



Snohomish County Council

Committee: Committee of the Whole
ECAF: 2023-0476
Ordinance: 23-046

Analyst: Nicole Gorle
Date: April 26, 2023

Consideration:

Add chapter 10.49 SCC, making it unlawful to possess or use in public controlled or counterfeit substances, or legend drugs.

Background:

In 2021 the Washington State Supreme Court issued an opinion in [State v. Blake, Cause No. 96873-0](#) that stated the Washington State simple possession of a controlled substance statute violated the due process clause of the state and federal constitution. Under the pre-2021 version of RCW 69.50.4013, simple possession was a class C felony¹ unless obtained through a valid prescription.

After RCW 69.50.4013(1) was deemed unconstitutional by the Supreme Court, the State legislature passed [SB 5476](#) which amended state law in response to the Blake decision with the following changes:

- Required that the individual knowingly possessed the controlled substance;
- Changed the penalty to a misdemeanor;
- Encouraged prosecutors to divert cases under this section for assessment, treatment, or other services; and
- Provided a sunset date for these changes of July 1, 2023.²

With the sunset date approaching, a focal point of the 2023 legislative session was RCW 69.50.4013. [SB 5536](#) made it to both bodies and conference committee, but failed to pass the House of Representatives on April 23, 2023, the last day of the regular session.

Without legislative action by either the State or local jurisdictions, possession of controlled substances will be legal come July 1, 2023.

Current Proposal:

Ordinance 23-046 would make it illegal to have possession of, or use in public, controlled substances, counterfeit substances, or legend drugs in unincorporated Snohomish County. The penalty for these illegal actions is a gross misdemeanor, however the legislation strongly encourages alternatives be offered in lieu of arrest and/or prosecution.

Additionally, there are two sections relating to cannabis that:

- Maintain an individual's ability to possess and use cannabis in the quantities allowed under chapter [69.50](#) and [69.51A](#) RCW, if they are twenty-one years of age or older.

¹ Class C felony faces up to 5 years in a state correctional institution, up to \$10,000 fine, or both.

² [SB 5476](#) - See section 29, page 44, line 17

- Maintain the illegality of possession of cannabis by individuals under the age of twenty-one and further clarifies that they must *knowingly* possess the cannabis³.

Sectional Analysis:

10.49.010 Definitions.

This section adds definitions for:

- “Controlled substances”, “counterfeit substances”, and “legend drug” which refer to the definitions provided in chapter 69.50 and 69.41 RCW;
- “Public place” means anywhere generally visible to public view; and
- “Use” means any effort to introduce a controlled or counterfeit substance, or legend drug into the human body.

10.49.020 Unlawful possession of controlled or counterfeit substances or legend drug.

Makes it illegal for anyone to knowingly possess one of these substances or drugs unless it was obtained directly from or pursuant to a valid prescription. Makes a valid prescription an affirmative defense, provable by a preponderance of evidence⁴.

10.49.030 Permissible possession of cannabis.

Maintains that it is legal for an individual twenty-one years of age or older to possess cannabis in amounts stated in RCW 69.50.360(3), allows for possession of medical cannabis, and for possession by individuals and businesses with a valid Washington State cannabis license.

10.49.040 Possession of less than 40 grams of cannabis.

Maintains that it is illegal for someone under the age of twenty-one to *knowingly* possess less than 40 grams of cannabis or any variation of cannabis product and that the penalty for this is a misdemeanor.³

10.49.050 Unlawful use of controlled or counterfeit substances or legend drug in public.

Makes it illegal for anyone to knowingly use one of these substances or drugs *in a public place* unless it was obtained directly from or pursuant to a valid prescription. Makes a valid prescription an affirmative defense, provable by a preponderance of evidence.

10.49.060 Penalty.

Unless otherwise stated, violations of this chapter face a gross misdemeanor. Below is breakdown of the illegal action and penalty under this chapter.

Illegal Action	Penalty
<u>Possession</u> of illegal drugs under this chapter	Gross Misdemeanor ⁵
<u>Use</u> of illegal drugs under this chapter	Gross Misdemeanor
Under 21 – Possession of Cannabis*	Misdemeanor ⁶

³ Washington State law does not contain the word “knowingly” in relation to the possession of cannabis by those under the age of twenty-one.

⁴ “Preponderance of the evidence” – Party with burden of proof convinces the fact finder that there is greater than 50% chance that the claim is true, in this case that the prescription is valid.

⁵ Gross Misdemeanor faces up to 364 days in prison, up to a \$5,000 fine, or both.

⁶ Misdemeanor faces up to 90 days in prison, up to \$1,000 fine, or both.

* Same penalty as is in state law.

Prosecutors are encouraged to divert these cases for assessment, treatment, or other services.

10.49.070 Post-arrest alternatives.

Strongly encourages law enforcement who have probable cause to make an arrest under this chapter to offer the individual services such as referral to [Law Enforcement Assisted Diversion \(LEAD\)](#), treatment facilities and programs, diversion centers or other related services. If the individual chooses one of the services offered, they will not be issued a citation or booked into jail. The officer will still be responsible for collecting evidence and preparing the case for potential referral to the prosecutor should the individual fails to follow through with services.

10.49.80 Severability.

If any section of the chapter is deemed invalid, the remainder is not affected.

This ordinance will go into effect on July 1, 2023.

2023 Budget: No

Future Budget Impact: Unknown

Handling: Expedite – May 17th

Approved-as-to-form: Yes

Risk Management: n/a

Executive Recommendation: n/a

Request: Set time and date for a public hearing on May 17th at 10:30 a.m.