

DATE OF MEETING July 8, 2019

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SUBJECT SUPERVISED CONSUMPTION SERVICE ZONING OPTIONS

## **OVERVIEW**

### **Purpose of Report**

To provide Council with options for changes to “City of Nanaimo Zoning Bylaw 2011 No. 4500” related to the siting of a Federally-approved Supervised Consumption Service.

### **Recommendation**

That Council direct Staff to:

- a) bring forward proposed changes to “City of Nanaimo Zoning Bylaw 2011 No. 4500” to repeal the definition of ‘Drug Addiction Treatment Facility’;
- b) bring forward proposed changes to “City of Nanaimo Zoning Bylaw 2011 No. 4500” to add a definition for ‘Supervised Consumption Service’; and
- c) provide Council an update on the 2017-DEC-11 Staff report "*Response to Health, Social and Safety Issues in the Downtown*".

## **BACKGROUND**

On 2019-MAR-04, Council received a report that provided background information regarding the role of local government in the siting of a Federally-approved and Provincially-funded supervised consumption service in our community.

Health services, which includes the supervised consumption of illicit substances, are within the mandate of the Provincial Government. One of the key Provincial responses to the current overdose crisis has been the provision by local health authorities of Overdose Prevention Sites (OPS) and Supervised Consumption Services (SCS). OPSs are typically established as a temporary emergency response, while SCSs are longer-term and can be more comprehensive in the services offered. Temporary OPS facilities are legally enabled by the declaration of a public health emergency by the BC Ministry of Health through Ministerial Order No. M488 in 2017, and as such, do not need to comply with local bylaws. For Island Health or another entity to operate an SCS in Nanaimo, an application must be made and approval received from the Federal Government for a site-specific exemption to Canada’s *Controlled Drugs and Substances Act*. The difference in the level of service provided by an OPS versus an SCS is dependent on the discretion of each local health authority to determine service levels and allocation of resources.

Nanaimo’s Medical Health Officer, Dr. Hasselback, has noted Island Health’s siting criteria for an SCS includes, but is not limited to: availability and site stability, proximity to needs and support services, separation distances, capital and operational costs, contracting requirements (purchasing), legal requirements (e.g., leases, agreements), and community interaction. Municipal zoning is not considered as part of the Federal exemption process, but like any land

use that operates under local government bylaws, appropriate zoning does determine whether a site can operate legally.

In Nanaimo's current "City of Nanaimo Zoning Bylaw 2011 No. 4500" (the "Zoning Bylaw"), the definition that most closely reflects the services offered by an SCS is that of "*Drug Addiction Treatment Facility: the use of a building to treat persons with substance use problems and includes needle exchange facilities, safe injection sites, Methadone clinics and the like*". 'Drug Addiction Treatment Facility' is not currently a permitted use in any zone and therefore must be approved by Council through rezoning on a site-specific basis. This use was introduced into the "City of Nanaimo Zoning Bylaw 1993 No. 4000" in 2006 as part of a comprehensive rezoning of the downtown area, the intent of which was to provide Council and the public with more input on the location of higher-impact land uses.

In January 2017, Council provided support for Island Health to establish a temporary OPS on City-owned land at 437 Wesley Street and directed Staff to amend the lease for this property to allow this use. In May 2017, Island Health (via the City of Nanaimo, the property owner) brought forward a site-specific rezoning application for a permanent SCS at 437 Wesley Street. The application included a new definition, 'Supervised Consumption Service', as both Staff and Island Health agreed the current definition the services falls under does not accurately reflect the services provided at an SCS. Following a Public Hearing, that rezoning application was defeated at third reading by Council based upon concerns related to existing and long-term impacts on the surrounding community and businesses.

On 2018-JUL-09, Council referred review of Zoning Bylaw amendments related to SCS to the Community Planning and Development Committee and the Public Safety Committee for recommendations. City committees were dissolved in September 2018 before there was an opportunity to review this topic, but the issue of zoning for this use remains a concern for Island Health, the City of Nanaimo, and other stakeholders seeking to address the overdose crisis through enhanced health services for safer drug consumption.

## **DISCUSSION**

### **Federal Exemption Process**

Following the March 2019 presentation to Council, Staff continued to work with Island Health and other stakeholders to identify options for establishing siting options for SCS in Nanaimo. Through our discussions, it came to light that the Federal process for approving SCS locations had changed since the last time Council was asked to make a zoning decision on this issue.

Though the Federal application process does not consider zoning, up until May of 2017, municipal input had been a mandatory part of the application for Federal exemption under the *Respect for Communities Act* (legislation amending the *Controlled Drugs and Substances Act*, which had been brought in under the Federal Conservative Government in 2015). The Federal application had required a letter from local government outlining its opinion on the proposed activities at the site, including any concerns with respect to public health or safety, and a description by the applicant of the measures that have been taken or will be taken to address any relevant concerns. This requirement allowed municipalities such as Kamloops to provide letters of conditional approval, outlining measures the municipal government needed from the health authority to provide continued support for the SCS even after zoning was in place.

