

Project title: An Ordinance Relating to Illegal Drugs, amending Ordinance Nos. 1653-89 and 1145-85, as previously amended.

Council Bill # CB 2105-16*interoffice use***Agenda dates requested:**

5.26.21

Briefing

Proposed action

Consent

Action

Ordinance 5.26.21

Public hearing

Yes

No

Budget amendment:

Yes

No

PowerPoint presentation:

Yes

X

No

Attachments:

Ordinance

Department(s) involved:

Legal

Contact person:

Flora Diaz

Phone number:

425-257-8658

Email:FDiaz@everettwa.gov**Initialed by:**

Department head

Administration

Council President

Project: *Emergency Ordinance***Partner/Supplier :** *None***Location:****Preceding action:** *Ordinance***Fund:****Fiscal summary statement:**

None

Project summary statement:

This Ordinance is an emergency Ordinance, necessary for the immediate preservation of the public peace, health, or safety, and shall be effective immediately pursuant to Section 3.4 of the City Charter.

On May 13, 2021, the Governor signed Engrossed Senate Bill (ESB) 5476. Changing the State law by adding a "knowing" *mens rea* element to the crimes possession of a controlled substance, possession of a counterfeit controlled substance, possession of less than 40 grams of marijuana or of marijuana by someone under age 21, and possession of legend drugs. It also makes possession of a controlled substance and possession of a counterfeit controlled substance a misdemeanor instead of a felony.

The State law change also amended the types of drug paraphernalia which are criminal under the possession of drug paraphernalia statute.

Recommendation (exact action requested of Council):

Adopt an Ordinance Relating to Illegal Drugs, amending Ordinance Nos. 1653-89 and 1145-85, as previously amended.



ORDINANCE NO. _____

An Ordinance Relating to Illegal Drugs, amending Ordinance Nos. 1653-89 and 1145-85, as previously amended.

WHEREAS,

- A. On May 13, 2021, the Governor signed Engrossed Senate Bill (ESB) 5476. This State law change was partially in response to the February 25, 2021 Washington Supreme Court case of *State v. Blake*, which invalidated the State statute criminalizing the possession of a controlled substance without a prescription.
- B. The State law change includes adding a “knowing” *mens rea* element to the crimes possession of a controlled substance, possession of a counterfeit controlled substance, possession of less than 40 grams of marijuana or of marijuana by someone under age 21, and possession of legend drugs. It also makes possession of a controlled substance and possession of a counterfeit controlled substance a misdemeanor instead of a felony.
- C. The State law change also amended the definition of drug paraphernalia.
- D. The Everett City Council deems it appropriate for the City of Everett drug laws to be consistent with corresponding State law.
- E. These State law changes were adopted with an immediate effective date after emergency findings within the bill, stating in Section 26 of ESB 5476 those sections were “...necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.”
- F. This Ordinance is likewise an emergency Ordinance, necessary for the immediate preservation of the public peace, health, or safety, and shall be effective immediately pursuant to Section 3.4 of the City Charter.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Ordinance No. 1653-89, as amended, (codified at Chapter 10.35 EMC), is amended to add the following section (to be codified at EMC 10.35.011 and EMC 10.35.012):

EMC 10.35.011 Possession of Controlled Substance.

RCW 69.50.4013, as currently enacted or later amended, is hereby adopted by reference as if laid out in full herein.

EMC 10.35.012 Possession of Counterfeit Controlled Substance.

RCW 69.50.4011, as currently enacted or later amended, is hereby adopted by reference as if laid out in full herein.

Section 2. Section 107 of Ordinance No. 1145-85 (codified at EMC 10.36.010), is amended as follows, with strikeouts deleted and underlining added:

Definitions.

RCW 69.41.010, as currently enacted or later amended, is hereby adopted by reference as if laid out in full herein.

As used in this chapter:

- A. ~~“Deliver” or “delivery” means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.~~
- B. ~~“Dispense” means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.~~
- C. ~~“Dispenser” means a practitioner who dispenses.~~
- D. ~~“Drug” means:~~
 - 1. ~~Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;~~
 - 2. ~~Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;~~
 - 3. ~~Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of man or animals; and~~
 - 4. ~~Substances intended for use as a component of any article specified in subdivisions 1, 2 and 3 of this subsection. It does not include devices or their components, parts, or accessories.~~
- E. ~~“Legend drugs” means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.~~
- F. ~~“Practitioner” means:~~
 - 1. ~~A physician under RCW Chapter 18.71, an osteopathic physician or an osteopathic physician and surgeon under RCW Chapter 18.57, a dentist under RCW Chapter 18.32, a podiatrist under RCW Chapter 18.22, a veterinarian under RCW Chapter 18.92, a registered nurse under RCW Chapter 18.88, a licensed practical nurse under RCW Chapter 18.78, an osteopathic physician’s assistant under RCW Chapter 18.57A, or a physician’s assistant under RCW Chapter 18.71A, or a pharmacist under RCW Chapter 18.64;~~
 - 2. ~~A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend drug in the course of professional practice or research in this state; and~~
 - 3. ~~A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathy and surgery in any state, or province of Canada, which shares a common border with the state of Washington.~~

Section 3. Section 108 of Ordinance No. 1145-85 (codified at EMC 10.36.020), is amended as follows, with strikeouts deleted and underlining added:

Possession of Legend Drug Without Prescription or Order Prohibited—Exceptions

RCW 69.41.030, as currently enacted or later amended, is hereby adopted by reference as if



laid out in full herein.

