

INTER-OFFICE MEMORANDUM

TO: CHAIR AND MEMBERS
PUBLIC SAFETY COMMITTEE

DATE: 2021 OCTOBER 26

FROM: ACTING DEPUTY CITY CLERK

FILE: 02410-20

SUBJECT: CHANGES TO PROPOSED CONTROLLED SUBSTANCE PROPERTY BYLAW
ITEM NO. 8.03., CHIEF ADMINISTRATIVE OFFICER'S REPORTS,
COUNCIL 2021 OCTOBER 25

Burnaby City Council, at the Open Council meeting held on 2021 October 25, received the above noted report and adopted the following recommendations contained therein:

1. THAT Council approve the changes to the proposed Burnaby Controlled Substance Property Bylaw outlined in the report.
2. THAT Council authorize the City Solicitor to bring forward a revised Burnaby Controlled Substance Property Bylaw and associated amendment to the Burnaby Bylaw Notice Enforcement Bylaw to impose penalties for violations of the bylaw.
3. THAT a copy of the report be forwarded to the Public Safety Committee.

As per recommendation #3, a copy of the report is attached for your information.



Eva Prior
Acting Deputy City Clerk
Copied to: Director Public Safety and Community Services

TO: CHIEF ADMINISTRATIVE OFFICER **DATE:** 2021 Sep 20

FROM: DIRECTOR - PUBLIC SAFETY AND
COMMUNITY SERVICES

**SUBJECT: CHANGES TO PROPOSED CONTROLLED SUBSTANCE PROPERTY
BYLAW**

PURPOSE: To recommend changes to proposed Controlled Substance Property
Bylaw to address community feedback.

RECOMMENDATIONS:

1. **THAT** Council approve the changes to the proposed Burnaby Controlled Substance Property Bylaw outlined in this report.
2. **THAT** Council authorize the City Solicitor to bring forward a revised Burnaby Controlled Substance Property Bylaw and associated amendment to the Burnaby Bylaw Notice Enforcement Bylaw to impose penalties for violations of the bylaw.
3. **THAT** A copy of this report be forwarded to the Public Safety Committee.

REPORT**1.0 INTRODUCTION**

At its 2020 January 27 regular meeting, Council received a Committee Report from the Public Safety Committee and authorized the establishment of regulations in respect to recovering costs from property owners for City services, should their property be used for the unlawful manufacture, trade, use, sharing, storage, sale or barter of a controlled substance and adopted a staff recommendation to bring forward a report with the necessary bylaw.

At its 2021 May 10 regular meeting, Council received a staff report containing the proposed Burnaby Controlled Substance Property Bylaw (Attachment 1) and subsequently authorized the City Solicitor to bring forward the bylaw and an amendment to the Burnaby Bylaw Notice Enforcement Bylaw to impose penalties for non-compliance with the proposed bylaw.

The purpose of this report is to request Council authorization to make changes to the proposed Burnaby Controlled Substance Property Bylaw to address community feedback, as outlined in this report.

2.0 POLICY SECTION

Goal

- A Safe Community
 - Crime prevention and reduction – Ensure citizens and businesses feel safe in our community
 - Emergency services – Provide responsive emergency services
- A Healthy Community
 - Healthy life – Encourages opportunities for healthy living and well-being
 - Healthy environment – Enhance our environmental health, resilience and sustainability
- A Thriving Organization
 - Organizational culture – Ensure that our core values are reflected in our policies, programs and service delivery
 - Financial viability – Maintain a financially sustainable City for the provision, renewal and enhancement of City services, facilities and assets

3.0 BACKGROUND

In response to the dangers of properties within the City being used to manufacture, process and sell marihuana, Fentanyl and other extremely dangerous opioids, the proposed Burnaby Controlled Substance Property Bylaw would prohibit property owners and occupants using properties as unlawful opioid or marihuana grow operations. The significant public safety risks arising from these unlawful operations include but are not limited to the tremendous amount of dangerous contamination that often results from these operations.

The proposed Controlled Substance Property Bylaw would impose regulatory prohibitions and requirements on property owners and occupants, authorize inspectors (including City staff, enforcement officers and Fire Department personnel) to inspect and issue orders for non-compliance with the bylaw prohibitions and requirements, and impose inspection fees and allow for recovery of costs incurred by the City or Burnaby RCMP in respect to controlled substance properties.

