

CITY OF FORT SASKATCHEWAN

Bylaw C19-15 to Amend Land Use Bylaw C10-13

Recommendation:

That Council give first reading to Bylaw C19-15, which amends Land Use Bylaw C10-13.

Purpose:

The purpose of this report is to present Council with information on the Land Use Bylaw Refresh and a request to give first reading to Bylaw C19-15, which amends Land Use Bylaw C10-13.

Background:

In accordance with Section 639 of the *Municipal Government Act* (MGA), every municipality must pass a Land Use Bylaw. City Council adopted the current Land Use Bylaw, C10-13, in May of 2013. The Land Use Bylaw implements the City's goals, objectives, and requirements relating to land use and built form. Administration relies heavily on this document on a day-to-day basis. The document is also used by the development industry, property owners, and residents of the community. The Land Use Bylaw is a dynamic document and therefore needs to be reviewed and amended on a regular basis. Therefore, the purpose of the Land Use Bylaw Refresh is to make adjustments so the Bylaw is current, enforceable, and effective in its application.

The amendments proposed in this year's refresh correct wording, grammar, interpretation, formatting, and general structure of the Land Use Bylaw. This is intended to ensure consistency, remove redundancy and conflicts with other regulations and legislation, and improve the overall organization of the document. Other more significant amendments, address specific matters related to regulatory content.

Rationale for the proposed amendments include:

- Case law precedent and legal opinion;
- Observations from residents;
- Consistency with statutory planning documents;
- Observations from development industry;
- Feedback from Development Authorities; and
- Grammatical, punctuation and formatting items.

Key regulatory amendments are highlighted below:

Boarding Facilities

The proposed amendments to boarding facilities remove ambiguity within the Bylaw, provide clarity to the definition, and provide specific regulations to effectively deal with potential adverse effects. The Bylaw currently defines boarding facilities but does not permit the use within any of the City's land use districts. Although boarding facilities are not allowed within any district, congregate living within detached housing is a form of housing that is trending in the Capital Region, specifically in communities with ties to the resource sector. The Bylaw, however, lacks the capacity to manage or enforce the use.

The definition for boarding facilities is relatively broad. As a result, a variety of household situations are caught by the definition. For example, a household where a child pays rent to his/her parents or a household with a roommate arguably both fit the definition of a boarding facility.

Additionally, a key element to the current definition is the owner must live in the dwelling unit. This creates significant challenges for enforcement. To qualify as a boarding facility, it is a prerequisite for the owner to live at the property. Therefore, if the owner does not live at the property, the City considers the property to be used as a boarding facility. A second challenge is how the courts would interpret the definition. A legal opinion obtained from Brownlee LLP stated:

It is trite law (a principle of law so entrenched that is commonly known and rarely disputed) that land use regulations must regulate the use of the land and not the users of the land....

Given that the definition is vague and regulates ownership, the likelihood of successful enforcement is very low and therefore is counterproductive.

The proposed amendments strengthen the boarding facility definition by identifying elements of the use as opposed to the occupants within. The change in wording differentiates boarding facilities from other uses, as it significantly reduces the range of living arrangements. Below is the existing definition followed by the proposed definition:

- *Existing:*
BOARDING FACILITY means a development consisting of a dwelling unit where the owner lives and supplies lodging and sleeping accommodation, with or without meals, for remuneration to a maximum of six persons. A boarding facility does not include a group home.
- *Proposed:*
BOARDING FACILITY means a development, within a standalone building, used for shared living and containing individual units on a fee-for-service arrangement. This Use Class does not include Assisted Living, Assisted Living (limited), Bed and Breakfast, Group Home, Group Home (limited), Hotel, or Motel. For the purposes of this definition, shared living means four or more persons occupying individual units within a congregate living setting and within a building where the occupants share access to facilities such as cooking, dining, laundry, or sanitary facilities.

Boarding facilities are proposed to be listed as a discretionary use within the R2 – Medium Lot Residential District. Prohibiting the use by not allowing it within any of the land use districts is not recognizing a type of housing form and development trend that exists in the City. As a discretionary use, the Development Authority must be satisfied that the development is appropriate and reasonably compatible with surrounding developments.

