



Legislation Details (With Text)

File #:	BL-21-037	Version:	1	Name:	
Type:	Bylaw	Status:		Agenda Ready	
File created:	5/11/2021	In control:		City Council	
On agenda:	5/17/2021	Final action:			
Title:	Bylaw 36/2021 - Land Use Bylaw Amendment (Direct Control District) - 23B Akins Drive (1st reading) Presented by: Adryan Slaght, Director, Planning & Development				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	1. Land Use Bylaw Amending Bylaw 36 2021				

Date	Ver.	Action By	Action	Result
5/17/2021	1	City Council	approved the Consent Agenda	

TAMRMS#: B06

10.2

Bylaw 36/2021 - Land Use Bylaw Amendment (Direct Control District) - 23B Akins Drive (1st reading)

Presented by: Adryan Slaght, Director, Planning & Development

RECOMMENDATION(S)

1. That Bylaw 36/2021, being amendment 199 to the Land Use Bylaw, be read a first time.
2. That the Public Hearing on Bylaw 36/2021 be scheduled for June 8, 2021.

PURPOSE OF REPORT

The report discusses a proposed amendment to Section 10.5 (Direct Control District) and Schedule A of the Land Use Bylaw (LUB) for the operation of one “drinking establishment” at 23B Akins Drive. The proposed amendments require a public hearing and Council’s approval, as per the requirements in the Municipal Government Act (MGA).

ALIGNMENT TO PRIORITIES IN COUNCIL’S STRATEGIC PLAN

N/A

ALIGNMENT TO LEVELS OF SERVICE DELIVERY

Service Component

Current Planning Application Processing:

Processing and coordination of the approval of Statutory plans and amendments, subdivision and condominiums applications.

ALIGNMENT TO COUNCIL DIRECTION OR MANDATORY STATUTORY PROVISION

Section 692(1) of the MGA requires that the subject matter of this report go to Council, and that a public hearing be held before giving second reading to the bylaw.

BACKGROUND AND DISCUSSION

In light of provincial regulations related to COVID-19, many businesses have been limited in their ability to operate. In the case of 23B Akins Drive (located at the Appleyard Square strip mall), LB's Pub, defined as a "drinking establishment" in the LUB, has approached the City several times recently regarding opportunities to install a patio to increase customer capacity limited by COVID-19 restrictions.

23 Akins Drive is districted as Neighbourhood Commercial (C1) District, and includes a variety of commercial uses including a hair studio, restaurant, arts studio, pre-school, pub, butcher shop, convenience store, flower shop, and child care centre. The purpose of the Neighbourhood Commercial Land Use District is "to provide for the sale of goods and services to the immediate neighbourhood" (Section 9.12 of the LUB). Drinking establishments are neither an allowed nor discretionary use in the Neighbourhood Commercial (C1) District. This makes LB's Pub a legally non-conforming use in the district, which means that it is allowed to remain, but is not allowed to expand, nor are additional permits allowed to be granted, including for accessory uses such as a patio.

Administration investigated several methods which might make the drinking establishment a legal use, thereby allowing LB's Pub to seek a permit for a legal patio:

1. One option would be to bring forward amendments to the Land Use Bylaw (LUB) to make drinking establishments a discretionary use in the C1 District. This would have the effect of allowing LB's Pub an opportunity to utilize a patio as an accessory use. The addition of a drinking establishment use would be applicable to all C1 districted sites within the City, and not site specific to 23 Akins Drive. Considerations include whether drinking establishments of unlimited size would open in other C1 Districts in the City, with potential impacts to the immediate neighbourhood.

2. Another option investigated was to add a new definition to the land use bylaw for a "drinking establishment, neighbourhood" with capacity and hours of outdoor operations limitations, and make the use a discretionary use in the C1 District. Administration was considering a capacity limitation of 50 persons, similar to restaurant limitations in several districts. The effect of this amendment would be to enable limited drinking establishments in the several C1 districts located throughout the City. It was determined, however, that the capacity of LB's Pub is 150 persons, and this approach would therefore be of no benefit in this case.