4.0 COMMUNITY FEEDBACK ON PROPOSED BYLAW

Subsequent to the 2021 May 10 Council meeting where staff received Council authority to bring forward the proposed Controlled Substance Property

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Bylaw, representatives from the Burnaby Overdose Community Action Team (BCAT) expressed concern in regards to the wording of the proposed bylaw. The BCAT is a non-profit group supported by the Ministry of Mental Health and Addictions, which acts as a platform for collaboration, discussion and decision-making related to the opioid overdose response in the City of Burnaby.

The BCAT raised concerns regarding specific wording in the proposed bylaw. In particular, the inclusion of the terms “use” and “sharing”. These two terms were included throughout the proposed bylaw as part of enforcement and prohibition provisions. The following is an example (emphasis added):

“3.1 No owner or occupant of property shall cause, permit or allow:

(a) any property to become or remain a place for the manufacture, trade, **use**, **sharing**, storage, sale or barter of a controlled substance;”

Staff met with members of the BCAT and heard the concerns as to how the inclusion of these two terms could potentially unfairly target individual opioid users struggling with addiction, versus the drug dealers and producers who are compromising public safety by using private property for the manufacture, storage and sale of illicit drugs. In addition, BCAT expressed the concern that landlords could inappropriately use the proposed bylaw as a means to discriminate against current or potential tenants struggling with addiction.

5.0 PROPOSED CHANGES TO BYLAW

An internal City working group consisting of the relevant departments was formed to create the proposed bylaw and the initial wording was drafted with the intent for consistency throughout the bylaw, as well as with other related pieces of legislation regarding the illicit drug trade.

As a result of the concerns brought forward by the BCAT and a subsequent review of the proposed bylaw, staff determined that the terms “use” and “sharing” can be removed without compromising the effectiveness of enforcement against owners and occupants using private property for the manufacture, storage and sale of controlled substances, being the intended target of the bylaw. As such, staff recommend that references to the terms “use” and “sharing” be removed in all instances from the bylaw.

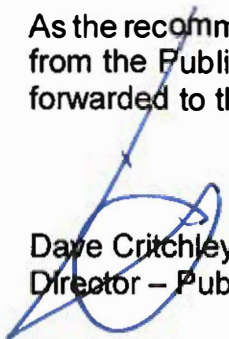
In the report approved by Council on 2021 May 10, the Council also authorized an amendment to the Burnaby Bylaw Notice Enforcement Bylaw to implement penalties for violation of the proposed Controlled Substance Property Bylaw. The penalty provisions approved by Council remain valid and can be brought forward together with the revised Controlled Substance Property Bylaw.

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6.0 RECOMMENDATIONS

It is recommended that Council approve the changes to the proposed Burnaby Controlled Substance Bylaw outlined in this report, which respond to community feedback, and that the City Solicitor be authorized to bring forward the revised bylaw together an amendment to the Burnaby Bylaw Notice Enforcement Bylaw to implement penalties for violation of the bylaw.

As the recommendation to implement the Burnaby Controlled Substance Bylaw originated from the Public Safety Committee, it is also recommended that a copy of this report be forwarded to the Public Safety Committee once it is approved by Council.



Dave Critchley
Director – Public Safety and Community Services

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Copied to: Deputy CAO / CFO
Director Engineering
Director Corporate Services
Director Planning & Building
City Solicitor
Fire Chief
Officer in Charge Burnaby RCMP

Attachment: 1 – Council Report 2021 May 10

**** Attachment 1 ****

CITY OF BURNABY

BYLAW NO. xxxxx

A BYLAW in respect to
controlled substance properties

The Council of the City of Burnaby ENACTS as follows:

PART 1: CITATION

- 1.1 This Bylaw may be cited as **BURNABY CONTROLLED SUBSTANCE PROPERTY BYLAW 2020.**

PART 2: INTERPRETATION

- 2.1 In this Bylaw,

“controlled substance” means:

- (a) a controlled substance as defined and described in Schedules I, II, III, IV, V or VI of the *Controlled Drugs and Substances Act*, R.S.C 1996 c. 19, but does not include the trade or manufacture of a controlled substance for which a valid licence or permit has been issued pursuant to the *Controlled Drugs and Substance Act*, R.S.C 1996 c.19, or its associated regulations, as such Act and regulations may be amended or replaced from time to time; and
- (b) “cannabis” as defined in the *Cannabis Act*, S.C. 2018, c. 16, but does not include the possession, production, sale or distribution of cannabis authorized pursuant to the *Cannabis Act*, S.C. 2018, c. 16, or *Cannabis Control and Licensing Act*, S.B.C. 2018, c. 29, or their associated regulations, as such Acts and regulations may be amended or replaced from time to time

