uniform floor area allowance of 90 m² for all such dwelling units (see Attachment No. 3). The basis for this change is to align the floor area allowance of these dwelling units with other secondary dwelling unit types (i.e. secondary suites and carriage houses) which have been set at 90 m². In addition, it would also complement the introduction of “mobile homes” as a permitted form of accessory dwelling in the AG Zones.

Carriage Houses in the ALR:

The ALC has previously advised the Regional District that “carriage houses” are not permitted within the ALR, which influenced the drafting of the “carriage house” regulations introduced into the Electoral Area “H” Zoning Bylaw in 2014 (i.e. not a permitted use in the AG3 Zone).

More recently, the *ALR Use, Subdivision and Procedure Regulation* was amended to allow for “accommodation that is constructed above an existing building on the farm and that has only a single level.”

While this type of dwelling unit is generally known as a “carriage house”, the ALC has advised that this term cannot be used when permitting a dwelling unit above an existing farm building in the ALR.

In response, Administration is proposing to amend the provisions which relate to “accessory dwellings” — similar to how they are applied in the industrial and commercial zones — to allow for a dwelling unit above an existing farm building.

Protection of Farming Development Permit Area (Electoral Area “C”):

A Protection of Farming Development Permit (PFDP) Area designation was introduced into the Electoral Area “C” OCP Bylaw as part of the AAP implementation 2012. The purpose of the PFDP Area is to protect farmland by mitigating conflict between agriculture and rural and urban neighbours through the imposition of buffers on new residential subdivisions.

Administration has noticed a number of mapping anomalies with the DP area designation that require attention. For example, the DP area is shown over road right-of-ways and over the Okanagan River channels neither of which need to be identified as the DP area. In addition to mapping there also is an opportunity to clarify the language regarding what development triggers the need for a PFDP. Currently it is not clear if a building permit requires a PFDP or whether it is only required at time of subdivision.

Review of Site Specific Amendments:

Should the proposed amendments to parcel coverage and floor area restrictions for wineries and packinghouses be implemented, this will render a number of site specific amendments redundant.

In addition, a number of other site specific amendments previously adopted to facilitate subdivision are already redundant (due to the new parcels having been created).

Administration has reviewed all of the AG1s & AG2s Zones and is proposing a majority of these be deleted from the bylaw — if the other changes are adopted.

Definitions:

Administration is also proposing a significant amendment to the definitions of agriculture related uses in the Zoning Bylaw. This is largely premised upon a legal review of the Electoral Area “H” that was completed in 2012, the findings of which are now proposed to be carried forward into the other zoning bylaws. A complete list of changes can be found within the draft Amendment Bylaw No. 2728 posted on the Regional District’s web-site.

The APC is asked to be aware that the proposed changes to the definitions precipitated a number of other amendments to the general regulations and permitted uses in the zones to reflect the proposed new text.

Respectfully submitted:



Endorsed by:

Donna Butler

C. Garrish, Planning Supervisor

D. Butler, Development Services Manager

Attachments: No. 1 – Draft Keeping of Livestock Provisions

No. 2 – Comparison of Existing and Proposed Parcel Coverage & Floor Area Regulations

No. 3 – Comparison of Existing and Proposed Density Provisions (AG1 Zone – Electoral Area “E”)

No. 4 – Representations and APC Minutes

Attachment No. 1 – Draft Keeping of Livestock Provisions

Current Zoning Bylaw Regulations	Proposed Zoning Bylaw Regulations
<ol style="list-style-type: none"> 1. On any parcel 2.0 ha or less in area, the total number of livestock, shall not exceed one (1) animal for each 0.4 ha of parcel area; 2. Despite Section .1, on any parcel 0.4 ha or less in area, up to twenty-five (25) poultry and/or fur bearing animals is permitted. 	<ol style="list-style-type: none"> 1. On parcels less than 500 m² in area, keeping of livestock, small livestock or farmed fur bearing animals shall not be permitted. 2. On parcels greater than 500 m² and less than 2,500 m² in area, keeping of animals shall be limited to 5 small livestock. 3. On parcels greater than 2,500 m² and less than 4,000 m² in area, keeping of animals shall be limited to 25 small livestock. 4. On parcels greater than 0.4 ha and less than 0.8 hectare in area, keeping of animals shall be limited to 1 livestock and 25 small livestock. 5. On parcels 0.8 ha or greater and less than 1.2 hectare in area, keeping of animals shall be limited to 2 livestock and 50 small livestock. 6. On parcels 1.2 ha or greater and less than 1.6 hectare in area, keeping of animals shall be limited to 3 livestock and 75 small livestock. 7. On parcels 1.6 ha or greater and less than 2.0 hectare in area, keeping of animals shall be limited to 4 livestock and 100 small livestock. 8. On parcels 2.0 ha or greater in area, keeping of livestock and small livestock shall be unlimited.
	<p>DEFINITIONS:</p> <p>“small livestock” means poultry, rabbit or other small animals similar in size and weight but does not include farmed fur bearing animals or roosters.</p>

Attachment No. 2 – Comparison of Existing and Proposed Parcel Coverage & Floor Area Regulations

EXISTING COVERAGE REGULATIONS – AG ZONES	PROPOSED COVERAGE REGULATIONS – AG ZONES
<p>Maximum Parcel Coverage:</p> <ul style="list-style-type: none"> a) 35% for parcels less than 2,020 m² in area. b) For parcels 2,020 m² or greater in area: <ul style="list-style-type: none"> i) 15%; and ii) 70% for greenhouse uses. 	<p>Maximum Parcel Coverage:</p> <ul style="list-style-type: none"> a) 35% for parcels less than 2,500 m² in area; b) 20% for parcels greater than 2,500 m² and less than 2.0 ha in area; and c) for parcels greater than 2.0 ha in area: <ul style="list-style-type: none"> i) 5%; and ii) 70% for greenhouse uses.

