

ORDINANCE NO. 21-911

AN ORDINANCE of the City of Federal Way, Washington, relating to misdemeanor possession of controlled substances; adding new section 6.10.130 to Chapter 6.10 FWRC.

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, 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 because it creates a strict-liability felony offense; 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 contact or arrest persons possessing a controlled substance 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.

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

Section 1. Chapter 6.10 of the Federal Way Revised Code is hereby amended to add a new section 6.10.130 to read as follows:

6.10.130 - Knowing possession of controlled substances prohibited

(1) It is unlawful for any person to knowingly possess a controlled substance other than marijuana unless the substance was obtained directly from, or in accordance with, a valid prescription or order of a practitioner while acting in the course of their professional practice.

(2) The terms “controlled substance” and “practitioner” as used in subsection 1 of this section are defined by RCW 69.50.101.

(3) Violation of subsection 1 of this section is a gross misdemeanor.

Section 2. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation. The City Council of the City of Federal Way hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clauses, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 3. 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/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 5. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage and publication, as provided by law.

PASSED by the City Council of the City of Federal Way this 20th day of April, 2021.

[signatures to follow]

CITY OF FEDERAL WAY:



JIM FERRELL, MAYOR

ATTEST:



STEPHANIE COURTNEY, CMC, CITY CLERK

APPROVED AS TO FORM:



J. RYAN CALL, CITY ATTORNEY

FILED WITH THE CITY CLERK:	<u>04/14/2021</u>
PASSED BY THE CITY COUNCIL:	<u>04/20/2021</u>
PUBLISHED:	<u>04/23/2021</u>
EFFECTIVE DATE:	<u>05/23/2021</u>
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