

## **DRAFT MODEL CONTROLLED SUBSTANCE POSSESSION LAW**

### **New Section in Skagit County Code, Chapter 9**

#### **9.xx.010 Definitions**

(1) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or commission rules, but does not include hemp or industrial hemp as defined in RCW 15.140.020.

(2) "Drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance.

(3) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, 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 to have 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.

#### **9.XX.020 Unlawful Possession or Use of a Controlled Substance.**

(1) It is unlawful for any person to knowingly possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of their professional practice, or except as otherwise authorized by this chapter.

(2) It is unlawful for any individual to knowingly use a controlled substance in a public place. Use of a controlled substance includes, but is not limited to, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance.

(2) Except as provided within this Chapter, any person who violates this section is guilty of a gross misdemeanor subject to the penalties of 9.XX.050.

#### **9.XX.030 Drug Paraphernalia**

(1) It is unlawful for any individual to knowingly use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, or prepare a controlled substance other than cannabis.

(2) 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, or prepare a controlled substance other than cannabis.

(3) Any person eighteen years of age or over who violates this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years their junior is guilty of a gross misdemeanor.

(4) 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 subsection is guilty of a misdemeanor.

(5) Except as provided within this Chapter, any person who violates this section is guilty of a gross misdemeanor subject to the penalties of 9.XX.050.

#### **9.XX.040 Possession of Cannabis**

(1) The knowing possession, by a person twenty-one years of age or older, of useable cannabis, cannabis concentrates, or cannabis-infused products in amounts that do not exceed those set forth in RCW 69.50.360(3) is not a violation of this section, this chapter, or any other provision of the Skagit County Code.

(2) The knowing possession of cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products being physically transported or delivered within the state, in amounts not exceeding those that may be established under RCW 69.50.385(3), by a licensed employee of a common carrier when performing the duties authorized in accordance with RCW 69.50.382 and 69.50.385, is not a violation of this section, this chapter, or any other provision of Washington state law.

(3)(a) The delivery by a person twenty-one years of age or older to one or more persons twenty-one years of age or older, during a single twenty-four hour period, for noncommercial purposes and not conditioned upon or done in connection with the provision or receipt of financial consideration, of any of the following cannabis products, is not a violation of this section, this chapter, or any other provision of the Skagit County Code:

- (i) One-half ounce of useable cannabis;
- (ii) Eight ounces of cannabis-infused product in solid form;
- (iii) Thirty-six ounces of cannabis-infused product in liquid form; or
- (iv) Three and one-half grams of cannabis concentrates.

(b) The act of delivering cannabis or a cannabis product as authorized under this subsection must meet one of the following requirements:

- (i) The delivery must be done in a location outside of the view of general public and in a nonpublic place; or
- (ii) The cannabis or cannabis product must be in the original packaging as purchased from the cannabis retailer.

(4) The knowing possession by a qualifying patient or designated provider of cannabis concentrates, useable cannabis, cannabis-infused products, or plants in accordance with chapter 69.51A RCW is not a violation of this section, this chapter, or any other provision of the Skagit County Code.

### **9.XX.050 Possession of Marijuana Under Twenty-One**

(1) No person under twenty-one years of age may knowingly possess, manufacture, sell, or distribute cannabis, cannabis-infused products, or cannabis concentrates, regardless of THC concentration. This does not include qualifying patients with a valid authorization as defined in this chapter.

(2) Except as provided within this Chapter, any person who violates this section is guilty of a misdemeanor subject to the penalties of 9.XX.060.

### **9.XX.060 Penalties**

(1)(a) Any person violating 9.XX.020 or 9.XX.030 or any provision thereof shall be deemed guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars (\$5,000.00) or imprisonment in the County Jail for not more than one (1) year or both such fine and imprisonment. There shall be a mandatory prohibition condition on the use or possession of alcohol, marijuana, or non-prescribed controlled substance during any period of probation.

(b) Subject to the provision of 9.xx.070, any person violating 9.XX.020 shall be subject to the following mandatory penalties:

(c) Upon a first conviction shall be subject to a minimum fourteen (14) days in-custody, a minimum term of probation of twelve (12) months, and any other mandatory penalties as prescribed within this Chapter.

(d) Upon a second or subsequent conviction shall be subject to a minimum thirty (30) days in-custody, a minimum term of probation of twenty-four (24) months, and any other mandatory penalties as prescribed within this Chapter.

(2) Any person violation 9.XX.050 or any provision thereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars (\$5,000.00) or imprisonment in the County Jail for not more than one (1) year or both such fine and imprisonment. There shall be a mandatory prohibition condition on the use or possession of alcohol, marijuana, or non-prescribed controlled substance during any period of probation.

(3)(a) A sentence for a person violating 9.XX.020, 9.XX.030, or 9.XX.050 shall include a chemical dependency evaluation and any recommended treatment from a licensed treatment provider.

(b) An individual who fails to get a chemical dependency evaluation within sixty (60) days of sentencing shall be subject to a mandatory probation sanction of ten (10) days in-custody.

(c) An individual who fails to successfully complete chemical dependency treatment by thirty (30) days prior to the end of their probationary period shall be subject to a mandatory probation sanction of thirty (30) days.

(i) The mandatory probationary sanction shall not apply to any individual who has had no violations of probation, has been in full compliance with chemical dependency treatment, and whose probationary period expires prior to the anticipated completion date of their chemical dependency treatment.

(4) An individual convicted of violating 9.XX.020, 9.XX.030, or 9.XX.050 and while on probation is found on probable cause to have consumed alcohol or used a controlled substance or committed a new

alcohol or controlled substance related offense within this State shall be subject to a mandatory probation sanction of thirty (30) days.

(5) The court may impose other interim probation sanctions for failure to comply with probation.

#### **9.XX.070 Diversion Option**

(1) Prior to an individual charged with violating 9.XX.020, 9.XX.030, or 9.XX.050 entering a plea of guilty or being found guilty following a trial, they may enter into a diversion program supervised by the probation department upon written consent of the prosecuting authority.

(2) To enter a diversion program, an individual must agree in writing to the following terms and conditions:

(a) An acknowledgment of their rights;

(b) an acknowledgment and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in their defense, and the right to a jury trial;

(c) a stipulation to the admissibility and sufficiency of the facts contained in the written police report to support a finding of guilty; and

(d) an acknowledgment that the statement will be entered and used to support a finding of guilty if the court finds cause to revoke the order granting diversion; and

(3) Prior to entering a defendant into a diversion under this section, the court shall provide the defendant and the defendant's counsel with the following information:

(a) A full description of the procedures for diversion;

(b) A general explanation of the roles and authority of the probation department, the prosecuting attorney, arrest and jail alternative program or , and the court in the process;

(c) A clear statement that upon the defendant's successful completion of diversion, as specified in subsection (5) of this section, and motion of the defendant, prosecuting attorney, court, or probation department, the court must dismiss the charge or charges against the defendant;

(d) A clear statement that if the defendant has not made substantial progress with treatment or services provided that are appropriate to the defendant's circumstances or, if applicable, community service, the prosecuting attorney may make a motion to terminate diversion and schedule further proceedings;

(e) An explanation of criminal record retention and disposition resulting from participation in diversion and the defendant's rights relative to answering questions about their arrest and diversion following successful completion; and

(f) A clear statement that under federal law it is unlawful for any person who is an unlawful user of or addicted to any controlled substance to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition, or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(4) Upon defendant acknowledging and waiving any rights as specific in subsection (2) of this section and being advised by the court of their rights as specified in subsection (3) of this statute, the court shall enter the defendant into the diversion program. The admission to the diversion program requires approval of the prosecuting authority of the jurisdiction where the crime is charged.

(a) A defendant who has entered a diversion program shall not be subject to any mandatory minimum jail sentence as prescribed in this chapter, unless they do not successfully complete the terms of diversion.

(b) The court may impose interim sanctions on defendants in the diversion program for not following the conditions as set forth in their diversion agreement.

(i) Any interim sanctions shall not qualify as credit towards any mandatory minimum sentence if the defendant does not successfully complete diversion.

(5) For a defendant to successfully complete diversion they must complete the following:

(a) A chemical dependency evaluation from a Washington State approved provider;

(b) Any recommended chemical dependency treatment or services, to include at a minimum intensive outpatient treatment or services;

(c) Having 12 months of substantial compliance with the assessment and recommended treatment or services and progress toward recovery goals as reflected by written status updates or by successfully completing the recommended treatment or services, whichever occurs first; or

(d) If the chemical dependency evaluation did not include a recommendation at a minimum for intensive outpatient treatment for treatment or services, the defendant successfully completes diversion by completing alcohol and drug information school and community service as described in subsection (6) of this section and submitting proof of completion to the court.

(6) If the chemical dependency evaluation recommends treatment or services less than intensive outpatient treatment, the defendant must instead complete, at a minimum, alcohol and drug information school and an amount of community service as determined by the court, not to exceed 120 hours of community service, in order to complete diversion.

(7) Upon successfully completion of diversion, the case shall be dismissed with prejudice with no penalties imposed.

(8) An individual who has participated in a diversion program may enter a second or subsequent diversion program for new charges, provided that the charges arose after completion of the previous diversion program.

(a) A defendant who is already participating in a diversion program may be terminated and sentenced accordingly if they are charged with a new crime with a finding of probable cause and after the ability to have a hearing under this chapter.

(i) If an individual is discharged from a diversion program under this subsection, they may enter diversion on the new charge under this chapter.