The current Bylaw has no development standards that regulate boarding facilities. The amendments propose new regulations designed to prevent clustering, restrict intensity, and ensure compatibility with surrounding development. In particular, boarding facilities shall not be within 150 metres from another boarding facility and the maximum number of residents shall be no more than six.

A development permit for a boarding facility would need to satisfy the following tests in order to be approved and deemed to be valid:

- The property must be located within the R2 District;
- The development must be appropriate and reasonably compatible with surrounding development. In this regard, the development must blend into the community;
- The Development Authority can place conditions to ensure compatibility and potential effects are minimized;
- The development must comply with a number of regulations, such as locational criteria, parking, intensity, etc.; and
- Be subject to notification and possible appeal from affected property owners.

Secondary Suites

The amendments are intended to provide validity and effectiveness to secondary suite regulations and to ensure any enforcement proceedings will be successful if legally challenged. The two main issues addressed with the amendments are related to parking and ownership.

Specific sections in the Bylaw related to secondary suite parking conflict with each other. Section 11 requires one stall per secondary suite in addition to the two stalls for the principal dwelling unit, while Section 4.35 requires one stall for each bedroom in the secondary suite in addition to the two required stalls for the principal dwelling unit. The proposed parking requirements for secondary suites will be one (1) parking stall for a bachelor or one bedroom suite and two (2) parking stalls for a two bedroom suite in addition to the required parking for the principal dwelling unit. A new regulation will limit the number of bedrooms within a secondary suite to no more than two.

The current Bylaw considers stalls arranged one in front of another (tandem parking) to be counted as required parking for low density housing. The Bylaw, however, does not allow tandem parking to be counted for secondary suites. Therefore a typical property with a driveway leading to a two-car garage would not meet the parking requirements for a secondary suite (see Figure 1 below).

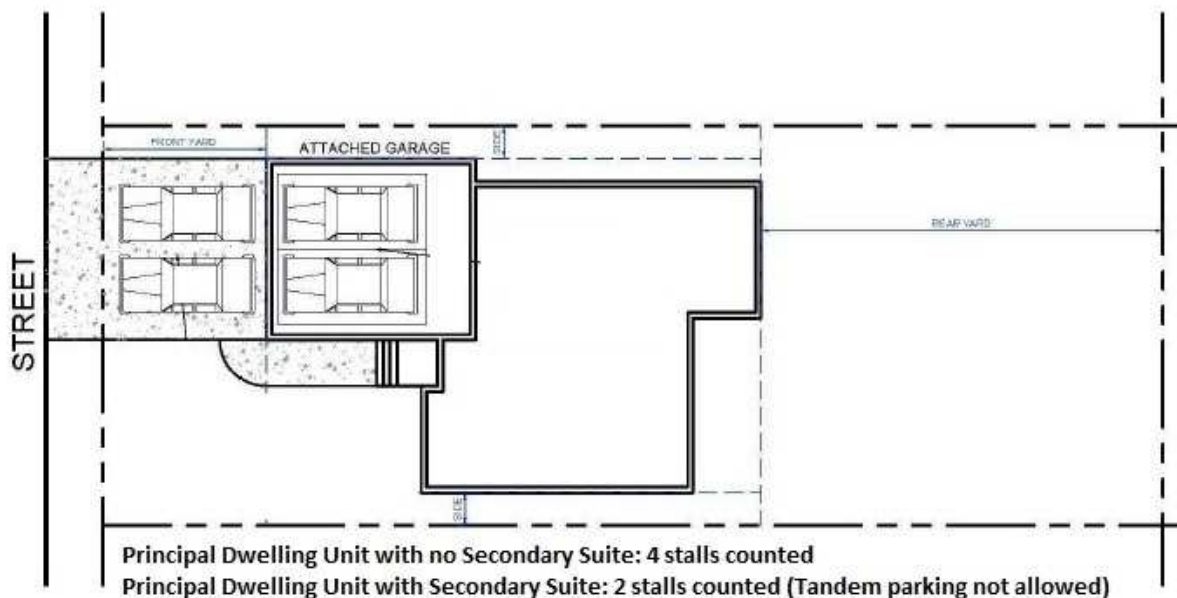


Figure 1 Tandem Parking

Restricting tandem parking limits the opportunity for secondary suites to approximately 4% of all low density residential lots. Property owners with unauthorized suites are therefore discouraged to make application for development and building permits.

