

## Request for Council Action

Date Action is Requested: May 10, 2023  
 Subject: **POSSESSION OF DRUGS ORDINANCE**

### COMMITTEE:

- Finance
  Public Works  
 Public Safety
  Special Agenda Item:

### TYPE OF ACTION REQUESTED:

- Ordinance No.
  Resolution No.  
 Motion
  Discussion  
 No Action - Information Only
  Other:

**SUMMARY OF REQUEST: The Aberdeen Police Department is requesting the council approve the possession of drug ordinance.**

### POLICY IMPLICATIONS:

- This action is in accordance with current policies and procedures.  
 This action would require a new  policy  ordinance  resolution  other action from the Council.  
 This action requires a revision to  policy  ordinance  resolution  other.  
 Does not affect current policies and procedures.

**FISCAL IMPACT: UNKNOWN. IT IS ANTICIPATED POLICE OFFICERS WILL HAVE ADDITIONAL CALLS/CONTACTS/ARRESTS/CITATIONS. THIS WILL INCREASE THE WORKLOAD OF THE ABERDEEN MUNICIPAL COURT AND COMMUNITY COURT AS WELL.**

### BUDGETARY STATUS:

- Funds have already been authorized in this year's budget.  
 This is an extra-budget expenditure.  
 Funds will be requested for this action, if approved, in next year's budget.  
 This action will bring in additional revenue.  
 This action has no budgetary implications.  
 This action will reduce expenditures.  
 Other:

**BACKGROUND/RATIONALE: IN 2021 THE WASHINGTON STATE SUPREME COURT RULED THE FELONY DRUG POSSESSION LAW WAS UNCONSTITUTIONAL. THE WASHINGTON STATE LEGISLATURE PASSED ESB 5476 DURING THE 2021 SESSION. THE 2023 WASHINGTON STATE LEGISLATIVE SESSION FAILED TO PASS A MEASURE REPLACING ESB 5476, WHICH EXPIRES ON JULY 1, 2023. WITH NO STATE STATUTE IN EFFECT, POSSESSION OF SCHEDULE NARCOTICS WITHIN WASHINGTON STATE ARE NO LONGER UNLAWFUL. THIS ORDINANCE MAKES POSSESSION OF LEGEND DRUGS A GROSS MISDEMEANOR IN THE CITY OF ABERDEEN.**

**RECOMMENDATION(S):** It is recommended the City Council approve first reading of the possession of legend drug ordinance.

**ATTACHMENTS:**

- DRAFT ORDINANCE

\_\_\_\_\_  
Staff Name

\_\_\_\_\_  
Committee Chair Name

\_\_\_\_\_  
Staff Signature

\_\_\_\_\_  
Committee Chair Signature

<b>This request aligns with the following City Council Values:</b>	
<input checked="" type="checkbox"/> Workforce Engagement & Development	<input checked="" type="checkbox"/> Vibrant, Safe & Healthy Community
<input type="checkbox"/> Economic Development	<input type="checkbox"/> Infrastructure Investment
<input type="checkbox"/> Fiscal Responsibility	<input checked="" type="checkbox"/> Communications & Outreach

**ORDINANCE \_\_****AN ORDINANCE OF THE CITY OF ABERDEEN, WASHINGTON, ADOPTING A NEW ABERDEEN MUNICIPAL CODE (“AMC”) CHAPTER 9.03, RELATING TO USE AND POSSESSION OF CONTROLLED OR COUNTERFEIT SUBSTANCES OR LEGEND DRUGS; PROVIDING FOR SEVERABILITY; AUTHORIZING CORRECTIONS; AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, people openly use and possess illegal drugs in public places in the City of Aberdeen (“City”); and

**WHEREAS**, in 2021, the Washington State Supreme Court issued a decision in *State v. Blake*, ruling that RCW 69.50.4013 is unconstitutional and void; and