**CITY OF STANWOOD  
WASHINGTON**

**ORDINANCE NO. 1516**

**AN ORDINANCE OF THE CITY OF STANWOOD, WASHINGTON, AMENDING STANWOOD MUNICIPAL CODE (SMC) TITLE 9, PUBLIC PEACE, SAFETY AND WELFARE, AND SMC TITLE 5, BUSINESS LICENSES AND REGULATIONS, AND CREATING A NEW SMC TITLE 6, PARKS AND PUBLIC PLACES, AND ESTABLISHING SEVERABILITY AND AN EFFECTIVE DATE.**

WHEREAS, the City of Stanwood has begun a process to comprehensively update its municipal code to conform to current law and practice; and

WHEREAS, the purpose of this code amendment is to eliminate conflicts, improve clarity and overall function of the municipal code, and reflect current city and best practices; and

WHEREAS, amendments to Title 9, Public Peace, Safety and Welfare include deleting existing Title 9 in its entirety and adopting new provisions that contain the laws and regulations enforced by the Stanwood Police Department, including but not limited to: Anticipatory Offenses, Offenses against Persons, Property, Public Morals, Public Order, Juveniles, Domestic Violence Violations, and Substance Abuse, Trespass, Fireworks and Park Rules; and

WHEREAS, the amendment updates the code to be more consistent with contemporary language and terms; and

WHEREAS RCW 35A.11.020 authorizes the City of Stanwood to create misdemeanors and gross misdemeanors, but requires the punishment for any criminal ordinance to be the same as the punishment provided in state law for the same crime; and

WHEREAS adoption of state misdemeanors and gross misdemeanors by reference harmonizes local offenses with statewide laws and avoids potential state preemption; and

WHEREAS persons using controlled substances can become addicted to such substances resulting in negative physical and mental health consequences and damage to family and personal relationships; and

WHEREAS the use of controlled substances without a prescription and the supervision of a medical professional can result in physical injury or death and exacerbates mental health conditions, is more likely to result in addiction, and is correlated with criminal behavior; and

WHEREAS the City has taken steps to address these problems through teaming police officers with social workers and mental health professionals and the municipal court's therapeutic Community Court Program; and

WHEREAS state law now requires that persons subject to arrest for possession of a controlled substance be referred to assessment and services in lieu of arrest at least twice before he or she may be arrested; and

WHEREAS prior to 2021, former RCW 69.50.4013 made possession of a controlled substance in violation of the Uniform Controlled Substances Act a felony; and

WHEREAS in *State v. Blake*, 197 W.2d 170 (2021), the Washington State Supreme Court found former RCW 69.50.4013 unconstitutional because the felony statute did not include a *mens rea* element, i.e., a requirement that the defendant knowingly possessed the controlled substance; and

WHEREAS in response to Blake, the State Legislature adopted RCW 69.50.4013 during its 2021 legislative session, which temporarily amended the law to add a knowledge requirement, make possession a misdemeanor rather than a felony, and via RCW 10.31.115, require law enforcement to twice refer offenders to voluntary drug treatment before from arresting or charging someone for unlawful possession of a controlled substance; and

WHEREAS the state referral requirement has resulted in increased use of controlled substances in public; and

WHEREAS no state law addresses the use of controlled substances in public; and

WHEREAS RCW 69.50.4013, making drug possession a misdemeanor, is set to expire July 1;

WHEREAS the State Legislature has adjourned its 2023 session without taking action to extend the drug possession statute, RCW 69.50.4013;

WHEREAS RCW 69.50.608 declares that the State of Washington fully occupies and preempts the entire field of setting penalties for violations of the Uniform Controlled Substances Act, and allows cities to enact laws only if consistent with RCW chapter 69.50 and requires the same penalties as provided by state law; and

WHEREAS the use of controlled substances in public increases public disorder, negatively affects children and youth, and normalizes the use of controlled substances without a prescription; and

WHEREAS prohibiting the possession of controlled substances, and the use of controlled substances in public, will enhance public health and safety; and

WHEREAS the City also desires to minimize the public health and safety risks posed by discarded needles and other drug paraphernalia; and

WHEREAS some edits to the fireworks chapter of Title 5 are required to migrate relevant offenses to Title 9; and

WHEREAS Parks regulations are generally punished only by civil infractions and should properly be organized in a new title for Parks and Public Places; and

WHEREAS, the City of Stanwood SEPA Responsible Official has reviewed the proposed amendments to the Stanwood Municipal Code, determined that the amendments are categorically exempt from SEPA, and memorialized those conclusions under file number 230040; and

WHEREAS, the Stanwood Advisory Group reviewed the ordinance scoping memo and draft ordinance at their January 18, 2023 and March 15, 2023 meetings respectively, and has recommended that the City Council adopt the ordinance as presented; and

WHEREAS, the Stanwood Planning Commission reviewed the ordinance scoping memo and draft ordinance at their February 13, 2023 and March 13, 2023 meetings respectively and has recommended that the City Council adopt the ordinance as presented; and

WHEREAS, the Stanwood Council Community Development Committee reviewed the ordinance scoping memo and draft ordinance at their February 2, 2023 and March 2, 2023 meetings respectively, and has recommended that the City Council adopt the ordinance as presented; and

WHEREAS, the City Council held a public meeting and first reading of the draft code amendment on May 11, 2023, a second reading on May 25, 2023, and accepted public comment; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF STANWOOD, WASHINGTON, DOES ORDAIN AS FOLLOWS:**

**Section 1.** Stanwood Municipal Code Title 6, Parks and Public Places, is created to read as shown in Exhibit A.

**Section 2.** Stanwood Municipal Code Title 9, Public Peace, Morals and Safety, is repealed in its entirety and replaced with the new Title 9, Public Peace, Safety, and Welfare shown in Exhibit B attached to this ordinance and incorporated herein by reference as if set forth in full.

**Section 3.** Stanwood Municipal Code Sections 5.04.050, License Required and 5.04.060, Sale Purchase, Use and Discharge Dates and House, is repealed.

**Section 4.** Severability. The various parts, sections and clauses of this ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

**Section 5.** Authority to Make Necessary Corrections. 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 clerical errors, references, ordinance numbers, section/subsection numbers and any references thereto.

**Section 6.** Effective Date. This Ordinance shall take effect five days after its passage and publication as required by law.

PASSED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF STANWOOD:



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Sid Roberts, Mayor

Attest:

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Lisa Sokolik, City Clerk

Approved as to Form:

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Nikki Thompson, City Attorney

Date of Publication: \_\_\_\_\_

Effective Date: \_\_\_\_\_

# EXHIBIT A

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## Title 6 Parks and Public Places

### Chapter 6.40 Park Usage

**i** Based on existing SMC 9.40 regarding park regulations.

#### 6.40.010 Applicability

This chapter applies to all parks owned and operated by the City of Stanwood.

#### 6.40.020 Definitions


"Director" means the director of Public Works or the director's designee.


"Park" means any park owned or operated by the City of Stanwood.

#### 6.40.030 Use of Parks


Consistent with SMC Chapter 9.50, use of city parks is conditioned upon compliance with the rules in this chapter and SMC 9.50.040.

## 6.40.040 General Rules


 This chapter organizes types of rules by subject and class of civil infraction. Each section has a single class of infraction for violations. If you want to prescribe a different class of infraction for a violation, let's move that rule to its own section.

 For reference, each class of infraction is set by statute and also includes substantial statutory assessments:


- class 1: \$250
- class 2: \$125
- class 3: \$50
- class 4: \$25

 The rules that follow are based on existing SMC 9.40.010.


(1) Within the boundaries of any park owned or operated by the City of Stanwood, it is unlawful to:

 Options include fixed hours, dusk till dawn, or the text below (sunset + 1 hour and sunrise - 1 hour). Police Chief prefers a construction that allows seasonal flexibility. Deleted "camp or remain overnight," as it is included in the hourly prohibition.

- (a) be present in any park, or park any vehicle in any park, between one hour after sunset and one hour before sunrise except with written permission of the Director;
- (b) possess or consume any alcoholic beverage except within a permitted beer garden;
- (c) permit any dog to be off-leash except in designated off-leash areas;
- (d) knowingly causes a horse to be upon park premises;
- (e) operate, stop, park, or leave a motor vehicle, including any motorcycle or motor-driven cycle, any place in the park, except on a driveway or parking area;
- (f) engages in the sale of any merchandise or services, or operate any concession, without authorization from a special event permit issued under Chapter 5.06 SMC or a temporary use permit issued under SMC Title 17;

 Deleted "engage in any disorderly conduct proscribed by a city ordinance" because that is now covered by SMC 9.50.

(g) use park facilities without paying any applicable user fee adopted by city council resolution.

 Existing SMC 9.40.040 Violations uses the Class B infraction system defined in existing SMC Title 13 that we propose to eliminate. Converting the Class B infraction to a Class 3 civil infraction would carry the same \$50 penalty, plus statutory assessments.

(2) A violation of this section is a class 3 civil infraction.

## 6.40.050 Speed Limits

- (1) The Director may set speed limits for roads, paths, and parking lots in City parks applicable to all vehicles.
- (2) It is unlawful to operate any vehicle, including any bicycle, in excess of the posted speed limits.

(3) A violation of this section is a class 3 civil infraction.

#### **6.40.060 Closed Areas**

(1) The Director may close any section of a park at any time by posting notice in the closed section.

(2) It is unlawful for a person to enter or remain in a closed section of a park without written permission from the Director.

(3) A violation of this section is a class 3 civil infraction.

#### **6.40.070 Smoking and Vaping.**

(1) It is unlawful to smoke within any city park.

(2) It is unlawful to vape or carry any active vaping device within any city park.

(3) A violation of this section is a class 4 civil infraction.

#### **6.40.080 Damage to Parks and Park Facilities**

(1) It is unlawful to:

(a) build any fire within the park except in a designated area;

(b) cut, remove, or damage any flower, tree, shrub, or other landscaping;

(c) mutilate, deface, injure, damage, or molest any building installation, personal property, or equipment;  
or

(d) scatters any litter, including broken glass, waste or discarded paper or waste of any kind, in the park, except in receptacles provided for that purpose.

(2) A violation of this section is a class 1 civil infraction.

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## Title 9 Public Peace, Safety, and Welfare

- i** This title is based on the existing SMC Title 9, Public Peace, Morals, and Safety.
- i** We have slightly renamed this title to be more consistent with contemporary language and other jurisdictions’ codes. Other jurisdictions frequently name this title their “Criminal Code” or “Penal Code” however we disfavor that because other code chapters will likely also include criminal provisions.
- i** This title is intended for general criminal provisions. Other provisions through the SMC may also include criminal penalties (e.g., traffic regulations in Title 10, health/sanitation in Title 7, animals in Title 8).
- i** Many existing chapters of SMC Title 9 have been reorganized into the new chapter structure. See the December 2022 scoping memo for details.
- i** Generally, this title seeks to incorporate by reference criminal state law provisions and avoid re-inventing the wheel in description of offenses.
- i** Why is it important to locally adopt these laws? Because RCW 3.50.100 provides that fees imposed by municipal court for the violation of any municipal ordinances are deposited in the city's general fund.

**U** The City attorney has recommended that existing chapter 9.50 Public Nuisance and Disturbance Noises be moved to Title 7, Health and Sanitation. Noise is frequently characterized as a health issue, so it may make sense to place it in Title 7, but noise also certainly disturbs the peace, and could be left in Title 9, which is also a common practice. We need a decision on organization of this chapter soon because the readoption of Title 9 as constructed below will replace chapter 9.50.

### Chapter 9.02 General Provisions

- i** This is a new chapter for some important universal provisions.

#### 9.02.010 Applicability

This chapter applies to the entirety of SMC Title 9.

### **9.02.020 Definitions**

The provisions of RCW 9A.04.110 Definitions as presently constituted or hereinafter amended are adopted by reference.