~~A. It is unlawful for any person to knowingly possess any legend drug except upon the order or prescription of a physician under RCW Chapter 18.71, an osteopathic physician or an osteopathic physician and surgeon under RCW Chapter 18.57, a dentist under RCW Chapter 18.32, a podiatrist under RCW Chapter 18.22, a veterinarian under RCW Chapter 18.92, a commissioned medical or dental officer in the United States armed forces, marine hospital service, or public health service in the discharge of his official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his official duties, a registered nurse under RCW Chapter 18.88 when authorized by the board of nursing, an osteopathic physician's assistant under RCW Chapter 18.57A when authorized by the committee of osteopathic examiners, a physician's assistant under RCW Chapter 18.71A when authorized by the board of medical examiners, or a physician licensed to practice medicine and surgery or a physician licensed to practice osteopathy and surgery in any state or province of Canada which shares a common border with the state of Washington; provided, however, that the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment; provided, further, that nothing in this chapter or RCW 18.64 shall prevent a family planning clinic that is under contract with the department of social and health services from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners.~~

~~B. Any person who violates this section shall be guilty of a misdemeanor.~~

Section 4. Section 109 of Ordinance No. 1145-85 (codified at EMC 10.36.030), is amended as follows, with strikeouts deleted and underlining added:

Legend drug—Labeling requirements.

RCW 69.41.050, as currently enacted or later amended, is hereby adopted by reference as if laid out in full herein.

~~A. To every box, bottle, jar, tube or other container of a legend drug, which is dispensed by a practitioner authorized to prescribe legend drugs, there shall be affixed a label bearing the name of the prescriber, complete directions for use, the name of the drug either by the brand or generic name and strength per unit dose, name of patient and date; provided, that the practitioner may omit the name and dosage of the drug if he determines that his patient should not have this information and that, if the drug dispensed is a trial sample in its original package and which is labeled in accordance with federal law or regulation, there need be set forth additionally only the name of the issuing practitioner and the name of the patient.~~

~~B. Any person who violates this section shall be guilty of a misdemeanor.~~

Section 5. Section 2 of Ordinance No. 1653-89, as amended (codified at EMC 10.35.020), is amended as follows, with strikeouts deleted and underlining added:

Possession of drug paraphernalia.



RCW 69.50.412(1) and (5), as currently enacted or later amended, are hereby adopted by reference as if laid out in full herein.

~~A. It is unlawful for any person to use, or possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance other than marijuana. Any person who violates this section is guilty of a misdemeanor.~~

~~B. Nothing in subsection A of this section prohibits any person over the age of eighteen from possessing sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases.~~

Section 6. Section 3 of Ordinance No. 1653-89, as amended (codified at EMC 10.35.030), is amended as follows, with strikeouts deleted and underlining added:

Manufacture or delivery of drug paraphernalia.

RCW 69.50.412(2) and (5), as currently enacted or later amended, are hereby adopted by reference as if laid out in full herein.

~~A. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance other than marijuana. Any person who violates this section is guilty of a misdemeanor.~~

~~B. Nothing in subsection A of this section prohibits any person over the age of eighteen from possessing sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases.~~

Section 7. Section 4 of Ordinance No. 1653-89, as amended (codified at EMC 10.35.040), is amended as follows, with strikeouts deleted and underlining added:

Delivery of drug paraphernalia to a minor.

RCW 69.50.412(3) and (5), as currently enacted or later amended, are hereby adopted by reference as if laid out in full herein.

~~A. Any person eighteen years of age or over who violates Section 10.35.030 of this chapter by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his junior is guilty of a gross misdemeanor.~~

~~B. Nothing in subsection A of this section prohibits any person over the age of eighteen from possessing sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases.~~

Section 8. Section 5 of Ordinance No. 1653-89 (codified at EMC 10.35.050), is amended as follows, with strikeouts deleted and underlining added:

Advertisement of drug paraphernalia.

RCW 69.50.412(4) and (5), as currently enacted or later amended, are hereby adopted by reference as if laid out in full herein.

~~It is unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a misdemeanor. (Ord. 1653-89 §§ 5, 9, 1989.)~~

Section 9. Section 6 of Ordinance No. 1653-89, as amended (codified at EMC 10.35.060), is amended as follows, with strikeouts deleted and underlining added:

Possession of marijuana.

RCW 69.50.4013 and RCW 69.50.4014, as currently enacted or later amended, are hereby adopted by reference as if laid out in full herein.

- ~~A. Any person who possesses forty grams or less of marijuana shall be a guilty of a misdemeanor.~~
- ~~B. Subsection A of this section shall not apply to or affect the following: the possession, by a person twenty-one years of age or older, of useable marijuana or marijuana-infused products in amounts that do not exceed those set forth in subsection C of this section.~~
- ~~C. The amounts of useable marijuana or marijuana-infused products applicable to this section are:~~
 - ~~1. One ounce of useable marijuana;~~
 - ~~2. Sixteen ounces of marijuana-infused product in solid form;~~
 - ~~3. Seventy-two ounces of marijuana-infused product in liquid form.~~

Section 10. Emergency ordinance; effective date: This Ordinance is an emergency Ordinance, necessary for the immediate preservation of the public peace, health, or safety, and shall be effective immediately pursuant to Section 3.4 of the City Charter.

Section 11. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerkal errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 12. The City Council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 13. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which



may be in existence on the effective date of this Ordinance.

Section 14. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Cassie Franklin, Mayor

ATTEST:

Sharon Fuller, City Clerk

PASSED: _____

VALID: _____

PUBLISHED: _____

EFFECTIVE DATE: _____