EXISTING FLOOR AREA REGULATIONS – AG USES	PROPOSED FLOOR AREA REGULATIONS – AG USES
<p>Provisions for Accessory Retail Sales and Processing, Packing and Storage of Farm products and/or Off-farm products</p> <p>.1 Where permitted in any agricultural zone, farm products, processed farm products and off-farm products may be sold to the public by retail sale subject to the following:</p> <ul style="list-style-type: none"> a) the portion of the agricultural land used for retail sales of off-farm products shall not exceed one-third of the total area used for all retail sales. For the purpose of calculating the portion of agricultural or industrial agriculture land to be used for retail sales, the area of any building or structure used for that purpose, including aisles and other areas of circulation, shelf and display space, counter space for packaging and taking payment and any area used for the service and consumption of hot and cold food items, shall be included, but any office area, wholesale storage area, processing facility or parking area or driveway, whether used for retail sale or not, shall not be included; b) where off-farm products are offered for sale, farm products and/or processed farm products shall also be offered for sale; c) the retail sales area for farm products and off-farm products shall not exceed 300 m²; d) the gross floor area of all buildings associated with the retail, processing, packing and storage of farm products in an Agricultural One (AG1) and Agricultural Two (AG2) Zone shall not exceed the lesser of 3000 m²; or 10% of parcel coverage”. 	<p>Provisions for Retail Sales of Farm and/or Off-Farm Products</p> <p>.1 Where “retail sales of farm and off-farm products” is permitted in a zone, farm products, processed farm products, and off-farm products may be sold to the public subject to the following regulations:</p> <ul style="list-style-type: none"> a) the area used for retail sales of off-farm products shall not exceed ⅓ of the total area used for all retail sales on the parcel; b) where off-farm products are offered for sale, farm products and/or processed farm products shall also be offered for sale; and c) the retail sales area for farm products and off-farm products shall not exceed 300 m². <p>.2 For the purpose of calculating the area used for retail sales in a building or structure, the following shall be included: aisles and other areas of circulation, shelf and display space, counter space for packaging and taking payment and any area used for the service and consumption of hot and cold food items. Any office area, wholesale storage area, processing facility or parking area or driveway, whether used for retail sale or not, shall be excluded.</p>

Attachment No. 3 – Comparison of Existing and Proposed Density Provisions (AG1 Zone – Electoral Area “E”)

EXISTING DENSITY PROVISIONS			PROPOSED DENSITY PROVISIONS				
Maximum Number of Dwellings Permitted Per Parcel:			Maximum Number of Dwellings Permitted Per Parcel:				
a) the number of principal dwellings and the number of accessory dwellings and temporary farm worker housing permitted per parcel shall be as follows:			a) the number of principal dwellings and the number of accessory dwellings and temporary farm worker housing permitted per parcel shall be as follows:				
PARCEL AREA	MAXIMUM NUMBER OF PRINCIPAL DWELLINGS	MAXIMUM NUMBER OF ACCESSORY DWELLINGS	PARCEL AREA	MAXIMUM NUMBER OF PRINCIPAL DWELLINGS	MAXIMUM NUMBER OF ACCESSORY DWELLINGS	MAXIMUM NUMBER OF TEMPORARY FARM WORKER HOUSING	MAXIMUM FLOOR AREA OF ACCESSORY DWELLINGS & TEMPORARY FARM WORKER HOUSING PER PARCEL
Less than 3.99 ha	1	1	Less than 3.5 ha	1	0	0	0
4.0 ha to 7.9 ha	1	2	3.5 ha to 7.9 ha	1	1	1	90 m ²
8.0 ha to 11.9 ha	1	3	8.0 ha to 11.9 ha	1	2	1	180 m ²
12.0 ha or greater	1	4	12.0 ha to 15.9 ha	1	3	1	270 m ²
8.0 ha or greater	2	0	Greater than 16.0 ha	1	4	1	360 m ²
			Greater than 8.0 ha	2	0	0	0
			b) one (1) secondary suite.				
			c) despite Section (a), for parcels situated within the Agricultural Land Reserve, all dwellings in excess of one (1) must be used only for the accommodation of persons engaged in farming on parcels classified as "farm" under the <i>Assessment Act</i> .				
			d) despite Section (a), for parcels between 3.5 ha to 7.9 ha in area, only one (1) accessory dwelling or one (1) temporary farm worker housing shall be permitted.				