

## **CITY OF FORT SASKATCHEWAN**

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

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#### **Motion:**

1. That City Council amend Bylaw C19-15, which amends Schedule “A” of Land Use Bylaw C10-13 by deleting the following subsection, under Section 4.32 – Home Business:

“4.32.1(b) Not to be a cause of inconvenience to adjacent landowners or tenants”

2. That Bylaw C19-15, which amends Schedule “A” of Land Use Bylaw C10-13 be amended by updating the following subsection, under Section 4.41 – Veterinary Clinic, Kennel and Pet Care Service Uses:

“4.41.1 Veterinary clinics, kennels and pet care services shall:”

3. That Bylaw C19-15, which amends Schedule “A” of Land Use Bylaw C10-13 be amended by adding the following subsection, under Section 4.41 – Veterinary Clinic, Kennel and Pet Care Service Uses:

“4.41.3 Outside enclosures, pens, runs or exercise areas shall:

- a) Not be located within a front or flanking front yard;
- b) Be visually and acoustically screened to the satisfaction of the Development Authority; and
- c) Not be allowed if, in the opinion of the Development Authority, the existence of outdoor pens, runs or exercise areas will materially interfere with or affect with the use, enjoyment, or value of adjacent parcels of land.”

4. That Bylaw C19-15, which amends Schedule “A” of Land Use Bylaw C10-13 be amended by update the following definition, under Part 13 - Definitions:

“PET CARE SERVICE means a development where small animals normally considered as household pets are washed, groomed, trained and/or boarded, but the animals shall not be boarded overnight and the development shall not have any outside enclosures, pens, runs or exercise areas within commercial districts. This land use may also include the retail sales of associated products.”

5. That Council give second reading to Bylaw C19-15, which amends Land Use Bylaw C10-13, as amended.
6. That Council give third 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, including a request for additional amendments to the bylaw, and to give second and third readings to Bylaw C19-15, which amend 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. As a dynamic document, it 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.

An initial report was presented to Council on July 14, 2015, and first reading was given to Bylaw C19-15.

The following matters were raised by Council members during first reading of the Bylaw. Administration has reviewed these matters and has provided the following comments:

*What is the minimum site width for the RC District, and what did it change from?*

Currently, the minimum required site width for Multi-Attached Dwellings is 5.5 metres (18 feet) for an internal unit and 7.0 metres (23 feet) for an end unit. The Refresh proposes to change the site width for an interior unit from 5.5 metres to 6.1 metres (20.0 feet) and from 7.0 metres to 7.3 metres (24.0 feet) for an end unit.

*What are the required number of parking stalls for a boarding house?*

The proposed minimum parking requirement for Boarding Facilities is four (4) parking stalls.

Since first reading, Administration has corrected the revision to Section 4.32.1 (b). The wording of the provision was not intended to be revised from the original document.

Also since first reading, Administration has revised the definition for the Pet Services use and added regulations related to outdoor enclosures. The current Bylaw prohibits outdoor enclosures for the Pet Services use in all districts. The changes will allow outdoor enclosures within industrial districts only and, in such cases, new regulations are intended to minimize any potential effects that outdoor enclosures may have.

The amendments proposed in this year's Refresh are 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 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 does not allow Boarding Facilities within any of the City's land use districts; however, 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 proposed amendments will allow the use subject to specific regulations. These regulations will provide Administration with the tools to effectively manage and enforce the use. The amendments include:

- Strengthening the definition of Boarding Facilities by identifying elements of the use as opposed to the occupants within. The change in wording differentiates Boarding Facilities from other uses, and therefore cannot be confused with other living arrangements.
- Allowing Boarding Facilities as a discretionary use within the R2 – Medium Lot Residential District. As a discretionary use, the Development Authority must be satisfied that the development is appropriate and reasonably compatible with surrounding developments.
- Creating specific 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.

As a result of the proposed amendments, 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 remove conflicts within the Land Use Bylaw related to Secondary Suite parking, and strengthen the regulations with the objective of ensuring compatibility, and that enforcement proceedings will be successful if legally challenged.

