

CITY OF ALGONA, WASHINGTON

ORDINANCE NO. 1223-23

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALGONA, WASHINGTON, REPEALING AND REPLACING CHAPTER 9.12 AMC DANGEROUS DRUGS; REPEALING CHAPTER 9.16 AMC MARIJUANA; ADOPTING BY REFERENCE THE CURRENT WASHINGTON STATUTES GOVERNING CONTROLLED SUBSTANCES, INCLUDING WITHOUT LIMITATION RECENT STATUTORY AMENDMENTS ADDRESSING THE USE AND POSSESSION IN PUBLIC PLACES OF CONTROLLED SUBSTANCES, DRUG PARAPHERNALIA, DIVERSION AND SENTENCING; PROVIDING FOR SEVERABILITY; DECLARING A PUBLIC EMERGENCY; AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the City of Algona protects the public health, safety, and welfare through the adoption by reference and enforcement of numerous Washington criminal statutes, including without limitation applicable provisions of the Uniformed Controlled Substances Act (UCSA) codified at Chapter 69.50 RCW; and

WHEREAS, on February 25, 2021, the Washington Supreme Court issued its decision in *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), holding that RCW 69.50.4013(1), the Washington statute that criminalized the possession of a controlled substance without a prescription, exceeded the State's police power and violated the due process clauses of the Washington and United States Constitutions by creating a strict-liability felony offense; and

WHEREAS, on May 16, 2023, the Washington State Legislature passed, and Governor Inslee subsequently signed, Second Engrossed Second Substitute Senate Bill (2E2SSB) 5536, which permanently addresses the criminality of drug possession and use in Washington in the wake of the Washington Supreme Court's *State v. Blake* decision; and

WHEREAS, 2E2SSB 5536, the resulting session law for which has been encapsulated as Laws of 2023, Ch. 1, establishes a July 1, 2023 effective date for provisions of the legislation prohibiting knowing possession and knowing use in a public place of a controlled substance and a counterfeit substance; and

WHEREAS, the Algona City Council finds that it is in the interest of the public health, safety and welfare to provide the Algona Police Department with the ability, to the fullest extent of the law, to enforce the prohibitions against knowing possession and knowing public use of controlled and counterfeit substances contained in 2E2SSB 5536, by adopting by reference the pertinent provisions of 2E2SSB 5536 into the Algona Municipal Code (AMC);

WHEREAS, the Algona City Council further finds that in order to protect the public health, public safety, public property, and public peace, it is necessary that the amendments set forth herein be in effect and fully enforceable simultaneously with the above-referenced effective date of 2E2SSB 5536, and therefore that a public emergency exists requiring this ordinance to take effect immediately upon passage;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALGONA DO ORDAIN AS FOLLOWS:

Section 1. Repeal and Replacement of Chapter 9.12 AMC. Chapter 9.12 of the Algona Municipal Code is hereby repealed and replaced to provide in its entirety as contained in Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full.

Section 2. Repeal of Chapter 9.16 AMC. Chapter 9.16 of the Algona Municipal Code is hereby repealed in its entirety.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4. Declaration of Emergency; Effective Date. Based upon the findings set forth above, the City Council hereby declares a public emergency requiring this ordinance to take effect immediately. This ordinance shall accordingly be in full force

and effect immediately upon passage; provided, that the provisions of Section 1 and Section 2 hereof shall take effect on July 1, 2023, concurrently with the above-referenced effective date of 2E2SSB 5536. This ordinance or a summary thereof consisting of the title shall be published in the City's official newspaper.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF THIS
_____ DAY OF _____ 2023.

Troy Linnell, Mayor

ATTEST:

Jessica Griess, City Clerk

APPROVED AS TO FORM:

J. Zachary Lell
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.: XXXX-____
Date of Publication:

Exhibit A

Chapter 9.12 DANGEROUS DRUGS

Sections:

9.12.010 Adoption by reference of sections of state statute, Uniform Controlled Substances Act.

9.12.020 Violation of AMC 9.12.010—Penalty.

9.12.030 Adoption by reference of sections of state statute—Legend drugs.

9.12.040 Violation of AMC 9.12.030—Penalty.

9.12.010 Adoption by reference of sections of state statute, Uniform Controlled Substances Act.

The following sections of Chapter 69.50 RCW relating to drugs and other controlled substances, defining crimes and prescribing penalties, are adopted by this reference:

RCW 69.50.101, RCW 69.50.102, RCW 69.50.202, RCW 69.50.203, RCW 69.50.204, RCW 69.50.205, RCW 69.50.206, RCW 69.50.207, RCW 69.50.208, RCW 69.50.209, RCW 69.50.210, RCW 69.50.211, RCW 69.50.212, RCW 69.50.302, RCW 69.50.306, RCW 69.50.307, RCW 69.50.308, RCW 69.50.309, RCW 69.50.401, RCW 69.50.4011, RCW 69.50.4013, RCW 69.50.4014, RCW 69.50.4121, Laws of 2023, ch. 1, § 9,* Laws of 2023, ch. 1, § 10,* RCW 69.50.402, RCW 69.50.403, RCW 69.50.404, RCW 69.50.405, RCW 69.50.406, RCW 69.50.408, RCW 69.50.412, RCW 69.50.500, RCW 69.50.505, RCW 69.50.506, RCW 69.50.509 and RCW 69.50.601.

*As of the date of adoption of this ordinance, Laws of 2023, ch. 1, § 9 (diversion) and Laws of 2023, ch. 1, § 10 (sentencing) have not yet been assigned permanent Revised Code of Washington (RCW) section numbers by the Washington State Code Reviser. The City Clerk and Code Publisher are hereby authorized and directed to update and replace the session law citations set forth in this ordinance with the applicable corresponding RCW section numbers after they have been assigned by the Washington State Code Reviser.

9.12.020 Violation of AMC 9.12.010—Penalty.

Any person convicted under this chapter of violation of any of the provisions adopted in AMC 9.20.010 is guilty of a crime and subject to penalties as prescribed by state law.

9.12.030 Adoption by reference of sections of state statute—Legend Drugs.

The following sections of Chapter 69.41 RCW relating to drugs and other controlled substances, defining crimes and prescribing penalties, are adopted by this reference:

RCW 69.41.010, RCW 69.41.030, RCW 69.41.050, RCW 69.41.300, RCW 69.41.320, and RCW 69.41.350.

9.12.040 Violation of AMC 9.12.030—Penalty.

Any person convicted under this chapter of violation of any of the provisions adopted in AMC 9.20.030 is guilty of a crime and subject to penalties as prescribed by state law.