In May of 2017, shortly after the failed rezoning application for 437 Wesley Street, the *Respect for Communities Act* was amended to simplify the application process. Applicants must now meet five conditions of approval (down from 26 under the previous act), and the new application no longer requires specific input from local government. However, the application does require a consultation report that must include a description of consultation activities undertaken for the proposed site. Results from the consultation, including all feedback and comments received, must be provided as part of the application. Examples of acceptable consultation methods include open houses, online surveys, information meetings, community association meetings, flyers, and door-to-door canvassing. The applicant must also demonstrate how they will address concerns raised by the community during consultation.

To ensure the City fully understood the implications of changes to the Federal exemption process, Staff requested Island Health provide a letter that outlined the following:

- 1) How input from municipal government would be considered as part of any future application to the Federal Government for an SCS;
- 2) An outline of the process that would be followed for public engagement on a proposed site, once a specific site had been identified; and
- 3) A plan for how impacts on the adjacent area would be managed and what resources would be available to manage any impacts on the surrounding community.

On 2019-MAY-23, the City received a response from Nanaimo's Medical Health Officer (MHO), which is included as Attachment A. The letter from the MHO provides information on the level of community engagement typically expected for an application for an SCS to be deemed complete. The letter notes the application usually includes a letter from the Provincial Minister (though this is no longer a requirement), which would ideally be provided with the support of the local government. The MHO notes that through the application consultation, any concerns about site impacts would be identified and addressed proactively through site-specific discussion. The MHO did not provide specific details as to the scope or resources available for off-site impact management, noting this is an ever-evolving issue that requires a dynamic response.

#### *Zoning Bylaw 4500*

In the letter received 2019-MAY-23, the MHO requested the definition for 'Drug Addiction Treatment Facility' be removed from the Zoning Bylaw and that an SCS be considered a use under 'Medical/Dental Office', which is permitted in most commercial and mixed-use zones. The City has received input from the MHO that an SCS is an essential health service and that zoning regulations distinguishing this service from any other health service are discriminatory and stigmatizing towards drug users, who are already at risk of overdosing while using alone due to the stigma of drug dependency disorder. The MHO further notes that in a rapidly changing public health context, overly specific zoning regulations may hinder the Health Authority's ability to respond effectively.

Staff recommend repealing the definition of 'Drug Addiction Treatment Facility', as the current definition is both dated and inaccurate (e.g., includes harm-reduction activities not typically found at a rehabilitation centre). Staff further recommend adding a new definition for 'Supervised Consumption Service' and that this use be permitted on a site-specific basis through rezoning. If Council wishes, this use could also be allowed under a Temporary Use

Permit (which grants zoning permission to operate for up to three years and is renewable for another three years). The proposed Zoning Bylaw amendments are included as Attachment B.

The MHO has argued Nanaimo is unique in its requirement for rezoning to allow an SCS; this is not the case. Attachment C outlines the examples of London (ON), Red Deer (AB) and Medicine Hat (AB), where the local councils added definitions for supervised consumption service to their zoning bylaws and permitted the services on a site-specific basis through rezoning. In Abbotsford, from 2005 until 2014, the City of Abbotsford's zoning bylaw prohibited all harm reduction uses in the community, including needle exchanges (Abbotsford currently has two OPSs, but no SCS. Their senior planner confirmed that if one were to be proposed, staff would likely recommend it be considered on a site-specific basis). Even in the BC communities where SCSs have been permitted as a health service without rezoning, council support has at times been conditional on meeting certain requirements (as was the case in Kamloops; see Attachment D for sample letter).

Like Nanaimo, many communities are struggling to find the appropriate balance between the health care needs of a specific population and the impacts on the broader community. In Vernon, Interior Health recently withdrew a Request for Proposal (RFP) for an operator to open an OPS at an unspecified location in Vernon, due to concerns from the downtown business community that they had not been consulted. Interior Health is now reconsidering the terms of the RFP; specifically, whether the proposed OPS will be located at the local hospital instead of downtown.

By permitting an SCS on a site-specific basis, Council will be able to allow this use with conditions of approval attached through the rezoning process. This recommendation aims to strike a balance between acknowledging that an SCS is indeed a necessary health service, while recognizing that the municipality is accountable to the public for impacts that result from introducing a new use to a neighbourhood through regulatory changes. This principle has been established with the rezoning policies for Liquor and Cannabis Retail Stores. These are commercial uses, but the municipality has adopted policies with input from Island Health to guide where they are permitted.

