

**ORDINANCE NO. 3438**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LYNNWOOD, WASHINGTON, DO ORDAINS AS FOLLOWS:
CREATING A NEW CHAPTER TO THE LYNNWOOD MUNICIPAL
CODE ENTITLED "USE OF DRUGS IN PUBLIC"; PROVIDING FOR
SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND
PROVIDING FOR SUMMARY PUBLICATION**

WHEREAS, people have been openly using and possessing illegal drugs in public places in the City of Lynnwood ("City"); and

WHEREAS, law enforcement does not have the legal authority to effectively address this 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 illegal 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 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 LYNNWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Purpose. The purpose of this ordinance is to: (1) prohibit the use of controlled substances in a public place or in view of the general public; (2) prohibit the deposit of controlled substances on the ground or in any body of water; and (3) provide post-arrest alternatives for police officers to consider.

Section 2. New Chapter Adopted. A new Lynnwood Municipal Code Chapter 10.42 entitled "Use of Drugs in Public" is hereby adopted to read as set forth in Exhibit A attached hereto and by this reference fully incorporated herein.

Section 3. Severability. If any section, 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 shall not affect the validity or constitutionality of any other section, sentence, clause, phrase, or word of this ordinance.

Section 4. Effective Date. This ordinance, or an approved summary thereof consisting of its title, shall be published in the City's official newspaper of record and shall take effect, and be in full force, five (5) days following its publication.

PASSED BY THE CITY COUNCIL this 13th day of February, 2023.

APPROVED:

DocuSigned by:

Christine Frizzell 2/22/2023

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Christine Frizzell, Mayor

ATTEST/AUTHENTICATED:

DocuSigned by:

Luke Lonie

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Luke Lonie, City Clerk

APPROVED AS TO FORM:

DocuSigned by:

Lisa Marshall

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Lisa M. Marshall, City Attorney

EXHIBIT A

CHAPTER 10.42 USE OF DRUGS IN PUBLIC

Sections:

- | | |
|-----------|---|
| 10.42.010 | Definitions. |
| 10.42.020 | Unlawful use of dangerous drugs in public. |
| 10.42.030 | Unlawful deposit of dangerous drugs and drug paraphernalia. |
| 10.42.040 | Penalty for violations. |
| 10.42.050 | Post-arrest alternatives. |

10.42.010 Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

B. “Drug paraphernalia” has the same meaning as provided in RCW 69.50.102, excluding sterile hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.

C. “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, parking garages, streets, driveways, alleys, highways, roads, tunnels, or bridges; public buildings and grounds, including schools, plazas, shelters, 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, transit stations, 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; automobiles visible to public view, whether moving or not; and all other places of like or similar nature.

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

10.42.020 Unlawful use of dangerous drugs in public.

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.

10.42.030 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 dangerous drug, as defined in LMC 10.42.010, or drug paraphernalia, as defined in RCW 69.50.102, as those referenced provisions are currently enacted or hereafter amended or recodified.

10.42.040 Penalty for violations.

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

10.42.050 Post-arrest alternatives.

A police officer who has probable cause and arrests a person for violating any provision of this chapter should strongly consider the following post-arrest alternatives:

A. Referral to services, including, but not limited to, Law Enforcement Assisted Diversion, local diversion centers, or substance use treatment facilities and programs. A police officer electing the post-arrest alternative under this subsection shall not issue a citation or book the person into jail. The police officer shall collect any evidence and prepare the case for potential referral to prosecution in the event the person fails to follow through with such services; or

B. Booking the person, providing him or her with information regarding the services as provided in subsection A of this section, and releasing him or her.