

ORDINANCE NO. 2023-08-021

AN ORDINANCE OF THE CITY OF BELLINGHAM AMENDING BELLINGHAM MUNICIPAL CODE CHAPTER 10.08 TO ADOPT BY REFERENCE THE NEW STATE LAWS ADDRESSING THE POSSESSION AND PUBLIC USE OF CONTROLLED SUBSTANCES

WHEREAS, in all of 2022, there were 70 drug overdoses in Bellingham. In 2023, the number and rate of overdoses has increased significantly, with 260 drug overdoses in Bellingham from January 1, 2023 through July 9, 2023. The majority of these overdoses are attributed to fentanyl and methamphetamines; and

WHEREAS, drug use negatively impacts the public's sense of safety and harms and threatens neighborhoods throughout Bellingham; and

WHEREAS, drug use is associated with drug trafficking, gun violence, and property crimes, which the City is trying to address; and

WHEREAS, the State Legislature passed 2E2SSB 5536 in the 2023 special legislative session to address drug possession and public drug use; and

WHEREAS, 2E2SSB 5536 focuses on treatment and harm-reduction practices instead of traditional felony-level criminalization and incarceration; and

WHEREAS, 2E2SSB 5536 amends RCW 69.50.4013 to state that "[t]he prosecutor is encouraged to divert such cases for assessment, treatment, or other services;" and that "[i]n lieu of jail booking and referral to the prosecutor, law enforcement is encouraged to offer a referral to assessment and services available under RCW 10.31.110 or other program or entity responsible for receiving referrals in lieu of legal system involvement, which may include, but are not limited to, arrest and jail alternative programs established under RCW 36.28A.450, law enforcement assisted diversion programs established under RCW 8 71.24.589, and the recovery navigator program established under RCW 9 71.24.115;" and

WHEREAS, RCW 39.34.180 requires that the City be responsible for all misdemeanors and gross misdemeanors occurring in the City; and

WHEREAS, prohibiting drug use is beneficial for public health and safety and will help combat the current drug epidemic; and

WHEREAS, to enforce RCWs that codify 2E2SSB 5536 in the Bellingham Municipal Court, the City must adopt the RCWs by reference into the Bellingham Municipal Code.

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

SECTION 1. Bellingham Municipal Code (BMC) Section 10.08.005 is hereby amended as follows:

The following provisions of the Revised Code of Washington as presently constituted or hereinafter amended are adopted by reference:

RCW

66.04.010	Definitions
66.28.200	Keg Registration- Requirements of Seller
66.28.210	Keg Registration- Requirement of Purchaser
66.28.230	Keg Registration- Penalties
66.44.090	Acting without a license
66.44.175	Violations of law
66.44.180	General penalties—jurisdiction for violations
66.44.200	Sales to persons apparently under the influence of liquor
66.44.240	Drinking in public conveyance- Penalty against carrier
66.44.250	Drinking in public conveyance- Penalty against individual
66.44.270	Furnishing liquor to minors- Possession, use
66.44.290	Minors purchasing or attempting to purchase liquor
66.44.310	Minor frequenting off-limits area- Misrepresentation of age
69.41.010	Definitions
69.41.030	<u>Sale, delivery, or possession of legend drug without a prescription or order prohibited- Exceptions- Penalty</u>
69.50.101	Definitions
69.50.4011	Counterfeit substances- Penalties
69.50.4013	Possession of controlled substance- Penalty
69.50.412	Prohibited acts- E -Penalties
69.50.4121	Drug paraphernalia- Selling or giving- Penalty
69.50.509	Search and seizure of controlled substances
	<u>The section created by 2E2SSB 5536, Section 9</u>
	<u>The section created by 2E2SSB 5536, Section 10</u>
	<u>The section created by 2E2SSB 5536, Section 11</u>

SECTION 2. BMC Section 10.08.110 is hereby repealed in its entirety.

SECTION 3. BMC Section 10.08.010 is hereby amended to remove the following definitions:

~~“Controlled substance” means a drug, substance, or immediate precursor included in Schedules I through V as set forth in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210 and 69.50.212, but does not include hemp or industrial hemp as defined in RCW 15.140.020.—~~

“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.

"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.

"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 Title 66, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, 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.

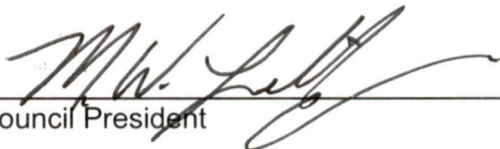
~~"Use" means any effort taken in furtherance of an attempt to inject, ingest, inhale or otherwise introduce a controlled substance into the human body.~~

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

SECTION 5. Upon approval by the city attorney, the city clerk or the code reviser are authorized to make necessary corrections to this ordinance, including scrivener's errors or clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or numbering or referencing of ordinances or their sections and subsections.

SECTION 6. Effective Date. This ordinance shall become effective fifteen days after the third and final reading of the ordinance.

PASSED by the Council this 7th day of August, 2023.




Council President

APPROVED by me this 10th day of August, 2023.



Mayor

ATTEST:


Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

Published:

August 11, 2023



Beaufort Gazette
Belleville News-Democrat
Bellingham Herald
Bradenton Herald
Centre Daily Times
Charlotte Observer
Columbus Ledger-Enquirer
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Attention: E-Tearsheet

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**City of Bellingham Ord.
#2023-08-02**

An Ordinance of the City of Bellingham Amending Bellingham Municipal Code Chapter 10.08 to Adopt by Reference the New State Laws Addressing the Possession and Public Use of Controlled Substances.

City of Bellingham Ord. #2023-08-022

An Ordinance Relating to Land Use Planning, Amending Bellingham Municipal Code (BMC) Titles 20 and 21 Regarding Accessory Dwelling Units (ADUs).
IPL0134858
Aug 11 2023

Stefani Beard, being duly sworn, deposes and says: That he/she is the Principal Clerk of The Bellingham Herald, a daily newspaper printed and published in Bellingham, Whatcom County, State of Washington, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of six months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in The Bellingham Herald, as amended, for:

1 insertion(s) published on:
08/11/23

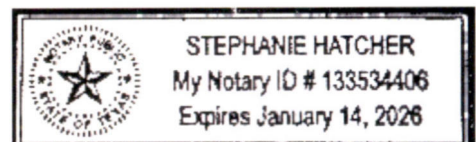
Stefani Beard

(Principal Clerk)

Subscribed and sworn on this 17th day of August in the year of 2023 before me, a Notary Public, personally appeared before me Stefani Beard known or identified to me to be the person whose name subscribed to the within instrument, and being by first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

Stephanie Hatcher

Notary Public in and for the state of Texas, residing in Dallas County



Extra charge for lost or duplicate affidavits.
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