Alternatively, Council may wish to permit this use by amending the definition of 'Office Medical/Dental' to include SCS activity as requested by the MHO (alternative wording for zoning revisions is in Attachment B). In this scenario, Island Health or any other applicant would be able to apply for a Federal exemption for an SCS wherever medical offices are allowed. This would apply to most commercial and mixed-use zones throughout the city. In this case, Council would not be able to attach conditions of approval, but would rely on the community consultation process outlined by the MHO (see below) to provide input as to any concerns about potential impacts on the area.

### *Community Consultation*

The 2019-MAY-23 letter from the MHO notes that for an application for an SCS to be considered complete, Health Canada requires that "*efforts [be] made to engage with the community to inform them of the proposal and ensure that the voices of community members have been heard*". There is also an expectation that steps would be taken by the applicant to mitigate concerns. The MHO mentions a number of tools that may be employed as part of community engagement (e.g., online communications and surveys, open houses, canvassing, etc.). Staff anticipate any future application for a Federal exemption for an SCS would be

accompanied by comprehensive community engagement by the applicant, with support from City Staff, regardless of which zoning option Council wishes to pursue.

### **Public Disorder in the Downtown**

Staff continue to work on addressing problems in the downtown core, and on 2017-DEC-11, brought forward the report for decision “*Responses to Health, Social and Safety Issues in the Downtown*”, which contained a number of recommendations that have since been completed or are actively underway. Some of the recommendations have been successful in addressing public disorder, such as the Urban Clean Up initiative. At the same time, concerns about the state of the downtown, particularly in the areas adjacent to the OPS on Wesley Street, have escalated over the last two years. Staff will bring forward an update to Council on the 2017-DEC-11 Staff report in summer 2019.

### **OPTIONS**

- Option 1 – That Council direct Staff to:
  - a) bring forward proposed changes to “City of Nanaimo Zoning Bylaw 2011 No. 4500” to repeal the definition of ‘Drug Addiction Treatment Facility’;
  - b) bring forward proposed changes to “City of Nanaimo Zoning Bylaw 2011 No. 4500” to add a definition for ‘Supervised Consumption Service’; and
  - c) provide Council an update on the 2017-DEC-11 staff report “*Response to Health, Social and Safety Issues in the Downtown.*”
    - Provides Council with a greater level of oversight and accountability as to the siting of a future Supervised Consumption Service. Permits Council to add conditions of rezoning approval. Consistent with precedent policies of requiring rezoning for Liquor Retail Stores and Cannabis Retail Stores.
    - Requires that Council make a decision on a specific site location in response to a future application, rather than leaving that decision up to Island Health based on public health criteria. This gives Island Health less flexibility in siting options and could be seen as stigmatizing towards substance users.
- Option 2 – That Council direct Staff to:
  - a) bring forward proposed changes to “City of Nanaimo Zoning Bylaw 2011 No. 4500” to repeal the definition of ‘Drug Addiction Treatment Facility’; and
  - b) bring forward proposed changes to “City of Nanaimo Zoning Bylaw 2011 No. 4500” to revise the definition of ‘Office Medical/Dental.’
    - Defining SCS as a health service is consistent with policy precedents set by other BC cities with established SCSs (Vancouver, Victoria, Kamloops, Kelowna, and Surrey). Adopting this approach could strengthen relationship with Health Authority by demonstrating trust in their siting process, and would ensure that harm reduction services would be in place indefinitely.

- The City would not have a substantive role in site selection. May create site-management issues that end up being addressed by RCMP and Bylaws.
- Option 3 – That Council provide alternative direction to Staff.

### **SUMMARY POINTS**

- British Columbia is currently experiencing an opioid overdose crisis. Harm reduction services such as Overdose Prevention Sites and Supervised Consumption Services are an important aspect of the Province’s response to the crisis.
- The difference in the levels of service provided by Overdose Prevention Sites and Supervised Consumption Services is dependent on the discretion of each local health authority to determine service levels and allocation of resources.
- Under the current Zoning Bylaw, a Supervised Consumption Service is allowed only on a site-specific basis through rezoning under the land use defined as “Drug Addiction Treatment Facility.”
- Staff recommend revisions to the Zoning Bylaw to repeal the definition of ‘Drug Addiction Treatment Facility’ and add a definition for ‘Supervised Consumption Service’ that would be permitted on a site-specific basis.
- An alternative approach would be to remove the definition of ‘Drug Addiction Treatment Facility’ and revise the definition of ‘Office Medical/Dental’ so that it includes supervised consumption activities in any zone permitting a medical office (most commercial and mixed-use zones).

### **ATTACHMENTS:**

- ATTACHMENT A: Letter dated 2019-MAY-23 from Medical Health Officer to City of Nanaimo Staff
- ATTACHMENT B: Proposed Zoning Bylaw Amendments – Supervised Consumption Services
- ATTACHMENT C: Local Government Approaches to Supervised Consumption Services
- ATTACHMENT D: City of Kamloops Opinion Letter on Supervised Consumption Services
- PowerPoint Presentation: Supervised Consumption Service Zoning Options

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