### **9.02.030 General Provisions**

- (1) The provision of a criminal penalty for any unlawful act does not preclude the City's use of civil remedies.
- (2) Where not otherwise specified, a violation of the Stanwood Municipal Code that is categorized as a crime is to be considered a misdemeanor.

**i** The following subsection replaces existing SMC Chapter 9.25 Emergency Response Cost Recovery and increases the recovery amount from \$1000 to \$2500.

- (3) It is the policy of the City of Stanwood to exercise the provisions of RCW 38.52.430 to recover the expenses of emergency response where that response is related to a person's intoxication by drugs or alcohol.

### **9.02.040 Adoption by reference**

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

- RCW 9.01.110 Omission, when not punishable.
- RCW 9A.04.060 Common law to supplement statutes.
- RCW 9A.04.070 Who amenable to criminal statutes.
- RCW 9A.04.090 Application of general provisions of code.

### **9.02.050 Restitution**

The municipal court may require any defendant convicted under this code, or any person subject to a civil infraction per RCW 7.80.120, to make restitution.

### **9.02.060 Severability**

If any section, sentence, clause, or phrase of this title is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality may not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this title.

## **Chapter 9.08 Anticipatory Offenses**

**i** The following adopted sections make any attempt, solicitation, and conspiracy for all Class C felonies prosecutable by the City as gross misdemeanors.

### **9.08.010 Adoption by reference**

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

- RCW 9A.28.020 Criminal attempt.
- RCW 9A.28.030 Criminal solicitation.
- RCW 9A.28.040 Criminal conspiracy.

## Chapter 9.10 Offenses against Persons

**i** This chapter replaces existing SMC 9.04 Assault and most of existing SMC 9.20 Disorderly Conduct.

### 9.10.010 Adoption by reference

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

RCW 9.61.230 Telephone harassment.

RCW 9.61.240 Telephone harassment - Permitting telephone to be used.

RCW 9.61.250 Telephone harassment - Offense, where committed.

RCW 9A.36.041 Assault in the fourth degree.

RCW 9A.36.050 Reckless endangerment.

RCW 9A.36.070 Coercion.

RCW 9A.36.160 Failing to summon assistance.

RCW 9A.36.161 Failing to summon assistance—Penalty.

RCW 9A.44.010 Definitions.

RCW 9A.44.115 Voyeurism.

RCW 9A.44.170 Custodial sexual misconduct in the second degree.

RCW 9A.46.020 Definition—Penalties.

RCW 9A.46.030 Place where committed.

RCW 9A.46.040 Court ordered requirements upon person charged with crime – Violation.

RCW 9A.46.080 Order restricting contact – Violation.

RCW 9A.46.110 Stalking.

RCW 9A.49.030 Unlawful discharge of a laser in the second degree.

RCW 9A.86.010 Disclosing intimate images.

RCW 9A.90.120 Cyber harassment.

RCW 9A.90.130 Cyberstalking.



## Chapter 9.12 Offenses against Property

**i** This chapter replaces existing SMC 9.12 Crimes Against Property.

### 9.12.010 Adoption by reference

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

RCW 9A.48.010 Definitions.

RCW 9A.48.050 Reckless burning in the second degree.

RCW 9A.48.060 Reckless burning – Defense.

RCW 9A.48.090 Malicious mischief in the third degree.

RCW 9A.48.100 Malicious mischief - "Physical damage" defined.

RCW 9A.48.105 Criminal street gang tagging and graffiti.

RCW 9A.52.010 Definitions.

RCW 9A.52.060 Making or having burglar tools.

RCW 9A.52.070 Criminal trespass in the first degree.

RCW 9A.52.080 Criminal trespass in the second degree.

RCW 9A.52.090 Criminal trespass – Defenses.

RCW 9A.52.100 Vehicle prowling in the second degree.

RCW 9A.52.105 Removal of unauthorized persons - Declaration - Liability - Rights.

RCW 9A.52.115 Removal of unauthorized persons - Declaration form - Penalty for false swearing.

RCW 9A.56.010 Definitions.

RCW 9A.56.020 Theft - Definition, defense.

RCW 9A.56.050 Theft in the third degree.

RCW 9A.56.060 Unlawful issuance of checks or drafts.

RCW 9A.56.063 Making or possessing motor vehicle theft tools.

RCW 9A.56.096 Theft of rental, leased, lease-purchase, or loaned property.

RCW 9A.56.140 Possessing stolen property - Definition - Presumption.

RCW 9A.56.170 Possessing stolen property in the third degree.

RCW 9A.56.180 Obscuring the identity of a machine.

RCW 9A.56.220 Theft of subscription services.

RCW 9A.56.240 Forfeiture and disposal of device used to commit violation.

RCW 9A.56.270 Shopping cart theft.

RCW 9A.56.330 Possession of another's identification.

RCW 9A.56.410 Metal property deception.

RCW 9A.61.010 Definitions.

RCW 9A.61.020 Defrauding a public utility.

RCW 9A.61.050 Defrauding a public utility in the third degree.

RCW 9A.61.060 Restitution and costs.

RCW 9A.90.030 Definitions.

RCW 9A.90.50 Computer trespass in the second degree.

RCW 9A.90.070 Spoofing.

RCW 9A.90.090 Electronic data tampering in the second degree.

**i** The following section addresses catalytic converter theft.

RCW 19.290.010 Definitions.

RCW 19.290.100 Scrap metal license—Penalties.

## Chapter 9.14 Offenses against Public Morals

**i** This chapter replaces existing AMC 9.28 Houses of Prostitution.

### 9.14.010 Adoption by reference

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

RCW 9A.42.010 Definitions.

RCW 9A.42.035 Criminal mistreatment third degree.

RCW 9A.42.037 Criminal mistreatment fourth degree.

RCW 9A.42.039 Arresting officer, notification by.

RCW 9A.42.050 Defense of financial inability.

RCW 9A.42.080 Abandonment of a dependent person in the third degree - Exception.

RCW 9A.42.090 Abandonment of a dependent person - Defense.

RCW 9A.42.110 Leaving a child in the care of a sex offender.

RCW 9A.44.130 Registration of sex offender.

RCW 9A.44.132 Failure to register as a sex offender or kidnapping offender – Refusal to provide DNA.

RCW 9A.88.010 Indecent exposure.

RCW 9A.88.030 Prostitution.

RCW 9A.88.040 Prosecution for prostitution under RCW 9A.88.030 - Affirmative defense.

RCW 9A.88.050 Prostitution - Sex of parties immaterial - No defense.

RCW 9A.88.090 Permitting prostitution.

RCW 9A.88.110 Patronizing a prostitute.

RCW 66.44.090 Acting without a license.

RCW 66.44.100 Opening or consuming liquor in public place —Penalty.

RCW 66.44.130 Sales of liquor by drink or bottle.

RCW 66.44.150 Buying liquor illegally.

RCW 66.44.180 General penalties —Jurisdiction for violations.

RCW 66.44.270 Furnishing liquor to minors.

RCW 66.44.290 Minor purchasing or attempting to purchase liquor - Penalty.

RCW 66.44.325 Unlawful transfer to minor of age identification.

RCW 66.44.328 Preparation or acquisition and supply to persons under age twenty-one of facsimile of official identification card - Penalty.

RCW 66.44.380 Powdered alcohol.

## Chapter 9.16 Offenses against Public Order

### 9.16.010 Adoption by reference

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

RCW 9.41.010 Definitions.

RCW 9.41.050 Carrying firearms.

RCW 9.41.060 Exceptions to restrictions on carrying firearms.

RCW 9.41.250 Dangerous weapons - Penalty.

**i** Note the following RCW requires the City to post signs providing notice of the restriction on possession of firearms.

RCW 9.41.305 Open carry of weapons prohibited on state capitol grounds and municipal buildings.

RCW 9.40.100 Tampering with fire alarm or firefighting equipment.

RCW 9A.50.020 Interfering with access to health care.

RCW 9A.60.045 Criminal impersonation in the second degree.

RCW 9A.60.050 False certification.

RCW 9A.72.040 False Swearing.

RCW 9A.72.060 Perjury and False Swearing - Retraction.

RCW 9A.72.150 Tampering with physical evidence.

RCW 9A.76.020 Obstructing a law enforcement officer.

RCW 9A.76.030 Refusing to summon aid for a peace officer.

RCW 9A.76.040 Resisting arrest.

RCW 9A.76.050 Rendering criminal assistance - Definition of term.

RCW 9A.76.060 Relative defined.

RCW 9A.76.080 Rendering criminal assistance in the second degree.

RCW 9A.76.090 Rendering criminal assistance in the third degree.

RCW 9A.76.100 Compounding.

RCW 9A.76.130 Escape.

RCW 9A.76.160 Introducing contraband in the third degree.

RCW 9A.76.170 Bail jumping.

RCW 9A.76.175 Making a false or misleading statement to a public servant.

RCW 9A.76.190 Failure to appear or surrender - Affirmative defense - Penalty.

RCW 9A.84.010 Criminal mischief.

RCW 9A.84.020 Failure to disperse.

RCW 9A.84.030 Disorderly conduct.

RCW 9A.84.040 False reporting.

### **9.16.020 Aiming or discharging weapons.**

**i** This section replaces SMC 9.20.110, Discharge of Firearms, and is expanded to include additional weapons and aiming such weapons, and removes regulation of fireworks (which is handled elsewhere).

(1) It is unlawful for any person to:

(a) aim any firearm, whether loaded or not, at or toward any human being;

(b) willfully discharge any firearm;

(c) willfully discharge an air gun, bow and arrow, sling shot, or like weapon in any place where persons or property might be unreasonably endangered thereby, whether or not injury or damage results.

- (2) This section does not apply to:
- (a) police officers while in the discharge of their lawful duties;
  - (b) persons exercising the right specified in RCW 9A.16.020;
  - (c) persons continuing with best farm management practices currently in existence, including, but not limited to, the slaughtering or humane destruction of livestock or wildlife, or the hazing of wildlife or wildfowl in conformance with the requirements of the Washington State Fish and Wildlife Department, the U.S. Department of Agriculture, and the United States Fish and Wildlife Service;
  - (d) persons discharging firearms loaded with blank cartridges for signal or ceremonial purposes in any athletic or sports event, recognized public event, any public ceremonial functions such as military funeral salutes, or by any memorial or military organizations or service groups for ceremonial purposes.
- (3) A violation of this section is a misdemeanor.