Regulations in the current Bylaw attempt to control secondary suites through elements of ownership. In particular, secondary suites are classified as permitted if the use is within a dwelling unit occupied by the registered owner and discretionary if within a dwelling not occupied by the registered owner. This is problematic because this puts the Development Authority into a position of exercising discretion based on occupants within the development as opposed to development itself. A legal opinion obtained from Brownlee LLP regarding the current regulations, particularly the dependency upon ownership was previously stated: that land use regulations must regulate the use and not the user.

The City is in a faulty position to carry out enforcement on secondary suites as the regulations do not have the legal standing to be successful.

Amendments proposed to regulations remove references to ownership and provide additional regulations that manage potential land use effects and remove many of the challenges associated with enforcement. The amendments allow greater opportunities for housing alternatives and also ensures this type of housing is safe and can be effectively managed through the regulations.

C2 and C3 Districts

The proposed amendments to the Vehicle Orientated Retail and Service (C2) and Commercial Shopping Centre (C3) Districts ensures listed uses are appropriately classified and the purpose is accurately stated and reflected in the respective regulations.

The two Districts in the current Bylaw differ in terms of the stated purpose but are almost identical in terms of allowable uses and regulations. The C2 District is intended to accommodate uses that serve vehicle traffic whereas the C3 District is to accommodate a variety of retail and service uses as part of a comprehensive shopping centre development.

The amendments update the wording of the purpose sections in each district. The new wording reflects the different objectives and provides validation for the regulations and classification of uses. Vehicle orientated uses within the C2 District will remain as permitted uses; however, those same uses will now be listed as discretionary within the C3 District. As the purpose of the C3 District is to accommodate retail and service uses, vehicle orientated uses may demand greater consideration in terms of land use compatibility.

Proposed changes to the C2 regulations relate to design, character, and appearance of buildings. In particular, buildings over 3,000 square metres (32,292 sq. feet) or buildings with a wall length of at least 25 m (82 feet) shall provide design elements to reduce the massing and provide greater visual interest.

RC District

The objective of the Comprehensive Planning Residential (RC) District is to accommodate a range of housing types while ensuring a low-density residential character. From a community planning perspective, the development of neighbourhoods encompassing a range of housing types is a deliberate effort to provide new housing for a broader range of household sizes and incomes. The availability of a mix of housing types within a community offers choice and flexibility as families and individuals grow and change through life stages. It is important that

the RC District provides this through an appropriate mix and distribution of housing types to maintain the appearance of a low density residential setting.

The current Bylaw does not restrict clustering of multi-attached dwellings and therefore, may not be consistent with policies pertaining to density within the City's statutory documents. In particular, the Southfort Area Structure Plan states that low-density residential shall not exceed a density of 35 dwelling units per net developable hectare (du/ndha). While multi-attached dwellings are considered low-density, when clustered together, the contiguous density or density of the block, can exceed 35 du/ndha. As a result, the streetscape may not maintain a low-density residential character and appearance.

The proposed amendments are intended to clarify the district's purpose and provide regulations that more appropriately align with statutory plan policies and the district's underlying planning objective. Changes to the regulations will restrict multi-attached development to no more than four dwellings per building and allow no more than three multi-attached buildings in succession. The Bylaw does provide circumstances where these restrictions would be exempt.

The RC District currently states that development shall generally follow a neighbourhood design concept which sets out the mix of land uses, housing types, streetscapes, relationships of buildings and architectural form and character. The purpose of the Land Use Bylaw is to provide definitive regulations that control development. The Neighbourhood Design Concept is non-regulatory and non-statutory and therefore cannot be applied at the development permit level. The proposed changes remove any provisions referencing the Neighbourhood Design Concept.