**WHEREAS**, as a result of the *State v. Blake* ruling, on July 1, 2023, RCW 69.50.4013 will revert to its prior form, which the state Supreme Court has also held was unconstitutional and void; effective July 1, 2023, therefore, Washington state, and cities like Aberdeen that have adopted RCW 69.50.4013 by reference, will be left with no enforceable law to prohibit the possession of controlled substances; and

**WHEREAS**, the use and possession of controlled substances is a detriment to the community; substance use disorders ravage the region; substance use provides an opportunity for those who produce, import, and sell deadly drugs to prey on those suffering from addiction; and property crimes, which are committed to fund addiction, have impacted the City’s residents and business community. The City is unwilling to stand idle while the use of deadly drugs is normalized, and drug addiction, drug-related deaths, and drug-related crime increases; and

**WHEREAS**, the City acknowledges substance use disorder is a medical issue and treatment services are necessary to address the issue. Without proper encouragement and care, however, individuals with substance use disorders cannot be expected to make the necessary decision to stop using those substances on their own. Addiction continues to control individuals and there is no incentive to end the cycle of use. While the City acknowledges that no single response will solve the drug epidemic facing our community, continued inaction will only exacerbate the problem by normalizing drug use, creating a bigger market for the distribution of controlled substances, and increasing the opportunity for people to become addicted. In turn, deaths will increase as will drug-related violence and property crimes; and

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

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

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

**Section 1. New Chapter 9.03 SMC, Use and Possession of Controlled or Counterfeit Substances or Legend Drugs, Adopted.** A new Chapter 9.03 of the Aberdeen Municipal Code, entitled “Use and Possession of Controlled or Counterfeit Substances or Legend Drugs,” is adopted as set forth in Attachment A hereto and incorporated herein by this reference.

**Section 2. Severability.** Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

**Section 3. Corrections.** The City Clerk and codifiers of the Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

**Section 4. Effective Date.** This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force on July 1, 2023.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF ABERDEEN, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS \_\_ DAY OF \_\_\_\_\_, 2023.**

**CITY OF ABERDEEN:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Pete Schave, Mayor**

\_\_\_\_\_  
**Hillary J. Evans, Corporation Counsel**

**ATTEST/AUTHENTICATED:**

Published:

Effective:

\_\_\_\_\_

**ATTACHMENT A****USE AND POSSESSION OF CONTROLLED OR COUNTERFEIT SUBSTANCES OR  
LEGEND DRUGS****Chapter 9.03**

Section:

**9.03.010 Definitions.****9.03.020 Unlawful possession of controlled or counterfeit substances or legend drug.****9.03.030 Unlawful use of controlled or counterfeit substances or legend drug in public.****9.03.040 Penalty.****9.03.010 Definitions.**

1. "Controlled substance" means any controlled substance classified in Schedule I, II, III, IV or V of chapter 69.50 RCW, as it now exists or shall hereafter be added to, deleted from, modified, or amended.
2. "Counterfeit substance" has the same meaning as "imitation controlled substance," as defined in RCW 69.52.020(3).
3. "Legend drug" means any legend drug as defined in RCW 69.41.210(3).
4. "Public place" is an area generally visible to public view and includes, but is not limited to, streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, transit stations, shelters and tunnels, automobiles visible to public view (whether moving or not) and buildings, including those which serve food or drink or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.
5. "Use" means any effort taken in furtherance of an attempt to inject, ingest, inhale, or otherwise introduce a controlled substance into the human body.

**9.03.020 Unlawful possession of controlled or counterfeit substances or legend drug.**

It is unlawful for any person to knowingly possess a controlled or counterfeit substance, or legend drug, 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 as otherwise authorized by this chapter, state or federal law. The existence of a valid prescription is an affirmative defense, provable by a preponderance of the evidence.

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

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.

**9.03.040 Penalty.**

Unless otherwise specified, any person who violates this chapter is guilty of a gross misdemeanor and upon conviction may be imprisoned for up to 364 days, or fined not more than five thousand dollars, or both. The prosecutor is encouraged to divert such cases for assessment, treatment or other services.