

**ORDINANCE NO. 2012-12-063**

**AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON AMENDING BELLINGHAM MUNICIPAL CODE 10.08.010 AND 10.08.020 TO BE CONSISTENT WITH NEW STATE LAWS REGARDING POSSESSION OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS, AND ADDING A NEW BMC SECTION 10.08.080, SETTING FORTH A PROHIBITION AND PENALTY FOR OPENING OR CONSUMING MARIJUANA IN PUBLIC.**

**WHEREAS**, Initiative 502 recently passed in the State of Washington legalizing personal possession of marijuana and marijuana-infused products; and

**WHEREAS**, Sections 15 and 20 of Initiative 502 legalize the possession of up to one (1) ounce of marijuana to persons twenty-one years of age or older. These sections also set specific limits on possession of marijuana-infused products in solid and liquid form; and

**WHEREAS**, BMC 10.08.020, makes the possession of up to 40 grams of marijuana by anyone a misdemeanor. The BMC is silent as to possession of marijuana-infused products; and

**WHEREAS**, Section 21 of Initiative 502 prohibits consuming or opening the packaging of marijuana and marijuana related products in public. Violations are a civil infraction; and

**WHEREAS**, the City similarly prohibits the opening or consuming of alcohol in public in BMC 10.08.070. However, the BMC contains no such restriction on marijuana use in public; and

**WHEREAS**, the City must amend BMC 10.08.010 and .020 regarding possession of marijuana to reflect recent changes in state law. The City must also enact its own law to prohibit public consumption of marijuana.

**NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1:** BMC 10.08.010 is hereby amended as follows:

**10.08.010 - Definitions**

- A. "Marijuana"** means all parts of the plant of the genus Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent based on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted

therefrom), fiber, oil, or cake; or the sterilized seed of the plant which is incapable of germination.

- B. **"Marijuana-infused products"** means products that contain marijuana or marijuana extracts and are intended for human consumption. The term "marijuana-infused products" does not include useable marijuana.
- C. **"Public Place"** includes streets and alleys; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under RCW 66, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

**Section 2:** BMC 10.08.020 is hereby amended as follows:

**10.08.020 - Possession of Marijuana or Marijuana-Infused Products Prohibited - Penalties**

- A. It is unlawful for any person under the age of 21 years to possess forty grams or less of marijuana in the City. It is unlawful for anyone to possess between 28.3 grams and 40 grams of marijuana in the City.
- B. It is unlawful for any person to possess more than 16 ounces of marijuana-infused product in solid form or more than 72 ounces of marijuana-infused product in liquid form. It is unlawful for any person under the age of 21 years to possess any amount of solid or liquid marijuana-infused product.
- C. Possession of marijuana or marijuana-infused product in violation of this section shall be considered a misdemeanor.
- D. A person who is convicted of a misdemeanor under this section shall be punished by imprisonment for not less than 24 consecutive hours, and by a fine of not less than \$250. On a second or subsequent conviction, the fine shall not be less than \$500. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition of the minimum imprisonment will pose a substantial risk to the defendant's physical or mental well-being or that local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of 40 hours of community service. If a minimum term of


imprisonment is suspended or deferred , the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person to be indigent, the minimum fine shall not be suspended or deferred.

**Section 3:** A new section is hereby enacted and added to the Bellingham Municipal Code, Section 10.08.080, as follows:

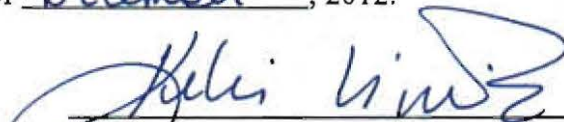
**10.08.080- Opening or Consuming Marijuana in a Public Place**

- A. It is unlawful to open a package containing marijuana or a marijuana-infused product, or to consume or use marijuana or a marijuana-infused product in a place which is open to the view of the general public.
- B. Every person who violates any provision of this section shall be guilty of a civil infraction.


**PASSED** by the Council this 10th day of December, 2012.

  
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Council President

**APPROVED** by me this 21st day of December, 2012.

  
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Mayor

**ATTEST:**   
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Finance Director

**APPROVED AS TO FORM:**  
  
\_\_\_\_\_  
Office of the City Attorney

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