Highway 15 Vicinity Overlay and Medium Industrial (IM) District

For the purposes of the Land Use Bylaw, an overlay is used to alter provisions within the underlying district in order to achieve specific planning objectives within a specially defined geographic area. The objective in the Highway 15 Vicinity Overlay is to provide limited highway commercial uses adjacent to Highway 15 and, due to its geographical location, ensure that appropriate risk assessments are carried out.

According to the MGA, a Land Use Bylaw must divide the municipality into districts and prescribe allowable uses within each district. In the case of the Highway 15 Vicinity Overlay, specific uses are listed within the overlay which are in addition to uses found in the underlying district. Because uses are specifically listed in the overlay, the Bylaw may be in conflict with Section 640(2)(b)(i) of the MGA.

The proposed amendments correct this by removing the uses in the overlay and adding those uses specifically to the IM District under a specific category called "IM Discretionary Uses within Highway 15 Vicinity Overlay." Those additional uses will only come into effect at such time when the lands subject to the overlay are redistricted to IM.

Also included in the amendment is adjusting the geographical boundary of the overlay to correspond to the Josephburg Road North Industrial Area Structure Plan.

Landscaping in Commercial and Industrial Districts

Amendments to the landscaping requirements ensure appropriate landscaping is provided and provide greater clarity in terms of tree counts and landscaping within parking lots.

In commercial districts, the current Bylaw requires 20% of the site to be landscaped, however, the Bylaw does not specify how those areas are to be landscaped. Provisions that do specify number of required trees and shrubs are only with respect to parking lots. Landscape areas, however, are not required for parking areas with fewer than 15 parking stalls and landscape parking islands are not required if a row of parking contains fewer than 25 contiguous parking spaces. This provision has shown to be ineffective because parking rows typically provide fewer than 25 stalls.

The number of trees and shrubs required, as part of the proposed amendments, are proportionate to the size of the landscaped area. This ensures an appropriate number and distribution of trees and shrubs throughout the landscape areas. The changes also ensure parking areas are appropriately landscaped.

In industrial districts, landscape requirements, in some cases, are too onerous given the merits of the development. The proposed amendments are intended to be responsive to the merits of typical applications within industrial areas while ensuring appropriate and landscaping. The proposed change states the specific planning objective within the regulation and gives the Development Authority discretion to require fewer trees, or an alternative arrangement of trees, taking into consideration the merits of the application, site conditions, traffic, and area context.

Signage

The primary amendments to Part 12 – Signs is to the developer sign and freestanding sign provisions. The purpose of the changes is to remove ambiguity and to more appropriately align the regulations to specific planning objectives and policies.

With respect to developer signs, the City has implemented a developer sign program whereby the City and residential developers have coordinated way finding signage throughout the City. Existing regulations within the Bylaw do not entirely recognize the program. The amendments are intended to ensure the intent of the sign program is upheld while providing flexibility for signage, at specific locations, for developers not associated with the sign program (such as industrial land developers).

The purpose of the amendments to the freestanding sign regulations are to provide clarity and ensure the regulations align with planning objectives. Currently, the regulations are ambiguous because sign height is predicated on the sign's copy area. A sign may be too high because the sign's copy area is too small. Therefore, the proponent is encouraged to increase the sign's massing in order to meet the height requirement. From a land use planning perspective, the regulations do not effectively balance development rights with potential offsite affects.

The amendments address this issue by providing clear and definitive regulations that specifically states maximum height and copy area. The amendments also recognize freestanding signs adjacent to Highways 15 or 21 may warrant larger freestanding signs provided certain conditions are met, such as sign design and minimum separation from residential land uses.

Accessory Development

Amendments related to accessory developments ensure correctness within the Bylaw regarding accessory uses. Accessory developments are listed as permitted uses in most land use districts. An accessory development includes a building, structure, or use that is subordinate to, incidental to and located on the same site as the principal building or use. In the case of a building, a detached garage is considered to be accessory to a single detached dwelling. In the case of a use, any use may be considered accessory provided it is subordinate and incidental to the principle use (for example, a coffee shop inside of a bookstore). Where the principal use can only be approved if it is a listed use within the district, an accessory use can be allowed without it being a listed use within the district because it is considered to be an element of the principal use.