3. A third option evaluated was to re-district 23 Akins Drive from the Neighbourhood Commercial (C1)

District to the General Commercial (C2) District. The purpose of the C2 district is, “to provide for the sale of goods and services to the whole community.” The redistricting of the property to a C2 commercial district would provide the existing drinking establishment to become conforming - as a discretionary use and would also expand the property for other future commercial use tenancies. The benefit of the C2 land use district is that unlike a Direct Control (DC) district, an application would not be required to appear before Council for permit decisions and the approval authority would remain with Administration and the Development Branch. A consideration would be whether the Appleyard Square is suited as a site to serve the entire community, and whether all of the uses or intensity of use would be appropriate for the site.

4. The final option evaluated, and the one that Administration recommends, was to re-district 23 Akins Drive from the Neighbourhood Commercial (C1) District to the Direct Control (DC) District. The purpose of the Direct Control District (Section 10.5 of the LUB) is “to enable Council to exercise particular control over the use and development of land or buildings within the area so designated”. Council determines the uses that may be allowed in a DC district, and may impose standards and conditions they feel appropriate to regulate the use in any manner it considers necessary. Accessory developments to a use in the DC district are delegated to the Development Officer (section 10.4 of the LUB). If Council were interested in making the drinking establishment at 23 Akins Drive a legally conforming use, Administration recommends that Council amends the LUB to make the property a Direct Control District, with permitted and discretionary uses being those permitted and discretionary uses of the C1 District, with the addition of one “drinking establishment” as a discretionary use, and with the addition of delegating the authority to approve future changes of use or occupancy, consistent with the approved permitted, discretionary, and accessory uses outlined to the Development Officers. This would allow the 23 Akins Drive strip mall to have no more than one drinking establishment, and would give the existing drinking establishment a legal avenue to pursue an accessory use such as a patio. A further limitation as to hours of outdoor operations could also be incorporated by the Development Officers in accordance with section 3.11 of the LUB. If Council were to approve a DC district without delegating approval power for all C1 uses and drinking establishments back to the development officers, other tenants in the building would be impacted through requirements for future change of use and tenancy applications, due to the need of Council approvals for such Development Permit applications.

Administration is recommending the fourth option because in Administration's opinion, this approach will have the fewest unintended consequences on neighbouring tenants and other C1 districts. The Direct Control District of the LUB would be amended by this Bylaw to specifically incorporate the discretionary and permitted uses for this building, and to delegate authority to the Development Officers to issue future development permits for this building in accordance with the uses listed. Additionally, Schedule A of the LUB would be amended by identifying 23B Akins Drive as a Direct Control (DC) District rather than the existing Neighbourhood Commercial (C1) District.

Anecdotal evidence indicates that some neighbours within Akinsdale have made complaints regarding this specific drinking establishment as it relates to noise and conduct of patrons, litter, trespass, etc. By making the building a Direct Control District with the uses of the C1 District with the addition of “drinking establishment”, the drinking establishment will be able to seek an accessory use for an outdoor patio area, but could affect neighbouring properties with the use. Council will need to weigh the benefits of this proposed re-districting as it relates to the business versus the interests of the neighbours, as well as any potential mitigation measures.

STAKEHOLDER COMMUNICATIONS OR ENGAGEMENT

The public hearing serves as the engagement for this item.

IMPLICATIONS OF RECOMMENDATION(S)

Financial:

None at this time

Legal / Risk:

Council has authority pursuant to section 641 of the Municipal Government Act to control the use of a building in a direct control district "in any manner it considers necessary" and the authority over the development permit applications may be delegated to a development authority with directions Council considers appropriate.

Program or Service:

None at this time

Organizational:

None at this time

ALTERNATIVES AND IMPLICATIONS CONSIDERED

If Council does not wish to support the recommendation, the following alternatives could be considered:

1. Defeat Bylaw 36/2021, which will have the following implication:
 - The drinking establishment at 23B Akins Drive will remain a legally non-conforming use, and will not be able to have an accessory use such as a patio.
2. Provide Administration direction to bring back an amendment to the LUB pursuant to one of the other options considered by Administration and outlined above.

Report Date: May 17, 2021

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