#### **9.16.040 Pedestrian Interference.**

- (1) It is unlawful to, in a public place:
- (a) obstruct pedestrian traffic; or
  - (b) aggressively beg.
- (2) Definitions. The following definitions apply to this section:
- (a) "Aggressively begs" means to beg with intent to intimidate another person into giving money or goods.
  - (b) "Beg" means to ask for money or goods as a charity, whether by words, or other means.
  - (c) "Intimidate" means to coerce or frighten into submission or obedience.
  - (d) "Obstruct pedestrian traffic" means to intentionally walk, stand, sit, lie, or place an object in such a manner as to block passage by another person, or to require another person to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized pursuant to permits issued by the city do not constitute obstruction of pedestrian traffic.
  - (e) "Public place" means the area generally visible to public view and includes alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks, streets, and trails open to the general public, including those that serve food or drink or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.
- (3) A violation of this section is a class 2 civil infraction.

## **Chapter 9.18 Offenses against Juveniles**

### **9.18.010 Adoption by reference**

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

RCW 9.68A.011 Definitions.

RCW 9.68A.090 Communicating with a minor for immoral purpose.

RCW 9.68A.103 Permitting commercial sexual abuse of a minor - Penalty - Consent of minor does not constitute defense.

RCW 9.68A.150 Allowing minor on the premises of a live erotic performance.

RCW 9.69.100 Duty of witness of offense against minor or any violent offense .

RCW 9A.44.096 Sexual misconduct with a minor in the second degree .

RCW 13.32A.080 Harboring a minor.

**i** RCW 26.28.080 regarding sales of tobacco to a minor includes vapor products.

RCW 26.28.080 Selling or giving tobacco to a minor.

RCW 70.345.010 Definitions.

RCW 70.345.030 License required [for sale of vapor products].

RCW 70.345.100 Product tastings—Requirements—Penalty.

RCW 70.345.140 Purchase or possession [of vapor products] by persons under eighteen .

### **9.18.020 Leaving children unattended in parked automobile**

**i** RCW 9.91.060 governs leaving children unattended in parked automobile, but only while the adult enters a tavern. This section mirrors that provision without the restrictive clause. Note that RCW 46.61.685, in the traffic code that is adopted by Title 10, governs leaving children unattended in standing vehicle with motor running.

- (1) It is unlawful for a person having the care and custody, whether temporary or permanent, of minor children under the age of twelve years, to leave such children in a parked automobile unattended by an adult.
- (2) A violation of this section is a misdemeanor.

## **Chapter 9.20 Domestic Violence Violations and Orders**

### **9.20.010 Adoption by reference**

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

RCW 7.105.010 Definitions.

RCW 7.105.450 Enforcement and penalties – Other than antiharassment protection orders and extreme risk protection orders.

RCW 7.105.455 Enforcement and penalties – Antiharassment protection orders.

RCW 7.105.460 Enforcement and penalties – Extreme risk protection orders – False petitions.

RCW 7.105.465 Enforcement and penalties – Knowledge of order.

RCW 7.105.470 Enforcement - Prosecutor assistance.

RCW 9.41.040 Unlawful possession of firearms – Ownership, possession by certain persons.

RCW 9.41.800 Surrender of weapons or licenses – Prohibition on future possession or licensing.

RCW 9.41.810 Violation – Penalty.

RCW 9A.36.150 Interfering with the reporting of domestic violence.

RCW 9A.40.010 Definitions.

RCW 9A.40.070 Custodial interference in the second degree.

RCW 9A.40.080 Custodial interference – Assessment of costs – Defense – Consent defense, restricted.

RCW 10.99.020 Definitions.

RCW 10.99.040 Duties of court – No contact order.

RCW 10.99.045 Appearances by defendant – Defendant's history – No-contact order.

RCW 10.99.050 Victim contact – Restriction, prohibition – Violation, penalties – Written order – Procedures.

RCW 10.99.055 Enforcement of orders.

RCW 10.99.070 Liability of peace officers.

RCW 26.09.300 Restraining orders – Notice – Refusal to comply – Arrest – Penalty – Defense.

## **Chapter 9.22 Substance Abuse**

### **9.22.010 Adoption by reference**

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

RCW 9.47A.010 Definition.

RCW 9.47A.020 Unlawful inhalation - Exception.

RCW 9.47A.030 Possession of certain substances prohibited, when.

RCW 9.47A.040 Sale of certain substances prohibited, when.

RCW 9.47A.050 Penalty.

RCW 69.38.010 "Poison" defined.

RCW 69.38.040 Inspection of poison register - Penalty for failure to maintain register.

RCW 69.38.050 False representation—Penalty.

RCW 69.38.060 Manufacturers and sellers of poisons—License required—Penalty.

RCW 69.41.010 Definitions.

RCW 69.41.030 Legend drug without prescription or order prohibited—Exceptions—Penalty.

RCW 69.41.350 Steroid—Penalties.

RCW 69.50.101 Definitions.

RCW 69.50.412 Prohibited acts: E—Penalties.

RCW 69.50.445 Cannabis in view of general public or public place—Penalty.

RCW 69.50.4011 Counterfeit substances—Penalties.

RCW 69.50.4013 Possession of controlled substance—Penalty.

RCW 69.50.4014 Possession of forty grams or less of cannabis—Penalty.

### 9.22.020 Possession of Drug Paraphernalia

**i** This section replaces existing SMC Chapter 9.22 Drug Paraphernalia Restrictions.

**i** Note that the *use* of drug paraphernalia is prohibited by RCW 69.50.412, incorporated by reference above.

- (1) It is unlawful to possess “drug paraphernalia,” as defined in RCW 69.50.102, for any purpose related to any controlled substance other than cannabis.
- (2) A violation of this section is a misdemeanor.

### 9.22.030 Use of a Controlled Substance in a Public Place

**i** This is a new section that addresses a gap in the state statutory drug framework. This section is similar to those most recently adopted by Anacortes and Bellingham, and previously Marysville, Richland, and others. Note the definition of “controlled substance” in RCW 69.50.101 (incorporated by reference above) excludes hemp/cannabis.

**i** Note that a bill in the Legislature in this session may contain a state law adoption of this same crime, which would pre-empt this section and necessitate its repeal.

- (1) It is unlawful to intentionally use a controlled substance in a public place, except as now or hereafter authorized or expressly permitted by the laws of the state or except upon written or oral order or prescription of a physician, surgeon, dentist, or other medical professional licensed to practice in the state and legally authorized to prescribe controlled substances.
- (2) Definitions. For the purpose of this section:
  - (a) "Public place" means an area generally visible to public view, including without limitation any place where the public has a right of access, including establishments or conveyances to which the public is invited and their associated parking lots, parking structures, walkways, doorways, entrances, and restrooms.
  - (b) "Use" means any effort taken in furtherance of an attempt to inject, ingest, inhale, or otherwise introduce a dangerous drug into the human body.
- (3) A violation of this section is a gross misdemeanor.



## 9.22.040 Unlawful Deposit of Controlled Substances and Drug Paraphernalia

**i** This is a new section that also may provide some utility for drug enforcement, and is similar to Richland's ordinance.

- (1) It is unlawful for any person to knowingly dump, throw, deposit, or discharge onto the ground or into any body of water, any controlled substance or drug paraphernalia.
- (2) A violation of this section is a misdemeanor.

## 9.22.050 Possession of Controlled Substances [effective July 1, 2023]

**i** This section is proposed to adopt the provisions of RCW 69.50.4013 to provide a criminal penalty for drug possession starting July 1, 2023, when RCW 69.50.4013 is scheduled to expire. This section makes possession a gross misdemeanor, consistent with the latest version of SB 5536, which the Legislature declined to adopt before it adjourned this session.

**i** It's possible that the Legislature may meet in special session to amend RCW 69.50.4013 before July 1; if so, the City should remove this from the ordinance or, if already adopted by then, amend the code to remove it.

**i** Note that the City's adoption does not include the treatment referral requirement in RCW 10.31.115, which doesn't expire but would become ineffective after expiration of RCW 69.50.4013.

- (1) It is unlawful for any person to knowingly possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by Chapter 69.50 RCW.
- (2) Exceptions.
  - (a) The possession, by a person 21 years of age or older, of useable cannabis, cannabis concentrates, or cannabis-infused products in amounts that do not exceed those set forth in RCW 69.50.360(3) is not a violation of this section.
  - (b) The delivery by a person 21 years of age or older to one or more persons 21 years of age or older, during a single 24-hour period, for noncommercial purposes and not conditioned upon or done in connection with the provision or receipt of financial consideration, of any of the following cannabis products, is not a violation of this section:
    - (i) One-half ounce of useable cannabis;
    - (ii) Eight ounces of cannabis-infused product in solid form;
    - (iii) 36 ounces of cannabis-infused product in liquid form; or
    - (iv) Three and one-half grams of cannabis concentrates.
  - (v) The act of delivering cannabis or a cannabis product as authorized under this subsection must meet one of the following requirements:
  - (vi) The delivery must be done in a location outside of the view of general public and in a nonpublic place; or
  - (vii) The cannabis or cannabis product must be in the original packaging as purchased from the cannabis retailer.
- (c) No person under 21 years of age may possess, manufacture, sell, or distribute cannabis, cannabis-infused products, or cannabis concentrates, regardless of THC concentration. This does not include qualifying patients with a valid authorization.

- (d) The possession by a qualifying patient or designated provider of cannabis concentrates, useable cannabis, cannabis-infused products, or plants in accordance with chapter 69.51A RCW is not a violation of this section.
- (3) A violation of this section is a gross misdemeanor.
- (4) This section is effective July 1, 2023.

## Chapter 9.42 Fireworks

**i** This chapter will supplant some portions of SMC Chapter 5.04 which governs permits for display fireworks so that police enforcement of fireworks violations are contained in Title 9, while the regulations and procedures regarding fireworks permits are contained in Title 5.

### 9.42.010 Adoption by reference

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

- RCW 70.77.485 Unlawful possession of fireworks—Penalties.
- RCW 70.77.488 Unlawful [reckless] discharge or use of fireworks—Penalty.
- RCW 70.77.510 Unlawful sales or transfers of display fireworks—Penalty.
- RCW 70.77.515 Unlawful sales or transfers of consumer fireworks—Penalty.
- RCW 70.77.520 Unlawful to permit fire nuisance where fireworks kept—Penalty.
- RCW 70.77.540 Penalty.
- RCW 70.77.545 Violation a separate, continuing offense.

### 9.42.020 Purchase and Sales.

- (1) It is unlawful to sell or purchase consumer fireworks within the City of Stanwood except during the following times:
  - (a) from 12:00 noon to 11:00 p.m. on June 28;
  - (b) from 9:00 a.m. to 11:00 p.m. on each day from June 29 through July 4;
  - (c) from 9:00 a.m. to 9:00 p.m. on July 5; and
  - (d) from 12:00 noon to 11:00 p.m. on each day from December 27 through December 31.
- (2) It is unlawful to sell fireworks without a valid license issued per SMC Chapter 5.04.
- (3) A violation of this section is a class 1 civil infraction.

