

# Memo



To: Regular Meeting  
From: **Bylaw Services**  
Date: 2023-03-27  
Subject: Controlled Substances Use Within Public Areas

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## Purpose

To provide Council with information on provincial decriminalization for possession of small amounts of controlled substances; and to seek direction on how the City should manage potential impacts to public use and enjoyment of parks and other public areas within its jurisdiction.

## Background

On January 31, 2023, the Provincial Government began a 3-year trial program to decriminalize the possession of less than 2.5 cumulative grams of controlled substances. Controlled substances under this initiative include illicit drugs such as opioids (e.g., Fentanyl, Morphine, Oxycodone), cocaine, methamphetamine, and MDMA (e.g., ecstasy, Molly).

The intent of provincial decriminalization of possession, includes:

- limiting criminal code enforcement/response and penalties applied to persons possessing and using small amounts of controlled substances; and
- reducing the public stigma associated with use of illicit drugs, such that in time it would be more accepted in open view and in public spaces; and
- accepting drug use in more visible environments so that people may be seen and receive assistance in the event of an overdose; and
- reducing the rate of drug overdose and fatalities occurring in the province due to the opioid crisis.

The Province advises that decriminalization will directly affect policing of open drug use within communities. The Ministry of Mental Health and Addictions has circulated information advising police will not be allowed to seize drugs or arrest individuals for possession at or below this threshold. In place of criminal penalties, police will provide individuals found in possession of illicit substances (at or below the threshold), with a resource card that includes contact information for local health and social services and may refer an individual to those services.

Despite the changes, police will continue to investigate and address possession of larger amounts of controlled substances, as well as possession for the purposes of trafficking, even below the 2.5-gram threshold. Public intoxication will remain illegal, and decriminalization will not apply to possession on premises of K-12 schools, licensed child-care facilities, airports, in a motor vehicle or watercraft operated by a minor, or within reach of the operator of a motor vehicle or watercraft, and it does not apply to youth aged 17 or younger. Police will also continue to have authority under the *Trespass Act* to remove individuals from property when they refuse to leave upon request of the owner, including for use of illicit drugs.

In proposing decriminalization, the Province consulted with local governments in October 2021 and with the Union of British Columbia Municipalities in 2022. The Ministry indicates research (in response to anticipated concerns) shows minimal health risks are expected from potential situations such as children observing open drug use, persons injured from contact with drug paraphernalia such as used syringes, or people being exposed to second hand smoke from drugs while in outdoor areas. The Ministry advises those situations present low risk compared to the potential benefits of decriminalization by reducing loss of life due to the opioid crisis.

#### Potential Bylaw

In anticipation that decriminalization may raise concerns in the community, Staff have been reviewing potential bylaw options and working to draft a bylaw, should Council decide that illicit drug use within public areas is an area of concern that should be regulated. A regulatory bylaw would not address the issue of possession but could potentially restrict consumption or use of illicit drugs in specific public areas and situations as an objectionable and nuisance activity, including but not limited to:

- parks
- public premises
- community facilities
- school properties
- playgrounds
- outdoor public events
- near children (minors under 18 years of age)
- near un-consenting persons in public places
- in public vehicles such as taxis or buses
- on public property in the downtown business district
- and near business entrances directly adjacent to public property (sidewalks).

Establishing a bylaw of this nature, would have to ensure it did not:

- prohibit possession - contrary to the provincial initiative; or
- prohibit use or consumption in all public areas and spaces - contrary to the provincial initiative.

By identifying specific parks and public areas as prohibited areas, given greater volumes of general public use anticipated, there could and should remain plenty of public space for people to access and use illicit drugs, albeit with a preference for more discreet areas.

#### Council Authority

The *Community Charter* provides authority for local government to regulate, prohibit and impose requirements in public places for objectionable and nuisance activity. Prior to decriminalization, many local governments across BC have routinely enforced bylaw regulations prohibiting use of illicit drugs and/or possession of paraphernalia in public areas. These regulations were most likely established because illicit drug use is generally viewed as illegal and considered a nuisance and objectionable activity in the community. The use of bylaws established a regulatory approach to enable bylaw enforcement staff to effectively manage city owned and managed public areas, in addition to police.

The provincial initiative for decriminalization is however counterproductive to historical approaches to deterring drug use in public areas. It is instead supported as a holistic public health response to the opioid crisis where approximately 11,000 people have died in BC since 2016 as a result of overdose. As such, the Province is actively advising local governments that if they wish to pass a “public health bylaw” to address consumption of illicit drugs, it would require review and approval of a local public health officer. This is a similar approach to how smoking prohibitions indoors were advanced years ago for public health and worker safety.

If the City were to consider adopting a bylaw to address consumption, that the approach should be more focused on nuisance and objectionable disturbances and activity. Additionally, it should take an approach to exempt public health related situations such as use of medicines and controlled substances as prescribed by a physician or the possession and the administration of opiate agonizers to individuals in an overdose situation. That said, Council may wish to consider that while a proposed bylaw utilizing authority to not allow specific nuisance behaviours in public spaces, in the situation of illicit drug use and associated activity, there is a likelihood the Province will scrutinize this approach along with other parties having an interest in advancing the decriminalization approach and allowing open use of illicit drugs on a trial basis.

#### What are other municipalities doing?

Other communities around the Province having concern with decriminalization have similarly been looking to regulate consumption of illicit drugs in public areas. Some have been met with legal challenges and significant resistance from supporters of decriminalization. This could be due to overly restrictive prohibition in all public areas which is likely to be interpreted as an overly broad application of the law, i.e. not affording a reasonable balance of space for those who do not necessarily have access to private property. Staff suggest that if the City were to adopt a bylaw to address consumption in public areas, it should take a less restrictive approach by allowing areas that are not outright prohibited.

If a bylaw were considered, it could support local RCMP and staff to approach and deter open drug use in the city’s most visible and utilized public spaces because despite a trial period of decriminalization, possession and use of illicit drugs, even under 2.5 grams, remains illegal. The approach to enforcing a bylaw of this nature could also be tempered through establishing an enforcement policy to guide the approach to different areas and circumstances and to clarify certain issues, including but not limited to:

- possession being solely the jurisdiction of police.
- not seizing or impounding controlled substances or paraphernalia from a person.
- removal of paraphernalia found in public areas (unattended/abandoned).
- persons not in compliance directed to exit the area of concern

#### Summary

This memo is therefore provided for Council information and review, and for Council to consider on how potential impacts to public use and enjoyment of parks and other public areas should or should not be addressed, as persons engage in illicit drug use in these areas.

### Report Approval Details

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This report and all of its attachments were approved and signed as outlined below:

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