

ORDINANCE NO. 782

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKEWOOD, PIERCE COUNTY, WASHINGTON, AMENDING LAKEWOOD MUNICIPAL CODE CHAPTER 9.06 RELATED TO CONTROLLED SUBSTANCES

WHEREAS, in *State v. Blake*, 197 W.2d 170 (2021), the Washington State Supreme Court found former RCW 69.50.4013, which made it a strict liability offense to possess a controlled substance in violation of the Uniform Controlled Substances Act, unconstitutional because the statute did not require proof that the offender knowingly possessed a controlled substance. Without proof of knowledge, the Court held the statute violated constitutional due process; and

WHEREAS, in response to *State v. Blake*, the state legislature adopted RCW 69.50.4013 during its 2021 legislative session, which provided a temporary correction to the law to make it unlawful for a person to knowingly possess a controlled substance. However, through this same legislation, the legislature enacted RCW 10.31.115, which prohibits law enforcement from arresting or citing someone for unlawful possession of a controlled substance until the offender has twice been “diverted” to voluntary social services; and

WHEREAS, the limitation imposed by RCW 10.31.115 has resulted in offenders openly using and possessing illegal drugs in public places, while simultaneously removing law enforcement’s ability to effectively remove the problem, all to the detriment of community members who face an increased risk of harm attributable to the adverse impacts associated with the use of illicit drugs in public; and

WHEREAS, while the use of cannabis and alcohol, both legal substances, is prohibited in public, there is no comparable state law that prohibits the use of illegal or controlled substances, like methamphetamine, heroin, and fentanyl, in public; and

WHEREAS, although state law does preempt the field of setting penalties for violations of the state’s Uniform Controlled Substances Act, Ch. 69.50 RCW, cities are authorized to enact local laws that are not inconsistent with that state law. Because the Uniform Controlled Substances Act does not expressly permit or otherwise protect the public use of controlled substances, the City is authorized to regulate or prohibit that use; and

WHEREAS, undeterred public use of illicit drugs in public places creates a perception that such behavior is acceptable and normalizes the illicit drug use particularly in the eyes of youth; and

WHEREAS, the City Council desires to act to keep the community safe, and the City Council desires to provide law enforcement and the prosecutor lawful ordinances to enforce to keep the community safe.

NOW THEREFORE, the City Council of the City of Lakewood, Washington hereby do ordain as follows:

Section 1. A new section, Section 9.06.090 of the Lakewood Municipal Code entitled

“Use of dangerous drugs in public,” is hereby created to read as follows:

9.06.090 Use of dangerous drugs in public.

A. It is unlawful for any person to intentionally use any dangerous drug in a public place, except as now or hereafter authorized or expressly permitted by the laws of the state or except upon the written or oral order or prescription of a physician, surgeon, dentist, or other medical professional licensed to practice medicine and legally authorized to prescribe controlled substances.

B. Definitions. For purposes of this section, the following terms or words shall be interpreted as follows:

1. “Dangerous drug” means any controlled substance classified in Schedule I, II, III or IV of Chapter 69.50 RCW, excluding cannabis, as it now exists or shall hereafter be added to, deleted from, modified, or amended.

2. “Public place” means an area generally visible to public view and includes without limitation any place where the public has a right of access, which includes without limitation sidewalks, parking lots and parking garages, streets, alleys, highways, or roads; public buildings and grounds, including schools, parks, playgrounds, libraries, and meeting halls; establishments to which the public is invited such as commercial businesses, including but not limited to, restaurants, theaters, stores, gas stations, meeting halls, lobbies, halls and dining rooms of hotels, bars, taverns, pubs, or establishments where beer or soft drinks may be sold, and their associated parking lots, parking structures, walkways, doorways, and entrances; railroad trains, light rail facilities, buses, transit facilities, and

other public conveyances of all kinds and character, and their associated stations and platforms used in conjunction therewith which are open to unrestricted use and access by the public; any lake or body of water where the public has access to or can take enjoyment in; and all other places of like or similar nature.

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

C. Unless another section expressly provides otherwise, any person who violates any provision of this section shall be guilty of a gross misdemeanor.

Section 2. A new section, Section 9.06.100 of Lakewood Municipal Code entitled “Unlawful deposit of dangerous drugs and drug paraphernalia,” is hereby created to read as follows:

9.06.090 Unlawful deposit of dangerous drugs and drug paraphernalia.

A. It shall be unlawful for any person to knowingly dump, throw, deposit, or discharge onto the ground or into any body of water any dangerous drug, as that term is defined in LMC 9.06.090(B)(1), or drug paraphernalia, as defined in RCW 69.50.102, as those referenced provisions are currently enacted or hereafter amended or recodified. Unless another section expressly provides otherwise, any person who violates any provision of this section shall be guilty of a gross misdemeanor.

Section 3. A new section, Section 9.06.110 of Lakewood Municipal Code entitled “Severability,” is created to read as follows:

9.06.100 Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

Section 4. This Ordinance shall take effect and be in force thirty (30) days from and after its passage, approval, and publication, as required by law.

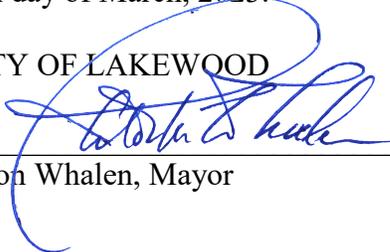
ADOPTED by the City Council this 20th day of March, 2023.

CITY OF LAKEWOOD

Attest:



Briana Schumacher, City Clerk



Jason Whalen, Mayor

Approved as to Form:



Heidi Ann Wachter, City Attorney