“City” means the City of Burnaby

“hazardous situation” is any real or potential risk to persons or property that arises or results from the use of a **property** for the manufacture, trade, use, sharing, storage, sale or barter of a **controlled substance**

“inspector” means:

- (a) the Director Public Safety and Community Services;
- (b) the Chief Licence Inspector and Licence Inspectors;
- (c) the Chief Building Inspector and every employee or agent authorized by the City to conduct inspections in respect of building, plumbing, electrical or gas standards;
- (d) Property Use Coordinators;

- (e) Bylaw Enforcement Officers;
- (f) any Firefighter or Fire Prevention Inspector;
- (g) Environmental Services Officer; and
- (h) other officers, employees, contractors and persons acting on behalf of the **City** for the purpose of enforcement of this Bylaw

“occupant” means:

- (a) a person residing on the **property**,
- (b) a person entitled to possession of the **property** if there is no person residing on the **property**, and
- (c) a person who is a leaseholder of the **property**, or
- (d) any of them

“owner” means any person shown on title at the Land Title Office as the registered owner of the **property** or has a life estate or registered leasehold interest in the **property** and includes the agent of that person

“person” includes a corporation, partnership or party, and the legal or personal or other legal representative of a person to whom the context may apply under this Bylaw

“police” means the Royal Canadian Mounted Police, Burnaby Detachment

“property” means all real property and includes, without limitation, front yards, side yards, rear yards, landscaped areas, parking and loading areas, driveways and walkways, , as well as any permanent or portable building or structure, vehicle, equipment or chattel located on the real property

PART 3: PROHIBITIONS

3.1 No **owner** or **occupant** of **property** shall cause, permit or allow:

- (a) any **property** to become or remain a place for the manufacture, trade, use, sharing, storage, sale or barter of a **controlled substance**;
- (b) water, rubbish, noxious, offensive or unsightly material to collect or accumulate in or around any **property** in connection with the trade, use, manufacture, sharing, storing, sale or barter of a **controlled substance**;
- (c) a structure or building to be altered in a way that facilitates the manufacture or growth of a **controlled substance**;
- (d) a building to become subject to the growth of mould or fungus arising from or in relation to the trade, use, manufacture, sharing, storing, sale or barter of a **controlled substance**;

(e) a **hazardous situation** to exist or remain on the **property**.

PART 4: INSPECTIONS AND REMEDIATION

- 4.1 An **inspector** may enter upon any **property** for the purpose of inspecting the **property** and determining whether the **property** is being used for the manufacture, trade, use, sharing, storage, sale or barter of a **controlled substance**, contains a **hazardous situation** or is otherwise not in compliance with this Bylaw, or to determine compliance with a written order issued pursuant to section 4.2 of this Bylaw.
- 4.2 An **inspector** may issue a written order to an **owner** and, where applicable, an **occupant**, to remedy any **hazardous situation** or anything or condition that is not in compliance with this Bylaw that exists on the **property**.
- 4.3 Where an **owner** or **occupant**, or both as the case may be, receives a written order to remedy any **hazardous situation** or anything or condition that is not in compliance with this Bylaw, the **owner** or **occupant** must comply with the order within the time frame specified in the order.
- 4.4 An **inspector** may post a notice on any **property** that has been used for the manufacture, trade, use, sharing, storage, sale or barter of a **controlled substance** or that contains a **hazardous situation** or anything or condition that is not in compliance with this Bylaw, advising of the requirements of this Bylaw.
- 4.5 If an **owner** or **occupant** of **property**:
- (a) is required to remedy any **hazardous situation** or anything or condition that is not in compliance with this Bylaw pursuant to a order given under this Bylaw and fails to comply within the time specified in such order;
 - (b) is required to carry out remedial work on the **property** pursuant to this Bylaw and fails to comply within the time specified; or
 - (c) violates any section of this Bylaw,
- the **City** may, but is not obligated to, by its employees, agents or other persons with whom it contracts or by members of the **police**, enter onto the **property** for purposes of fulfilling the **owner's** or **occupant's** requirements under this Bylaw, including any written order issued pursuant to section 4.2 of this Bylaw, at the **owner's** or **occupant's** expense.

