

DATE OF MEETING    SEPTEMBER 11, 2023

AUTHORED BY        DAVID LABERGE, DIRECTOR, BYLAW SERVICES

**SUBJECT            BYLAW REGULATION OF CONTROLLED SUBSTANCES**

## **OVERVIEW**

### **Purpose of Report:**

To update Council on options to regulate the consumption of controlled substances in public places following Provincial decriminalization.

## **BACKGROUND**

At the 2023-MAY-15 Regular Meeting, Council passed the following motion:

*“direct Staff to prepare a report on options to regulate the use of controlled substances in public spaces including a summary of steps being proposed in other British Columbia Communities following Provincial decriminalization.”* |

## **DISCUSSION**

The federal government granted the Province of British Columbia’s request for a subsection 56(1) exemption under the *Controlled Drugs and Substances Act* in effect from January 31, 2023 to January 31, 2026 which would permit adults (18 years of age and older) to possess small amounts of certain illegal drugs for personal use. This exemption is referred to as the ‘decriminalization of personal possession of illegal drugs’ and includes opioids (fentanyl, morphine, heroin), cocaine, methamphetamine (meth), and MDMA (ecstasy).

The exemption is one of the approaches of the provincial government to address the opioid crisis. Adults found in personal possession or using any combination of these drugs of a combined total of no more than 2.5 grams are not subject to arrest, charges, or seizure of the substances; no fines, tickets or administrative sanctions; and, no mandatory treatment or diversion. Decriminalization shifts approach to substance use as a health matter, not a criminal justice issue. When encountering persons using substances, the role of police is to provide information about social and health supports.

The provincial government has been specific and deliberate in limiting locations where exemptions to possession and use of illicit substances is not permitted, recognizing that while many people prefer to use indoors or in private space, those who are homeless or live in a place with visitor restrictions may have no alternative than to resort to public locations. The restriction of public consumption can displace people to places where they are less likely to be supported and responded to if they overdose, leading to using alone without supports, and increasing the risk of fatal overdose.

The *Community Charter* provides broad powers to municipalities in relation to:

- Fostering the economic, social and environmental well-being of its community (7(d))
- Public places, including persons, property, things and activities that are in, on or near public places (8(3)(b) and 62)
- The protection and enhancement of the well-being of the community in relation to nuisances, refuse and garbage, and unsightly conditions on property (8(3)(g) and Section 64)
- Public health (8(3)(i))
- Protection of the natural environment (8(3)(j))
- Uses of or involving highways (36 and 46)

Municipalities can use these authorities to enact bylaws with respect to matters of health and safety of residents, to address nuisances and blights, environmental impacts associated with hazardous substances, and expenses related to first responders provided that they are not inconsistent with federal or provincial law.

In developing bylaws intended to address either health risks (as with smoking) or the behaviours that may sometimes be associated with substance use (e.g. nuisance), the complementary goals of public health and public safety must be considered. The enactment of bylaws which precludes the use of substances in public places and imposes fines or other sanction would have the effect of frustrating the purpose of the federal exemption and could be potentially ultra vires, making them invalid. Similarly, bylaws which disproportionately impact persons who experience disabilities, addictions, and homelessness who lack access to indoor spaces could be discriminatory in contravention of the Charter of Rights or Human Rights Code.

In bylaws which affect public health polices, the *Public Health Act* and *Community Charter* require municipalities to consult with the Medical Health Officer or regional health board, and to submit for deposit or approval with the Minister.

### **Campbell River**

The City of Campbell River was one of the first municipalities to enact bylaws to regulate the consumption of controlled substances in response to provincial decriminalization. In January 2023, Campbell River adopted “Public Nuisance Amendment Bylaw No. 3884” which prohibited consumption of controlled substances in any public place, which included amendments to allow for \$200 ticketing penalties. In passing final reading of the bylaw, their Council declined to receive a letter from the Medical Health Officer offering public health advice.

The bylaws were rescinded following a legal challenge by Pivot Legal Society in the Supreme Court of British Columbia on the basis that they were outside of the scope of the city’s legislative authority, and for the city’s failure to consult with the Medical Health Officer or any other medical professionals in their development.

The bylaw was later amended to prohibit consumption of controlled substances on or within 15 metres of city facilities, playgrounds, sport fields, tennis courts, picnic shelters, water parks or bus shelters. No ticketing sanctions were included in the amendments.

## **Penticton**

The City of Penticton recently enacted amendments to the Safe Public Places Bylaw No. 2023-06 which prohibits display or use of controlled substances or drug paraphernalia in any public place other than supervised consumption or overdose prevention facilities after receiving public engagement and consultation with the medical health officer. No ticketing sanctions were included in the amendments, but Penticton's Council unanimously agreed to proceed with the bylaw in the belief that it would provide Community Safety Officers with more authority to enforce the regulations.

## **Prince George**

The City of Prince George enacted Safe Streets Bylaw 9209 in 2021 which prohibits open drug use or disposal of drug paraphernalia on a street, roadway, open space area or park. Notably, these provisions of the bylaw were updated prior to provincial decriminalization.

## **Upcoming Provincial Legislation**

Medical Health Officers around the province have encouraged municipalities to continue monitoring the effects of decriminalization on public consumption before implementing new bylaws to determine if there is an actual increase in public drug use or other unintended consequences, and to continue to seek sound public health advice.

Staff have consulted the Medical Health Officer for Central Vancouver Island, who has provided the health perspective that the banning of illicit drug use in public places would not change drug consumption, rather it would force people to conceal their substance use and use alone, increasing the risk of overdose.

The Province has acknowledged that local governments, police agencies, and members of the public have expressed concerns about drug use, particularly in family and child-focused spaces, and in the context of decriminalization notes that there may be a need for reasonable limits (on drug use) in certain public places. The Province further acknowledges that places where the use of tobacco, cannabis, and alcohol is currently regulated, but similar rules have not been established for use of other controlled substances.

The BC Ministry of Public Safety and the Solicitor General is currently consulting with municipalities through the Union of BC Municipalities (UBCM) and undertaking policy work to support possible legislation in the fall 2023 session to regulate the use of drugs in certain public places.

Staff have consulted with a number of other municipalities who advise that they are continuing to evaluate the public safety impacts of decriminalization, observing the outcomes of bylaws enacted by communities such as Campbell River and Penticton, or communicating with the province through UBCM on matters of public safety in anticipation of updated policies and legislation this year. |

## **CONCLUSION**

The provincial government is currently undertaking policy work to support possible legislation in the fall 2023 session to regulate the use of drugs in certain family and child-centric public spaces.

The City has taken a measured approach in supporting the objectives of the decriminalization of controlled substances by continuing to support interventions implemented by the health authority and provincial programs to prevent or address public substance use, and will continue to communicate with the medical health officer and monitor impacts of decriminalization locally as the Province contemplates changes to policy and legislation which are expected by the end of the year.

## **SUMMARY POINTS**

- The Province received a federal exemption to decriminalize certain controlled substances for a three-year period from January 2023 until January 2026.
- Council has directed staff to provide options for bylaws to regulate consumption of controlled substances in public spaces
- The *Community Charter* provides authority for local government to enact bylaws pertaining to matters of public health, but requires consultation with the medical health officer.
- The medical health officer has encouraged the City to not introduce bylaws that impose restrictions or penalties for public drug consumption.
- The provincial government is undertaking consultations to consider possible legislation to regulate consumption of controlled substances in family and child-focused public places which is expected by year end.

### **Submitted by:**

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### **Concurrence by:**

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