
JULY 16, 2018

CLIENT BULLETIN

NEW LEGISLATION: CANNABIS PRODUCTION IN THE AGRICULTURAL LAND RESERVE

On Friday, July 13, 2018, the provincial government made changes to what qualifies as a “farm use” in relation to cannabis production on Agricultural Land Reserve (ALR) properties in an amendment to the Agricultural Land Reserve Use, Subdivision and Procedure Regulation BC Reg 171/2002 (the “Regulation”). The former provision regarding medical marihuana production has been subsumed into this new section and there will be no difference in the treatment of medical marihuana and non-medical cannabis in the ALR.

The Agricultural Land Commission (ALC) issued a contemporaneous press release stating that local governments are now “able to prohibit cannabis production in the ALR within their communities, unless it is grown in ways that preserve the productive capacity of agricultural land.” It appears that these changes give local governments the ability to prohibit the construction of new structures with concrete bases for the production of cannabis or marihuana in the ALR.

However, upon examination of the actual text of the amended regulation, it appears that in the ALC, local governments will not be able to outright prohibit:

- 1) Open-air cannabis production not within a structure;
- 2) Cannabis production in a new or existing structure with a soil base;
- 3) Cannabis production in an existing structure with a concrete base, whether or not that facility was originally constructed for the production of medical marihuana or for some other crop; or
- 4) Cannabis production in a facility with a concrete base which is currently under active construction for the growing of any crop, so long as that facility is compliant with all applicable regulations.

Far from the imposition of a temporary cannabis production moratorium pending consultation, as requested by UBCM, and rather than increasing the ability of local governments to “make decisions regarding cannabis production that align with local planning and priorities in their communities”, as suggested by the ALC, these changes appear to open the doors to the cannabis industry and may expose the Agricultural Land Reserve to the gold rush of non-medical cannabis production. Local impacts of outdoor and low-security marihuana production may include odors,

theft and violence, runoff, and increased demand for and property values of agricultural land which make food production uses unsustainable.

For the moment, only federally licensed producers under the medical marijuana regime may grow cannabis, and these operations are subject to stringent security requirements including concrete-based flooring. However, the production of cannabis in open fields and soil-based greenhouses will be lawful once the *Cannabis Act* comes into force on October 17, 2018.

Bylaws that are consistent with a local government's authority to regulate land uses, such as setbacks for structures, may still apply to farm uses under the Regulation. Local governments may wish to consider the impacts of cannabis production in outdoor fields or indoor soil-based environments, including as they relate to nuisance, drainage, and waste management practices, and to plan for and enact regulatory measures to mitigate, to the extent possible, the significant local effects of this regulatory change by the ALC. Such changes should be made prior to the effective date of the *Cannabis Act*.

Consultation with legal counsel is encouraged in drafting bylaws to reflect this regulatory change.

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