The issue with the way accessory developments are dealt with under the current Bylaw is an inappropriate or incompatible development may meet the criteria for being an accessory development and, as a permitted use, must be approved. For example, a drug paraphernalia store must be approved if it meets the criteria of being accessory to a principle use even though it is located in an area of the City where it may not be appropriate.

The proposed amendments provide two methods to correct this issue. Accessory developments will be also be listed within the discretionary use category. Therefore, an accessory use will be considered as a discretionary use if the principal use is also listed as a discretionary use.

To manage accessory uses that have a greater likelihood of incompatibility, a new section called "Prohibited Uses" is proposed. The purpose of this section is to prohibit certain uses as accessory if they are not specifically identified within the district. These include such uses as, retail store (drug paraphernalia), adult entertainment facility, bed and breakfast, boarding facility, casino, pawn shop, and liquor store, to name a few. In doing so, this prevents the potential for inappropriate or incompatible uses to be considered accessory unless such uses are allowed in the respective district.

"Those uses which are similar" Use

Within several districts, the use table includes the following:

"Those uses which, in the opinion of the Development Authority, are similar to a permitted use or discretionary use, and which conform to the general purpose of and intent of this District."

The abundance of discretion granted through this use could prove problematic, as uses that are not appropriate or intended for the district could be allowed through this provision. For example, a retail store (drug paraphernalia) could easily argue that the use is similar to retail store (general). As such, this use has been removed.

Notification

The purpose of the proposed amendments is to ensure correctness, transparency, and eliminate the risk of failing to provide proper notice of development permit approvals. In accordance with the MGA, notice of development permit approval must be provided to the person that applied for the permit and, in certain situations, to those who may be affected by the issuance of the development permit.

Under the current Bylaw, notification is not required to be given to affected property owners if the regulations have been varied or relaxed by less than 10%. For example, a new house is required to be no more than 10 metres in height. A variance may be granted to allow a house up to 11 metres high; however, the Bylaw does not require notice to be sent to property owners who may be affected.

Notice to affected persons is intended to give those persons an opportunity to appeal the issuance of the permit to the Subdivision and Development Appeal Board. If notice is not provided, an interested party may be denied the opportunity to appeal. Therefore, the City may be at risk by not notifying those who may be affected by the issuance of a development permit.

The proposed amendments will address this issue by requiring notices to be given to affected parties for all development permit approvals where the regulations have been relaxed or varied.

If Council grants first reading to Bylaw C19-15, staff will post the draft changes to the bylaw (Schedule A) on the City's website and promote the project through announcements on the website, social medium, and the Fort Saskatchewan Record in order to encourage feedback and comments. Further, the development industry will be notified of the proposed changes.

If Council grants first reading, a Public Hearing for the Bylaw will be scheduled for the August 25, 2015 regular Council meeting, allowing the opportunity for feedback and comments from the community. In order to ensure that everyone in the community is aware of the Public Hearing and their opportunity to address Council regarding proposed Bylaw C19-15, the Public Hearing will be advertised through the following mechanisms:

- Announcements posted on the City's website;
- Display boards in various municipal buildings;
- Advertisements in the Fort Saskatchewan Record; and
- Communication with the development industry.

Internal Impacts:

Regular review and improvements to legislation ensure City bylaws continue to be an effective tool to achieve the intended results.

Alternatives:

1. That Council give first reading to Bylaw C19-15, which amends Land Use Bylaw C10-13.
2. That not Council give first reading to Bylaw C19-15, and advise how they wish to proceed.

Recommendation:

That Council give first reading to Bylaw C19-15, which amends Land Use Bylaw C10-13.

Enclosures:

1. Bylaw C19-15
 2. Schedule A - Proposed Land Use Bylaw Amendments
 3. Schedule B – Land Use Bylaw Map
 4. Schedule C – Billboard Sign Location Map
 5. Schedule D – Developer Sign Location Map
-

Prepared by:	Craig Thomas Senior Development Planner, Planning & Development	Date: June 26, 2015
Approved by:	Troy Fleming General Manager, Infrastructure and Community Services	Date: July 8, 2015
Reviewed by:	Kelly Kloss City Manager	Date: July 9, 2015
Submitted to:	City Council	Date: July 14, 2015