### 9.42.030 Use and Discharge.

- (1) It is unlawful to use or discharge consumer fireworks within the City of Stanwood except during the following times:
  - (a) from 12:00 noon to 11:00 p.m. on June 28
  - (b) from 9:00 a.m. to 11:00 p.m. on each day from June 29 to July 3
  - (c) from 9:00 a.m. to 12:00 midnight on July 4;

- (d) from 9:00 a.m. to 11:00 p.m. on July 5;
  - (e) from 6:00 p.m. on December 31 until 1:00 a.m. on January 1 of the subsequent year.
- (2) This section does not apply to a public display of fireworks licensed per SMC Chapter 5.04.
- (3) A violation of this section is a class 2 civil infraction.

## Chapter 9.50 Conduct and Trespass from City Property

**i** People that behave dangerously, illegally, or threateningly may need to be trespassed from city property. To protect the due process rights of those people, it's important to adopt a code of conduct, procedures, graduated exclusion periods, and appeal provisions. This chapter is based on similar code chapters from Port Townsend and Anacortes.

### 9.50.010 Purpose and policy.


- (1) The purpose of this chapter is to:
- (a) Adopt a legally sound process for being able to exclude from city property persons whose behavior is dangerous, unsafe, illegal, or unreasonably disruptive to other users;
  - (b) Define the process for issuance of trespass warnings and their content; and
  - (c) Provide procedures for a recipient of a trespass warning to promptly appeal the warning to protect their right to engage in legitimate activities protected by the state and federal constitutions.
- (2) This chapter is enacted as an exercise of the city's authority to protect and preserve the public health, safety, and welfare under Article XI, Section 11 of the Washington State Constitution.
- (3) This chapter is intended to be enforced to emphasize voluntary compliance with laws and city rules and so that inadvertent minor violations of this section can be corrected without resorting to a trespass warning.

### 9.50.020 Applicability.

- (1) This chapter applies to behavior on all real property in the City of Stanwood owned or leased by the City of Stanwood, including real property that the city owns or operates in common with another jurisdiction, including but not limited to:
- (a) Municipal buildings, including City Hall;
  - (b) Parks, trails, and other open spaces;
  - (c) Public Works water and wastewater treatment facility;
  - (d) Reservoirs, water tanks, pump stations, lift stations;
  - (e) Police station and annex building;
  - (f) North County Regional Fire Authority fire stations when used by city staff or elected officials;
  - (g) Stanwood Camano School District Building when used for official Council or City meetings;
  - (h) Stanwood library;
  - (i) Public restrooms;
  - (j) City owned public parking lots; and
  - (k) City owned detention ponds and vaults.

(2) This chapter does not apply to public streets and sidewalks.

### 9.50.030 Definitions.

 See note about the person designated to hear appeals below.

“Police Chief” means the Chief of the City of Stanwood Police Department or other person designated by the Chief to perform the duties described in this chapter.

“Trespass warning” means a document informing the recipient that they are prohibited from entering a specified place for a specified period of time, consistent with the requirements of this chapter.

### 9.50.040 Prohibited conduct.

(1) The following behavior is prohibited by this chapter in the places to which this chapter applies:

- (a) Dangerous Behavior. Any behavior that creates an imminent and unreasonable risk of injury or harm to either persons or property of another or the actor.
- (b) Illegal Behavior. Any behavior that is prohibited by the laws of the United States, Washington State, Snohomish County, or the city including, but not limited to, any of the following types of behavior:
  - (i) Threatening another person by communicating either directly or indirectly to another person the intent to cause bodily injury in the future to the person threatened or to any other person;
  - (ii) Selling or using alcohol or drugs;
  - (iii) Threatening or harassing behavior (e.g., fighting or threatening to fight, brandishing a weapon, stalking, verbally threatening to harm others or their property);
  - (iv) Assaulting staff or other patrons;
  - (v) Urination or defecation other than in facilities intended for that function;
  - (vi) Sexual misconduct or harassment (e.g., indecent exposure, offensive touching, sexual acts);
  - (vii) Vandalism or placing graffiti;
  - (viii) Starting a fire in an undesignated area.
- (c) Unreasonably Disruptive Behavior. Any behavior that, in consideration of the nature, scope, use and purpose of the city property in question, unreasonably interferes with others’ use and enjoyment of city property, including but not limited to:
  - (i) Use of unreasonably hostile or aggressive language or gestures; or
  - (ii) Unreasonably loud vocal expression or unreasonably boisterous physical behavior; or
  - (iii) Using electronic or other communication devices in a manner that is unreasonably disruptive to others; or
  - (iv) Unreasonably interfering with the free passage of staff or patrons in or on public property; or
  - (v) Behavior that is unreasonably inconsistent with the normal use for which the publicly owned property was designed and intended to be used (e.g., engaging in loud conversation in a library setting);
  - (vi) Violation of the posted rules of the city property in question.

(2) Exception. Any constitutionally protected action or speech is excluded from the prohibited conduct described in this section.

### **9.50.050 Authority to issue trespass warnings – Service.**

- (1) Officers of the city Police Department are authorized to issue a trespass warning to any person who the officer has probable cause to believe has violated SMC 9.50.040.
- (2) The warning may be based upon observation by a police officer or a city employee or may be based upon a civilian report that would ordinarily be relied upon by police officers in the determination of probable cause.
- (3) The person need not be charged, tried, or convicted of any crime or infraction for the trespass warning to be issued or be effective.
- (4) Trespass warnings may be served upon the person subject to the warning using one of the following methods:
  - (a) First-class mail to the person at the person's last known address;
  - (b) Personally; or
  - (c) If the person cannot be located by one of the first two methods after a diligent search, by publication in a newspaper of general circulation.
- (5) Service is effective:
  - (a) On the date the notice is personally received;
  - (b) In the case of service by mail, three days after the notice is mailed; or
  - (c) In the case of service by publication, 15 days after publication.
- (6) The trespass warning becomes effective, and the duration starts to run, upon the effective date of service.

### **9.50.060 Content of trespass warning.**


- (1) The trespass warning must be in writing and contain:
  - (a) The date of issuance;
  - (b) A description of the behavior that is the basis for the trespass warning;
  - (c) The place(s) of exclusion consistent with subsection (2) of this section;
  - (d) The length of exclusion consistent with SMC 9.50.070;
  - (e) The signature of the issuing police officer;
  - (f) A description of the consequences for failure to comply consistent with SMC 9.50.100.
- (2) A trespass warning for a place or places may not prohibit access to another place or places that are unrelated to or not a part of the place where the conduct that is the subject of the trespass warning occurred.

### **9.50.070 Duration of exclusion.**

- (1) An officer who issues a trespass warning under this Chapter must determine a duration of exclusion consistent with this section.
- (2) If the person subject to the trespass warning:
  - (a) Has not been excluded from City property by a trespass warning issued within one year prior to the violation, then the warning may exclude the person for a period not exceeding 7 days.
  - (b) Has been the subject of only one prior trespass warning issued within one year prior to the current violation, then the warning may exclude the person up to 90 days.

- (c) Has been the subject of two or more prior trespass warnings issued within one year prior to the current violation, then the warning may exclude the person up to one year.

### 9.50.080 Review procedure.

 Note this review could alternatively be performed by the City Administrator, as it is in Port Townsend's code.

- (1) For good cause, the Police Chief may rescind, shorten, or modify a trespass warning consistent with this section.
  - (a) A written request for review of a trespass warning must be delivered to the Police Chief no later than seven business days after it is issued.
  - (b) The Police Chief must hold a review hearing on the decision within one week of receipt of a request for review of a trespass warning.
  - (c) The Police Chief must notify the person subject to the warning of the date, time, and place, telephone number or electronic means at or by which the review will be conducted.
  - (d) The review decision must be communicated no later than five business days following the review.
  - (e) The review decision must inform the person subject to the warning of the right to seek judicial review of the decision and that the time frame for seeking judicial review runs from the date of service of the written decision.
- (2) For purposes of this section, "good cause" to rescind, shorten, or modify a trespass warning must be found where any of the following are true:
  - (a) The person subject to the warning demonstrates by a preponderance of the evidence that his or her conduct was intended to be expressive conduct protected by the First Amendment;
  - (b) The person subject to the warning was not given warning that the conduct in question was subject to a trespass warning;
  - (c) The trespass warning was based solely upon the statement of a third party, was not observed personally by the issuing officer or a city employee, would not ordinarily be relied upon by police officers in the determination of probable cause, and the person subject to the warning claims that he or she did not commit the action for which he or she was warned; or
  - (d) Reasonable minds could differ on the question of whether the conduct in question was unreasonably disruptive to others on the same property at the same time.
- (3) At the review hearing, the violation must be proved by a preponderance of the evidence to uphold the trespass warning. The Police Chief may consider a sworn report or declaration from the officer who issued the trespass warning or upon whose observation the trespass warning was based, without further evidentiary foundation, as prima facie evidence that the person committed the violation as described. The Police Chief may consider information that would not be admissible under the evidence rules in a court of law but that the Police Chief considers relevant and trustworthy. If the warning was issued because of the alleged violation of any criminal law, the person need not be charged, tried, or convicted for the warning to be upheld.
- (4) The decision of the Police Chief constitutes the city's final decision. A person seeking judicial review of the city's final decision must file an application for a writ of review in Superior Court within 15 days of receipt of the city's final decision.
- (5) The trespass warning remains in effect during the pendency of any administrative or judicial proceeding.

- (6) No determination of facts made by the Police Chief may have any collateral estoppel effect on a subsequent criminal prosecution or civil proceeding and may not preclude litigation of those same facts in a subsequent criminal prosecution or civil proceeding.

**9.50.090 Permitted entry notwithstanding warning.**

- (1) The Police Chief may, upon request, authorize a person who has received a trespass warning in accordance with this chapter to enter city property to exercise his or her First Amendment rights or to conduct government business if there is no other reasonable alternative location to exercise such rights or conduct such business. Authorization must be in writing and specify the duration of the authorization and any conditions thereof, which may include a requirement that the person be escorted by a police officer.
- (2) The Police Chief must issue a decision on a request for entry onto public property by the recipient of a trespass warning during a period of exclusion no later than 48 hours after receipt of the request.

**9.50.100 Violation – Penalty.**

- (1) Any person who is found on city or other publicly owned property in violation of a trespass warning issued in accordance with this chapter may be arrested for criminal trespass as defined in Chapter 9A.52 RCW and incorporated by reference into this title, except as otherwise provided in this section.
- (2) This chapter does not supplant the city's ability to enforce any other section of the Stanwood Municipal Code regulating behavior on public property or the city's ability to pursue other civil or criminal remedies and penalties.
- (3) A city employee who becomes aware of a violation of a trespass warning issued in accordance with this chapter is expected to notify the Police Department.