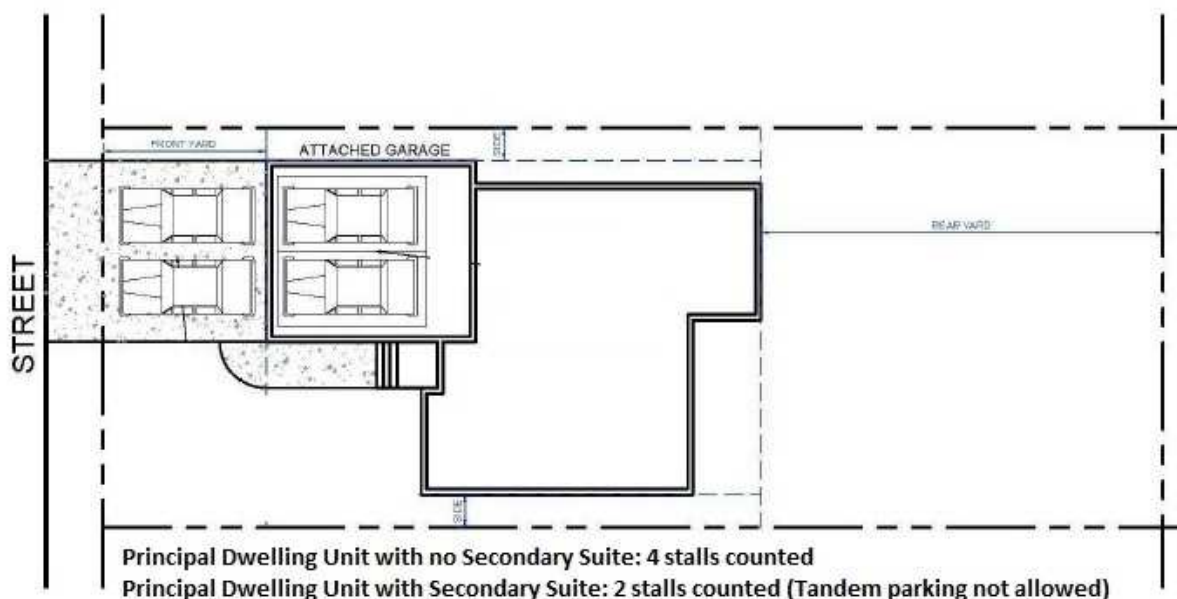
The proposed amendments include:

- Remove provisions related to ownership;
- Secondary Suites shall only be allowed within Single Detached Dwellings (not Semi-Detached);
- Maximum of two bedrooms within a Secondary Suite;

- Providing clear parking requirements for Secondary Suites: one (1) onsite parking stall for bachelor or one bedroom suite; and two (2) parking stalls for a two bedroom suite. Parking for Secondary Suites shall be in addition to the required parking for the principal dwelling unit;
- Parking stalls arranged one in front of the other (tandem) will be allowed.

In the current Bylaw, 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. 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. Based on the current regulations, 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.

The current Bylaw does not allow stalls to be counted if they are in tandem and to provide for Secondary Suite parking. 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.

### 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 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.

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 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 required number of trees and shrubs will be 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 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 sign height is predicated on the sign's copy area. This encourages greater sign massing in order to meet the height requirement. This may pose adverse effects to more sensitive land uses.

The amendments 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

Currently, 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. An accessory development can be a building such as a detached garage, or a use such as a coffee shop within 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.

This can be problematic because an inappropriate use may meet the criteria for being accessory 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. An accessory use will only be considered a permitted use if the principal use is listed as permitted.

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

In accordance with the MGA, notice of development permit approval must be provided to those who may be affected by the issuance of certain development permits. 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.

The draft changes to the Bylaw (Schedule A) were posted on the City's website and promoted through announcements on the website, and local and social media in order to encourage feedback and comments. The development industry was also notified of the proposed changes and residents affected by changes to district designation of parcel(s) of land were notified in accordance with the MGA.

Administration conducted an online survey and displayed presentation material in public locations such as the Dow Centennial Centre (main lobby), Harbour Pool, and City Hall. The displays and online survey provided the opportunity for the public to give feedback on the more significant changes. The results of the feedback is provided in "Appendix A" and an update will be presented to Council at the Public Hearing.

**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 Bylaw C19-15, which amends Land Use Bylaw C10-13, approval to the proposed amendments, and second and third reading, as amended.
2. That Council not give second and third reading, as amended, and advise how they wish to proceed.

**Recommendation:**

That Council give Bylaw C19-15, which amends Land Use Bylaw C10-13, approval to the proposed amendments, and second and third reading, as amended.

**Enclosures:**

1. Bylaw C19-15
2. Appendix A – Summary Report of Public Feedback

**The following attachments were previously distributed with the July 14, 2015 Council agenda, and do not form part of the Council report dated August 19, 2015.**

- Schedule A - Proposed Land Use Bylaw Amendments
- Schedule B – Land Use Bylaw Map
- Schedule C – Billboard Sign Location Map
- Schedule D – Developer Sign Location Map



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Submitted to:	City Council	Date: August 25, 2015