

CITY OF BUCKLEY, WASHINGTON

ORDINANCE NO. 03-23

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON, AMENDING BUCKLEY MUNICIPAL CODE CHAPTER 10.68 - CONTROLLED SUBSTANCES AND DRUG PARAPHERNALIA

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

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

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

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

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

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

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

10.68.010 Controlled Substances prohibited.

- (1) It is unlawful for any person to knowingly possess a controlled substance other than marijuana as defined by RCW [69.50.101](#)(f) 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) It is unlawful for any person to knowingly possess a legend drug in violation of Chapter [69.41](#) RCW.
- (3) Penalties.
 - (a) Violation of subsection (1) of this section is a misdemeanor. For a first offense, the maximum penalty shall be 90 days in jail and/or a \$1,000 fine. For a second or subsequent offense, the maximum penalty shall be 180 days in jail and/or a \$2,000 fine.
 - (b) Violation of subsection (2) of this section is a gross misdemeanor punishable by up to 364 days in jail and/or a \$5,000 fine.
 - (c) Violation of this subsection (3) is a misdemeanor punishable by up to 90 days in jail and/or a \$1,000 fine.

Section 1. Chapter 10.68 of the Buckley Municipal Code is hereby amended by enacting a new section, Section 10.68.020 of Buckley Municipal Code entitled “Use of dangerous drugs in public,” is added as follows:

10.68.020 Use of dangerous drugs in public.

- A. It is unlawful for any person to intentionally use any dangerous drug in a public place, except as now or hereafter authorized or expressly permitted by the laws of the state or except upon the written or oral order or prescription of a physician, surgeon,

dentist, or other medical professional licensed to practice in the state and legally authorized to prescribe controlled substances.

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

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

2. "Public place" means an area generally visible to public view and includes without limitation any place where the public has a right of access, which includes without limitation sidewalks, parking lots and parking garages, streets, alleys, highways, or roads; public buildings and grounds, including schools, parks, playgrounds, 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.

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

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

Section 2. Chapter 10.68 of the Buckley Municipal Code is hereby amended by enacting a new section, Section 10.68.030 of Buckley Municipal Code entitled “Unlawful deposit of dangerous drugs and drug paraphernalia,” is added as follows:

10.68.030 Unlawful deposit of dangerous drugs and drug paraphernalia.

It shall be unlawful for any person to knowingly dump, throw, deposit, discard, or discharge onto the ground or into any body of water any dangerous drug, as that term is defined in BMC 10.68.020(B)(1), or drug paraphernalia, as defined in RCW 69.50.102, as those referenced provisions are currently enacted or hereafter amended or recodified. Unless another section expressly provides otherwise, any person who violates any provision of this section shall be guilty of a misdemeanor.

Section 3. Chapter 10.68 of the Buckley Municipal Code is hereby amended to add a new section, Section 10.68.040 of Buckley Municipal Code entitled “Unlawful to aid or abet furnishing certain drugs to persons in jail or custody of police,” as follows:

10.68.040 Unlawful to aid or abet furnishing certain drugs to persons in jail or custody of police. It is unlawful for any person not acting under the direction of the director of public health to knowingly furnish or aid or abet the furnishing of any opium, morphine, cocaine, hydrate of chloral, isonipecaine, amidone, isosmidone, keto-bemidone or any substance neither chemically nor physically distinguishable from any one (1) of them or any opiate or narcotic, or narcotic derivative thereof or any of the “dangerous drugs” mentioned in BMC 10.68.020 to any person confined in jail, in the custody of the court

bailiff, in the custody of the police department, in the custody of a police or law enforcement officer, or any place used for the confinement of a person, unless the substance in question is lawfully prescribed for the person by a doctor or physician and is given to such person under the direction of that person's physician or doctor. Unless another section expressly provides otherwise, any person who violates any provision of this section shall be guilty of a misdemeanor.

Section 4. Chapter 10.68 of the Buckley Municipal Code is hereby amended by enacting a new section, Section 10.68.050 of Buckley Municipal Code entitled "Places of resort for users of narcotics and/or dangerous drugs declared nuisance," is added as follows:

10.68.050 Places of resort for users of narcotics and/or dangerous drugs declared nuisance. It shall be unlawful for any person, firm, corporation or agent, holding, leasing, renting, occupying or having charge and control of, any building, structure or premises or room or rooms therein to knowingly permit the same to be used as a place of resort for the unlawful sale, gift, use, or distribution of narcotics, narcotic drugs or dangerous drugs mentioned in BMC 10.68.020 and BMC 10.68.040, and any such sale, gift, use, or distribution of narcotics, narcotic drugs and/or dangerous drugs is hereby declared to be a public nuisance and may be abated as such in the manner provided by this chapter or BMC 1.12. Unless another section expressly provides otherwise, any person who violates any provision of this section shall be guilty of a misdemeanor.