PART 5: FEES AND COSTS

- 5.1 An **owner** or **occupant** of a **property** shall pay to the City the following fees and costs:

- (a) all costs incurred by the **City** or by the **police** in the response, disassembly, removal, transportation, storage and disposal of equipment, substances, materials and other paraphernalia associated with the manufacture, trade, use, sharing, storage, sale or barter of a **controlled substance** on or in respect of the **property**,
- (b) any inspection of the **property** pursuant to section 4.1 of this **Bylaw**;
- (c) any costs incurred by the **City** pursuant to section 4.5 of this **Bylaw**,

in accordance with the rates set out in Schedule “A” of this **Bylaw**.

- 5.2 The **City** will invoice the **owner** or **occupant** of a **property** for all fees and costs imposed pursuant to section 5.1 of this Bylaw and the **owner** or **occupant** must pay such invoice upon receipt of the same.
- 5.3 The **City** may recover all fees and costs imposed under this Bylaw from the **owner** or **occupant** as a debt, and in the event that the **owner** or **occupant** fails to pay such fees and costs before December 31 in the year in which the invoice was issued, such fees and costs shall be added to and form part of the taxes payable in respect of the **property** as taxes in arrears as of January 1 of the next year.

PART 8: OFFENCES AND PENALTIES

- 6.1 Every **person** who violates any of the provisions of this **Bylaw** or who suffers or permits any act or thing to be done in contravention of any of the provisions of this **Bylaw**, or who neglects to do or refrains from doing anything required to be done by any of the provisions of this **Bylaw**, or who does any act, or who violates any of the provisions of this **Bylaw**, is guilty of an offence and is liable, on summary conviction, to a fine of not less than five thousand dollars (\$5,000.00) and not more than fifty thousand dollars (\$50,000.00).
- 6.2 If an offence continues for more than one day, a separate offence occurs on each day or part of a day, and separate fines may be issued for each day or part of a day in respect of which the offence occurs or continues.
- 6.3 Any **person** who contravenes any provision of this **Bylaw** is liable to the **City** for and must indemnify the **City** from all costs, expenses, damages and injuries resulting from the contravention. This does not in any way limit any other provision or any other remedy the **City** may have under this **Bylaw** or otherwise at law.
- 6.4 A violation of any of the provisions identified in this **Bylaw** shall result in liability for penalties and late payment amounts established in Schedule A of BURNABY BYLAW NOTICE ENFORCEMENT BYLAW, 2009, and be subject to the procedures, restrictions, limits, obligations and rights established in BURNABY BYLAW NOTICE ENFORCEMENT BYLAW, 2009 and the *Local Government Bylaw Notice Enforcement Act*

PART 7: SEVERABILITY

7.1 If a portion of this **Bylaw** is held invalid by a Court of competent jurisdiction, the invalid portion must be severed and the remainder of this **Bylaw** is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

Read a first time this	day of	2021
Read a second time this	day of	2021
Read a third time this	day of	2021
Reconsidered and adopted this	day of	2021

MAYOR

CLERK

SCHEDULE "A"
FEES AND COSTS

A. Staff Costs

Fire Department Staff	
Senior Captain	\$125 / hour or part thereof
Captain	\$120 / hour or part thereof
Firefighter	\$100 / hour or part thereof
Assistant Chief	\$145 / hour or part thereof
Lieutenant	\$110 / hour or part thereof
Fire Inspector / Investigator	\$100 / hour or part thereof
Police Officer	\$100 / hour or part thereof
Other Staff	Hourly wages paid for all individuals attending or providing services in accordance with this Bylaw, as determined by the applicable employment/collective agreement or pay grid for non-union staff, plus 29% which equates to additional personnel costs incurred by the City for such individuals.

B. Equipment and Analysis Costs

Fire Department Vehicles	
Engine Truck	\$300 / hour or part thereof
Ladder Truck	\$900 / hour or part thereof
Rescue Truck	\$500 / hour or part thereof
Command Unit	\$200 / hour or part thereof
Special Operations Vehicle & Equipment	\$900 / hour or part thereof
Police Vehicle	\$8 / hour, minimum 3 hours
Replacement of equipment due to exposure to contaminants	Cost to City

Replacement of consumable equipment	Cost to City
Analysis and tests of materials or conditions	Cost to City

C. Inspection Fees

Inspection under section 4.1 of this Bylaw	\$500 per inspection
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D. Other City Costs

Costs incurred by the City under section 4.5 of this Bylaw	Cost to City
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E. Administration Fee

Administration and overhead fee for invoice processing and collection	\$100 per invoice
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Note: Where applicable, taxes will be added to amounts in this Schedule.