CITY OF MARYSVILLE  
Marysville, Washington

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF MARYSVILLE AMENDING CHAPTER 6.27 OF THE MUNICIPAL CODE IN REGARD TO THE USE OF CONTROLLED SUBSTANCES IN PUBLIC PLACES.**

WHEREAS, the use of controlled substances without a prescription and the supervision of a medical professional can result in physical injury or death; and

WHEREAS, the use of controlled substances without a prescription and the supervision of a medical professional often exacerbates mental health conditions; and

WHEREAS, using controlled substances can alter a person's brain or brain chemistry with negative health consequences; and

WHEREAS, persons using controlled substances can become addicted to such substances resulting in negative physical and mental health consequences and damage to family and personal relationships; and

WHEREAS, the use of controlled substances without a prescription or medical supervision is more likely to result in addiction; and

WHEREAS, the use of controlled substances without a prescription is positively correlated with criminal behavior; and

WHEREAS, the City has taken steps to address these problems through teaming police officers with social workers and mental health professionals and the municipal court's Mental Health Alternatives Program; and

WHEREAS, state law now requires that persons subject to arrest for possession of a controlled substance be referred to assessment and services in lieu of arrest at least twice before he or she may be arrested; and

WHEREAS, this state requirement has resulted in increased use of controlled substances in public; and

WHEREAS, the use of controlled substances in public increases public disorder and the negative effects of using controlled substances without a prescription; and

WHEREAS, the use of controlled substances in public negatively affects children and youth and normalizes the use of controlled substances without a prescription; and



WHEREAS, the use of alcohol and marijuana by persons of legal age is prohibited in public; and

WHEREAS, prohibiting the use of controlled substances in public will enhance public health and safety; and

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

SECTION 1. A new section 6.27.022 is added to the municipal code as set forth in Exhibit A.

SECTION 2. Section 6.27.025 of the municipal code is amended as set forth in Exhibit B.

SECTION 3. 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 4. 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 5. Effective Date. This ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

CITY OF MARYSVILLE

By \_\_\_\_\_  
JON NEHRING, MAYOR

Attest:

By \_\_\_\_\_,  
DEPUTY CITY CLERK

Approved as to form:

By \_\_\_\_\_  
JON WALKER, CITY ATTORNEY

Date of publication: \_\_\_\_\_

Effective Date (5 days after publication): \_\_\_\_\_

# EXHIBIT A

## **6.27.022 Use of a Controlled Substance in a Public Place.**

1. It is unlawful for any person to knowingly use a controlled substance in a public place unless the controlled substance has been lawfully prescribed to the person using it.
2. "Use" means any effort taken in furtherance of an attempt to inject, ingest, inhale or otherwise introduce a controlled substance into the human body.
3. "Public place" means an area generally visible to public view, and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles (whether moving or not), and buildings open to the public, and doorways, windows, drive-up windows, and entrances to buildings or dwellings that are visible to public view.
4. Use of a controlled substance in a public place is a misdemeanor.

# EXHIBIT B

## **6.27.025 Offer of referral.**

When a police officer has probable cause that a person has committed the crime of possession of a counterfeit substance, possession of a controlled substance, possession of 40 grams or less of marijuana, possession of a legend drug, or possession of drug paraphernalia, the officer will offer a referral to assessment and services in the manner provided by RCW 10.31.115. When a police officer has probable cause that a person has committed the crime of use of a controlled substance in a public place, the officer may, but is not required to offer a referral and is authorized to book the person into jail regardless of whether that person has previously been offered a referral.

CITY OF MARYSVILLE  
Marysville, Washington

ORDINANCE NO. 3179

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARYSVILLE,  
WASHINGTON, AMENDING CHAPTER 6.27 OF THE MUNICIPAL CODE  
AND CRIMINALIZING THE POSSESSION OF A CONTROLLED SUBSTANCE  
WITHOUT A PRESCRIPTION.**

WHEREAS, the use of controlled substances without a prescription and the supervision of a medical professional can result in physical injury or death; and

WHEREAS, the use of controlled substances without a prescription and the supervision of a medical professional often exacerbates mental health conditions; and

WHEREAS, using controlled substances can alter a person's brain or brain chemistry with negative health consequences; and

WHEREAS, persons using controlled substances can become addicted to such substances resulting in negative physical and mental health consequences and damage to family and personal relationships; and

WHEREAS, the use of controlled substances without a prescription or medical supervision is more likely to result in addiction; and

WHEREAS, the use of controlled substances without a prescription is positively correlated with criminal behavior; and

WHEREAS, the City has taken steps to address these problems through teaming police officers with social workers and mental health professionals and the municipal court's Mental Health Alternatives Program; and

WHEREAS, public health officials in Snohomish County have linked an increase in opioid deaths and the use of naloxone to prevent overdoses with the continuing COVID-19 pandemic; and

WHEREAS, on February 25, 2021, the Washington State Supreme Court held in the case of State v. Blake, No. 96873-0, that RCW 69.50.4013(1) – the statute that criminalized the possession of a controlled substance without a prescription – exceeds the state's police power and violates the due process clauses of the state and federal constitutions; and

WHEREAS, the Supreme Court's ruling has the effect of eliminating any criminal penalties for the possession of a controlled substance without a prescription; and

WHEREAS, the Supreme Court's ruling also eliminates the authority of police officers to arrest persons possessing a controlled substance without a prescription or obtaining search warrants to search for controlled substances possessed without a prescription; and

WHEREAS, the lack of criminal penalties for the possession of controlled substances without a prescription will immediately result in an increase in the negative health and safety consequences associated with the use of controlled substances without a prescription; and

WHEREAS, the lack of enforcement authority of the police will interfere with the City's initiatives to address addiction and criminal activity associated with the use of controlled substances without a prescription by eliminating incentives for individuals to enter treatment or obtain necessary social services; and

WHEREAS, the effect of eliminating criminal penalties and police authority in regard to the possession and use of controlled substances without a prescription will have an immediate, direct, and negative impact on the health, safety, and welfare of the City's inhabitants; and

WHEREAS, this is a public emergency ordinance necessary for the protection of public health and public safety, and should be effective upon adoption.

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

SECTION 1. The Recitals set forth above are adopted as findings of fact in support of this emergency ordinance.

SECTION 2. Chapter 6.27 of the municipal code is amended as set forth in Exhibit A.


SECTION 3. 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 4. 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 5. Effective Date. This ordinance is necessary for the protection of public health and public safety, and is effective upon adoption.

PASSED by the City Council and APPROVED by the Mayor this 8<sup>th</sup> day of March, 2021.


CITY OF MARYSVILLE

By   
JON NEHRING, MAYOR

Attest:

By   
Tina Brock, DEPUTY CITY CLERK

Approved as to form:

By   
JON WALKER, CITY ATTORNEY

Date of publication: 03/12/2021

Effective Date: 03/08/2021

# EXHIBIT A

## **6.27.010 Statutes incorporated by reference.**

The following statutes regarding controlled substances and drug paraphernalia are incorporated by reference:

RCW

<u>9.47A.010</u>	Definition.
<u>9.47A.020</u>	Unlawful inhalation – Exception.
<u>9.47A.030</u>	Possession of certain substances prohibited, when.
<u>9.47A.040</u>	Sale of certain substances prohibited, when.
<u>9.47A.050</u>	Penalty.
<u>69.41.010</u>	Definitions of legend drugs.
<u>69.41.030</u>	Possession of a legend drug unlawful.
<u>69.41.060</u>	Search and seizure.
<u>69.50.101</u>	Definitions.
<u>69.50.102</u>	Definitions.
<u>69.50.201</u>	Authority to control.
<u>69.50.202</u>	Nomenclature.
<u>69.50.204</u>	<del>Schedule I. Marijuana defined as a controlled substance.</del>
<u>69.50.206</u>	<del>Schedule II.</del>
<u>69.50.208</u>	<del>Schedule III.</del>
<u>69.50.210</u>	<del>Schedule IV.</del>
<u>69.50.212</u>	<del>Schedule V.</del>
<u>69.50.214</u>	<del>Controlled substance analog.</del>
<u>69.50.401</u>	<del>(e) Possession of 40 grams or less of marijuana prohibited.</del>
<u>69.50.412</u>	Prohibited acts and penalties regarding drug paraphernalia.
<u>69.50.425</u>	Minimum imprisonment.
<u>69.50.505</u>	Forfeiture of controlled substances and drug paraphernalia, and equipment and vehicles associated therewith.

## **NEW SECTION. 6.27.030**

(1) It is unlawful for any person to knowingly possess a controlled substance or to possess a controlled substance with intent to use it, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by chapter 69.50 RCW.

(2) Any person who violates this section is guilty of a gross misdemeanor punishable by up to 364 days in jail and a \$5,000 fine.

(3)(a) The possession, by a person twenty-one years of age or older, of useable marijuana, marijuana concentrates, or marijuana-infused products in amounts that do not exceed those set forth in RCW 69.50.360(3) is not a violation of this section or this chapter.

(b) The possession of marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products being physically transported or delivered within the state, in amounts not exceeding



those that may be established under RCW 69.50.385(3), by a licensed employee of a common carrier when performing the duties authorized in accordance with RCW 69.50.382 and 69.50.385, is not a violation of this section or this chapter.

(c) The possession by a qualifying patient or designated provider of marijuana concentrates, useable marijuana, marijuana-infused products, or plants in accordance with chapter 69.51A RCW is not a violation of this section or this chapter.

(d) It is unlawful for a person under twenty-one years of age to knowingly possess or possess with intent to use marijuana, marijuana-infused products, or marijuana concentrates, regardless of THC concentration. This does not include qualifying patients with a valid authorization. Violation of this subsection is a misdemeanor punishable by up to 90 days in jail and a \$1,000 fine.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

**ORDINANCE**

**SECTION 1.** - *Repealer - Ch. 9.12 KCC.* Chapter 9.12 of the Kent City Code, entitled "Narcotics and Barbiturates", is repealed in its entirety.