Section 5. Chapter 10.68 of the Buckley Municipal Code is hereby amended by enacting a new section, Section 10.68.060 of Buckley Municipal Code entitled "Unlawful to frequent or be in place where narcotics and/or dangerous drugs are unlawfully kept, used or disposed of," is added as follows:

10.68.060. Unlawful to frequent or be in place where narcotics and/or dangerous drugs are unlawfully kept, used or disposed of. It is unlawful for anyone, not lawfully authorized, to frequent, enter, be in, or be found in any place they know to be a location where narcotics, narcotic drugs, their derivatives, or dangerous drugs mentioned in BMC 10.68.020 and BMC 10.68.040 are unlawfully used, kept, or disposed of. Unless another section expressly provides otherwise, any person who violates any provision of this section shall be guilty of a misdemeanor.

Section 6. Chapter 10.68 of the Buckley Municipal Code is hereby amended by enacting a new section, Section 10.68.070 of Buckley Municipal Code entitled "Drug-traffic loitering," is added as follows:

10.68.070 Drug-traffic loitering.

A. As used in this section:

1. "Conviction" means an adjudication of guilt pursuant to RCW Title 10 or 13, or the equivalent provisions of any federal statute, state statute, or ordinance of any political subdivision of this state, and includes a verdict of guilty, a finding of guilty, and an acceptance of a plea of guilty.

2. "Drug paraphernalia" means drug paraphernalia as the term is defined in the Uniform Substance Act, RCW 69.50.102, excluding hypodermic syringes or needles in

the possession of a confirmed diabetic or a person directed by his or her physician to use such items.

3. "Illegal drug" activity means unlawful conduct contrary to any provision of Chapter 69.41, 69.50 or 69.52 RCW, or the equivalent federal statute, state statute, or ordinance of any political subdivision of this state.

4. "Known drug trafficker" means a person who has, within the knowledge of the arresting officer, been convicted within the last two (2) years in any court of any felony illegal drug activity.

5. "Public place" means 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.

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

B. A person is guilty of drug-traffic loitering if he or she remains in a public place and intentionally solicits, induces, entices, or procures another to engage in unlawful conduct contrary to Chapter 69.50, 69.41 or 69.52 RCW.

C. The following non-exclusive list of circumstances that do not by themselves constitute the crime of drug-traffic loitering, but they may be relevant in evaluating the criminal intent required by subsection (B):

1. Is seen by the officer to be in possession of drug paraphernalia under circumstances that evince an intent to use a controlled substance other than cannabis; or
2. Is a known drug trafficker; or
3. Repeatedly beckons to, stops or attempts to stop passersby, or engages passersby in conversation; or
4. Repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms or any other bodily gesture; or
5. Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to stop pedestrians.

D. No person may be arrested for drug-traffic loitering unless probable cause exists to believe that he or she has remained in a public place and has intentionally solicited, induced, enticed or procured another to engage in unlawful conduct contrary to Chapter 69.50, 69.41, or 69.52 RCW.

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

Section 7. Chapter 10.68 of the Buckley Municipal Code is hereby amended by enacting a new section, Section 10.68.080 of Buckley Municipal Code entitled "Severability," is added as follows:

10.68.080 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

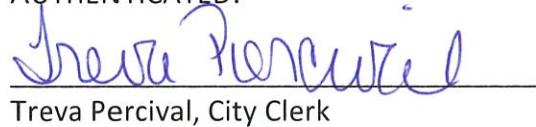
validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

Section 8. This Ordinance shall take effect and be in force five (5) days from and after its passage, approval, and publication, as required by law.

PASSED BY THE CITY COUNCIL this 24TH day of January 2023.


Beau Burkett, Mayor

AUTHENTICATED:


Treva Percival, City Clerk

APPROVED AS TO FORM:


Phil Olbrechts, City Attorney

Published: February 1, 2023

Effective: February 6, 2023