**SECTION 2.** - *Amendment - New Ch. 9.12 KCC.* The Kent City Code is amended to add a new Chapter 9.12, entitled "Drug and Alcohol Possession", as follows:

**CHAPTER 9.12  
DRUG AND ALCOHOL POSSESSION**

**Sec. 9.12.010. Purpose.** Substance abuse is taking an increasing toll on the health and safety of our community. The purpose of this chapter is to help those suffering from addiction find a path to treatment through our municipal court system, and to hold accountable those unwilling to seek treatment for the harm caused to our community. If an individual is charged with a crime under this chapter and they comply with their recommended substance use disorder treatment program, their criminal charge will be dismissed and no conviction will result. If an individual fails to comply with their treatment program and they are later convicted of the charge after being found noncompliant by the court, they will still have the opportunity to have their conviction vacated if they comply with their recommended treatment program. The Kent City Council intends that incarceration be utilized as a sanction only when an individual fails to comply with their recommended treatment program or other conditions imposed by the court.

**Sec. 9.12.020. Definitions.** For purposes of this section, the following terms or words shall be interpreted as follows:

A. *Controlled substance* 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.

B. *Counterfeit controlled substance* means a controlled substance that is falsely labeled so as to appear to have been legitimately manufactured or distributed.

C. *Drug paraphernalia* has the same meaning as provided for in RCW 69.50.102, which statute is adopted by this reference, as currently enacted and hereafter amended or recodified from time to time.

D. *Legend drug* means any drug which is required by state law or regulation of the pharmacy quality assurance commission to be dispensed on prescription only or is restricted to use by practitioners only.

E. *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, and meeting halls; establishments to which the public is invited including 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, 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; and all other places of like or similar nature.

F. *Use* means actual use or a substantial step taken that evidences an intent to inject, ingest, inhale, or otherwise introduce a controlled substance into the human body.

**Sec. 9.12.030. Controlled substances—Possession or use in public—Penalty.**

A. *Possession*. It is unlawful for any person to knowingly possess a controlled substance unless the controlled substance has been lawfully prescribed to the person possessing it.

B. *Public use*. It is unlawful for any person to intentionally use a controlled substance in a public place unless the controlled substance has been lawfully prescribed to the person using it.

C. *Exception*. It shall not be a violation of this section if the person possesses a controlled substance prescribed to another person for whom the person is a legal guardian and the controlled substance is possessed in the container in which it was originally dispensed.

D. *Penalty*. A violation of this section is punishable as a gross misdemeanor.

**Sec. 9.12.040. Legend drugs—Possession or use in public—Penalty.**

A. *Possession*. It is unlawful for any person to knowingly possess any legend drug unless the legend drug has been lawfully prescribed to the person possessing it.

B. *Public use.* It is unlawful for any person to intentionally use a legend drug in a public place unless the legend drug has been lawfully prescribed to the person using it.

C. *Exception.* It shall not be a violation of this section if the person possesses a legend drug prescribed to another person for whom the person is a legal guardian and the legend drug is possessed in the container in which it was originally dispensed.

D. *Penalty.* A violation of this section is punishable as a gross misdemeanor.

**Sec. 9.12.050. Counterfeit controlled substances—Possession or use in public—Penalty.**

A. *Possession.* It is unlawful for any person to knowingly possess a counterfeit controlled substance.

B. *Public use.* It is unlawful for any person to intentionally use a counterfeit controlled substance in a public place.

C. *Penalty.* A violation of this section is punishable as a gross misdemeanor.

**Sec. 9.12.060. Possession of drug paraphernalia.** It is unlawful for any person to knowingly possess drug paraphernalia, other than that drug paraphernalia associated with the lawful possession and use of cannabis. A violation of this section is punishable as a misdemeanor.

**Sec. 9.12.070. Minor in possession of alcohol.** It is unlawful for any person under the age of twenty-one years to knowingly possess,

consume, or otherwise acquire any liquor. A violation of this subsection is punishable as a gross misdemeanor.

**Sec. 9.12.080. Unlawful deposit of dangerous drugs and drug paraphernalia.** It shall be unlawful for any person to knowingly dump, throw, deposit, or discharge onto the ground or into any body of water any controlled substance, counterfeit controlled substance, or legend drug, or any drug paraphernalia. A violation of this section is punishable as a misdemeanor.

**Sec. 9.12.090. Alternative deferred prosecution program.** In lieu of the process provided for under Ch. 10.05 RCW, an individual charged with a crime under this chapter may petition the court to have that charge considered under the alternative deferred prosecution program provided for by this section.

A. Petition—Eligibility. An individual charged with a crime under this chapter may petition the court to be considered for this alternative deferred prosecution program. The petition may include, upon agreement of the parties, multiple charges that are pending at the time the petition is filed, which may be consolidated into a single program. However, this alternative deferred prosecution program is not available for any offense under Title 46 RCW, any domestic violence offense, or any offense under Chapter 9A.42 RCW, which offenses may only be petitioned for under the deferred prosecution program procedures provided for in Ch. 10.05 RCW. Misdemeanor charges that result from the county declining to file felony charges for the sale, delivery, or possession with an intent to deliver controlled substances, counterfeit controlled substances, or legend drugs, are not eligible for this alternative deferred prosecution program, unless the parties otherwise agree.

The petition shall be filed with the court at least three court days prior to the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial.

B. Statement of availability. At the time of arraignment an individual charged with an offense under this chapter may be given a statement by the court that explains the availability, operation, and effects of this alternative deferred prosecution program.

C. Requirements of petition—Rights of petitioner—Court findings.

1. In the petition, the petitioner shall allege under oath that the wrongful conduct charged is the result of or was caused by a substance use disorder for which the individual is in need of treatment and unless treated the probability of future recurrence is great, along with a statement that the individual agrees to pay the cost of a diagnosis and treatment of the alleged problem or problems, if financially able to do so. The petition shall also contain a case history and written assessment prepared by an approved substance use disorder treatment program as designated in chapter 71.24 RCW.

2. Before entry of an order deferring prosecution, a petitioner shall be advised of their right as an accused and execute, as a condition of receiving treatment, a statement that contains the following:

- a. An acknowledgment of their rights;
- b. An acknowledgment and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in their defense, and the right to a jury trial;

c. A stipulation to the admissibility and sufficiency of the facts contained in the written police report;

d. An acknowledgment that the statement will be entered and used to support a finding of guilty, if the court finds cause to revoke the order granting deferred prosecution;

e. An agreement to sign a release of information allowing the program provider to share information with the court, defense counsel, and the prosecutor, subject to the condition that information learned shall be used only to determine the individual's compliance with treatment approved through this alternative deferred prosecution program and not for prosecution of a criminal offense; and

f. An acknowledgment that the individual may opt out of this alternative deferred prosecution program at their first review hearing and have their criminal case sent back to pre-trial status. The petitioner shall also be advised that they may, if they proceed to trial and are found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be ordered upon the condition that they seek treatment and, further, that they may seek treatment from public and private agencies at any time without regard to whether or not they are found guilty of the offense charged. They shall also be advised that the court will not accept a petition for deferred prosecution from an individual who: (i) sincerely believes that they are innocent of the charges; or (ii) sincerely believes that they did not, in fact, suffer from a substance use disorder.

3. Before entering an order deferring prosecution, the court shall make specific findings that:

a. The petitioner has stipulated to the admissibility and sufficiency of the facts as contained in the written police report;



b. The petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing on the underlying offense or offenses held subsequent to revocation of the order granting deferred prosecution;

c. The petitioner has acknowledged and waived the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in their defense, and the right to a jury trial; and

d. The petitioner's statements were made knowingly and voluntarily.

Such findings shall be included in the order granting deferred prosecution.

D. Investigation and examination. The program to which such individual is referred shall conduct an investigation and examination to determine:

1. Whether the individual suffers from the problem described;
2. Whether the problem is such that if not treated there is a probability that similar misconduct will occur in the future;
3. Whether extensive and long term treatment is required;
4. Whether effective treatment for the individual's problem is available; and
5. Whether the individual is amenable to treatment.

E. Report to court—Recommended treatment plan—Commitment to provide treatment.

1. The program shall make a written report to the court stating its findings and recommendations after the examination required by KCC 9.12.090(E). If its findings and recommendations support treatment, it shall also recommend a treatment or service plan setting out:

- a. The type;
- b. Nature;
- c. Length;

- d. A treatment or service time schedule; and
- e. Approximate cost of the treatment.

2. The report with the treatment or service plan shall be filed with the court and a copy given to the petitioner and petitioner's counsel. A copy of the treatment or service plan shall be given to the prosecutor by petitioner's counsel. The evaluation facility making the written report shall append to the report a commitment by the treatment program that it will provide the treatment in accordance with this section. If the individual is monitored by the court's probation department, the facility or the service provider shall agree to provide the court with a statement every three months for the first year and every six months for the second year regarding (a) the petitioner's cooperation with the treatment proposed, and (b) the petitioner's progress or failure in treatment. If the individual is not monitored by the court's probation department, such statements must be filed with the court, along with a copy sent to the prosecutor and defense attorney, every month or as the court may otherwise order. These statements shall be made as a declaration by the individual who is personally responsible for providing the treatment or services.

F. Procedure upon approval of plan. If the report recommends treatment, the court shall examine the treatment plan. If the court approves the plan and the petitioner agrees to comply with its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the individual's court docket showing that the individual has been accepted for deferred prosecution under this alternative program. A copy of the treatment plan shall be filed with the court.

G. When treatment rejected. When treatment is either not recommended or not approved by the judge, or the petitioner declines to accept the

treatment plan, the charge shall proceed through the criminal justice system in regular course.

H. Evidence, uses, and admissibility. If the petition is not approved or is withdrawn before approval, evidence pertaining to or resulting from the petition and/or investigation is inadmissible in any trial on the charges, but shall be available for use after a conviction in determining a sentence.

I. Procedure upon breach of treatment plan. If a petitioner, who has been accepted for a deferred prosecution, fails, or neglects to carry out and fulfill any term or condition of the petitioner's treatment plan, the facility, center, institution, or agency administering the treatment shall immediately report such breach to the court, the prosecutor, and the petitioner or petitioner's attorney of record, together with its recommendation. The court upon receiving such a report shall hold a hearing to determine whether the petitioner should be removed from the deferred prosecution program. At the hearing, evidence shall be taken of the petitioner's alleged failure to comply with the treatment plan and the petitioner shall have the right to present evidence on their own behalf. The court shall either order that the petitioner continue on the treatment plan or be removed from deferred prosecution. If removed from deferred prosecution, the court shall enter judgment pursuant to KCC 9.12.090(C).

J. Conviction of similar offense. If a petitioner is subsequently convicted of a similar offense that was committed while the petitioner was in a deferred prosecution program, upon notice the court may remove the petitioner's docket from the deferred prosecution file, and if removed, shall enter judgment pursuant to KCC 9.12.090(C).

K. Trial delay not grounds for dismissal. Delay in bringing a case to trial caused by a petitioner requesting deferred prosecution as provided for in this section shall not be grounds for dismissal.

L. Dismissal of charges. Following proof to the court that the petitioner has complied with the conditions imposed by the court following successful completion of the recommended treatment program, but not before two years following entry of the order of deferred prosecution pursuant to a petition brought under KCC 9.12.090, or earlier upon agreement of the parties, the court shall dismiss the charges pending against the petitioner.

M. Services provided for indigent defendants. If an individual is indigent and has sufficiently demonstrated to the court that they are unable to pay the cost of any program of treatment, including costs to provide investigation, examination, report and a treatment plan, those costs may be eligible for payment using available funds appropriated by the City or the state for that purpose.

N. Conditions of granting.

1. As a condition of granting a deferred prosecution petition, the court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160.

2. To help ensure continued sobriety and reduce the likelihood of re-offense, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for substance use disorders, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. The court may terminate the deferred prosecution program upon violation of any term or condition provided for in the deferred prosecution order.

O. Minimum program requirements. A deferred prosecution program shall be for a two-year period and shall include, but not be limited to, the following requirements:

1. Total abstinence from alcohol and all other nonprescribed mind-altering drugs;

2. Participation in an intensive inpatient or intensive outpatient program in a state-approved substance use disorder treatment program;

3. Participation in a minimum of two meetings per week of a self-help recovery support group, as determined by the assessing agency, for the duration of the treatment program;

4. Participation in a self-help recovery support group, as determined by the assessing agency, from the date of court approval of the plan to entry into intensive treatment;

5. Not less than weekly approved outpatient counseling, group or individual, for a minimum of six months following the intensive phase of treatment;

6. Not less than monthly outpatient contact, group or individual, for the remainder of the two-year deferred prosecution period;

7. The decision to include the use of prescribed drugs to treat a substance use disorder, including but not limited to disulfiram, methadone, buprenorphine, and naltrexone, as a condition of treatment shall be reserved to the treating facility and the petitioner's physician;

8. All treatment within the purview of this section shall occur within or be approved by a state-approved substance use disorder treatment program as described in Chapter 71.24 RCW;

9. Signature of the petitioner agreeing to the terms and conditions of the treatment program.

P. Appeal of deferred prosecution order. The prosecutor may appeal an order granting deferred prosecution if the evaluation facility fails to provide the information required in KCC 9.12.090(E) and KCC 9.12.090(F), if the petitioner has been referred to the facility for treatment. If an appeal on such basis is successful, the trial court may consider the use of another treatment program.

Q. Supervision as condition—Levy of assessment. As a condition of granting a deferred prosecution, the court may order supervision of the petitioner by the probation department during the period of deferral and may levy a monthly assessment upon the petitioner as provided in KCC 9.12.090(M), to the extent the petitioner is able to pay the assessment.

**Sec. 9.12.100. No objection to deferred sentence following revoked deferred prosecution.** If an individual declines the alternative deferred prosecution program created through this chapter, a deferred prosecution program as provided for in Chapter 10.05 RCW, or a deferred prosecution program under this chapter or Chapter 10.05 RCW is revoked due to noncompliance, the city will not object to the individual being granted a deferred sentence conditioned on compliance with a state-approved substance use disorder treatment program.

**Sec. 9.12.110. Vacation of conviction.** If a person convicted of an offense under this chapter is ordered by the court to complete a substance use disorder treatment program, the city will not object to the court vacating the individual's conviction(s) if the person successfully completes the court-approved treatment program and they file proof of such completion with the court. Vacation shall include all convictions for offenses under this chapter that were entered at the time the individual completed the court-approved substance use disorder treatment program.

**SECTION 3.** – *Adoptions by Reference.* A true and correct copy of RCW 69.50.102 adopted and incorporated by reference in Section 2 of this ordinance is attached as Exhibit A.

**SECTION 4.** – *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 5.** – *Savings.* The existing Chapter 9.12 of the Kent City Code, which is repealed and replaced by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

**SECTION 6.** – *Corrections by City Clerk or Code Reviser.* Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

**SECTION 7.** – *Effective Date.* This ordinance shall take effect and be in force at 12:01 a.m. on July 1, 2023, which date is at least thirty days from and after its passage. Until that date, the existing provisions of Chapter 9.12 KCC shall remain in effect.

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DANA RALPH, MAYOR

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Date Approved

ATTEST:

\_\_\_\_\_  
KIMBERLEY A. KOMOTO, CITY CLERK

\_\_\_\_\_  
Date Adopted

\_\_\_\_\_  
Date Published

APPROVED AS TO FORM:

\_\_\_\_\_  
TAMMY WHITE, CITY ATTORNEY



## EXHIBIT A

**RCW 69.50.102 Drug paraphernalia—Definitions.** (a) As used in this chapter, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis;

(8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, or hashish oil into the human body, such as:

(i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

(v) Roach clips: Meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand;

(vi) Miniature cocaine spoons, and cocaine vials;

(vii) Chamber pipes;

(viii) Carburetor pipes;

- (ix) Electric pipes;
- (x) Air-driven pipes;
- (xi) Chillums;
- (xii) Bongs; and
- (xiii) Ice pipes or chillers.

(b) In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
- (3) The proximity of the object, in time and space, to a direct violation of this chapter;
- (4) The proximity of the object to controlled substances;
- (5) The existence of any residue of controlled substances on the object;
- (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;
- (7) Instructions, oral or written, provided with the object concerning its use;
- (8) Descriptive materials accompanying the object which explain or depict its use;
- (9) National and local advertising concerning its use;
- (10) The manner in which the object is displayed for sale;
- (11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
- (13) The existence and scope of legitimate uses for the object in the community; and
- (14) Expert testimony concerning its use. [2022 c 16 § 52; 2012 c 117 § 366; 1981 c 48 § 1.]

**Intent—Finding—2022 c 16:** See note following RCW 69.50.101.

**Severability—1981 c 48:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 48 § 4.]

ORDINANCE NO. \_\_\_\_\_

An Ordinance concerning the unauthorized use and possession of controlled substances, counterfeit substances or legend drugs; amending section 10.60.030 and creating a new Chapter 10.76 of the Spokane Municipal Code.

**Section 1.** A new Chapter 10.76 of the Spokane Municipal Code is created as follows:

**Chapter 10.76**

**Use and Possession of Controlled or Counterfeit Substances or Legend Drugs**

Sections:

- 10.76.010 Definitions
- 10.76.020 Unlawful possession of controlled, counterfeit substances or legend drug.
- 10.76.030 Permissible possession of cannabis.
- 10.76.040 Possession of less than 40 grams of cannabis.
- 10.76.050 Unlawful use of a controlled or counterfeit substance in a public place.
- 10.76.060 Penalty
- 10.76.070 Enforcement
- 10.76.080 Case Resolution

**Section 10.76.010 Definitions.**

The following definitions are applicable in this chapter:

1. "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or commission rules, but does not include hemp or industrial hemp as defined in RCW 15.140.020.
2. "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.
3. "Legend drug" means any drugs which are required by state law or regulation of the pharmacy quality assurance commission to be dispensed on prescription only or are restricted to use by practitioners only and shall include controlled substances in Schedules II through V of chapter 69.50 RCW.
4. "Practitioner" has the same definition as in RCW 69.50.101.
5. "Public place" means an area generally visible to public view, and includes streets,

sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles (whether moving or not), and buildings open to the public, and doorways, windows, drive-up windows, and entrances to buildings or dwellings that are visible to public view.

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

**Section 10.76.020 Unlawful possession of controlled or counterfeit substances or legend drug.**

Except as otherwise authorized by Chapter 69.50 RCW, it is unlawful for any person:

1. to knowingly possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice;
2. to knowingly possess a counterfeit substance; or
3. to knowingly possess a legend drug, except upon the order or prescription of an authorized medical practitioner as provided in RCW 69.41.030.

**Section 10.76.030 Permissible possession of cannabis.**

1. It is not a violation of this chapter for an individual twenty-one years of age or older to possess cannabis, useable cannabis, cannabis concentrates or cannabis infused products in amounts that do not exceed those listed in RCW 69.50.360(3).
2. It is not a violation of this chapter for an individual to possess medical cannabis in accordance with chapters 69.50 or 69.51A RCW.
3. It is not a violation of this chapter for an individual to possess cannabis pursuant to a valid license issued by the Washington State Liquor and Cannabis Control Board.

**Section 10.76.040 Possession of less than 40 grams of cannabis.**

Except as otherwise provided in Chapter 69.50 RCW, knowing possession of less than 40 grams of cannabis or knowing possession of cannabis, cannabis-infused product or cannabis concentrates, regardless of THC concentration, by an individual under the age of twenty-one years, is a misdemeanor.

**Section 10.76.050 Unlawful use of a controlled or counterfeit substance in a public place.**

It is unlawful for any person to knowingly use a controlled or counterfeit substance or legend drug in a public place, unless the substance was obtained directly from, or pursuant to, a

valid prescription or order of a practitioner while acting in the course of his or her professional practice. The existence of a valid prescription is an affirmative defense, provable by a preponderance of the evidence.

### **Section 10.76.060 Penalty**

Until July 1, 2023, all violations of this chapter are punishable as a misdemeanor. Beginning on July 1, 2023, any person who violates this chapter is guilty of a gross misdemeanor, except as provided in section 10.76.040.

### **Section 10.76.070 Enforcement**

1. Unless otherwise subject to custodial arrest under RCW 10.31.100, individuals subject to enforcement under this section shall be cited and released rather than being booked into jail.
2. For individuals cited under this section, law enforcement officers shall seize all controlled substances and related drug paraphernalia and place those items onto property to ensure that all evidence is preserved and available for further testing.
3. As an alternative to arrest, citation or referral to the prosecutor, law enforcement may offer a referral to assessment, treatment and other community resources.

### **Section 10.76.080 Case Resolution**

Case resolution and sentencing under this section should address the underlying addiction. The prosecutor is therefore encouraged to resolve cases charged under this section in a manner that will most effectively advance the defendant's stabilization and recovery. Nothing in this section prevents the prosecutor from offering pretrial diversion or another alternative to prosecution, such as a stipulated order of continuance or deferred prosecution as the mechanism to ensure the defendant receives an assessment, treatment or other services.

**Section 2.** 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 3.** Upon approval by the city attorney, the city clerk is 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 4.** Emergency Clause. The City Council declares that an urgency and emergency exists such that this ordinance is needed for the immediate preservation of the public peace, health, or safety, and/or for the immediate support of City government

and its existing public institutions, and that because of such need, this ordinance shall be effective immediately under Section 19 of the City Charter, upon the affirmative vote of one more than a majority of the City Council.

PASSED by the City Council on \_\_\_\_\_

\_\_\_\_\_  
Council President

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Effective Date