

Ordinance 666

An ordinance amending the Forks Criminal Code, Chapter 9.05, in a manner as to adopt the State Legislative fix to the State Supreme Court's Blake Decision associated with the illegal possession of controlled substances as Chapter 9.20.

Recitals

Whereas, the Washington State Supreme Court determined that the previous felony possession of controlled substances statute was unconstitutional in February 2021 (See *Washington v. Blake*, No. 98873-0);

Whereas, that ruling's reasoning also applied to other identically worded criminal ordinances including the City of Forks;

Whereas, efforts within the Washington State Legislature to address a "*Blake* fix" was eventually addressed in a Special Legislative Session that occurred on 16 May 2023 (See Second Engrossed Second Substitute Senate Bill 55360);

Whereas, those statutory changes need to be adopted by the City as it created new criminal charges for the possession of controlled substances and also the use of such substances in public;

Therefore, the City Council in open session adopts this amendment to its criminal code:

Section 1. Repealing FMC 9.05.050. Forks Municipal Code 9.05.050 is repealed and replaced in the manner found below.

Section 2. Creating a New Chapter, FMC 9.20, Controlled Substances, drug paraphernalia, and use of controlled substances in public. Chapter FMC 9.20 is hereby created as below.

Chapter 9.20. Controlled Substances, Counterfeit Substance or Legend Drug, and Drug Paraphernalia,

Section 3. FMC 9.20.010. Prohibition of Knowing Possession of a Counterfeit Substance, Controlled Substance, or Legend Drug.

(a) Except as authorized by state law, it is unlawful for any person to:

- (1) Knowingly possess a counterfeit substance; or,
- (2) Knowingly use a counterfeit substance in a public place.

No person may be charged under both FMC 9.20.010(a) (1) or (2) of this chapter relating to the same course of conduct.

A violation of subsection (a)(1) or (a)(2) of this section is a gross misdemeanor punishable by imprisonment of up to 180 days, or by a fine of not more than \$1,000, or by both such imprisonment and fine, however, if the defendant has two or more prior convictions under subsection (a)(1) or (a)(2) of this section occurring after the effective date of this ordinance, a violation of subsection (a)(1) or (a)(2) of this section is punishable by imprisonment for up to 364 days, or by a fine of not more than \$1,000, or by both such imprisonment and fine. The prosecutor is encouraged to divert such cases for assessment, treatment, or other services.

(b) Except as authorized by state law, it is unlawful for any person to:

- (1) Knowingly possess a controlled substance 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
- (2) Knowingly use a controlled substance 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.

No person may be charged under both FMC 9.20.010(b)(1) or (b)(2) of this chapter relating to the same course of conduct.

A violation of subsection (b)(1) or (b)(2) of this section is a gross misdemeanor punishable by imprisonment of up to 180 days, or by a fine of not more than \$1,000, or by both such imprisonment and fine, however, if the defendant has two or more prior convictions under subsection (b)(1) or (b)(2) of this section occurring after the effective date of this ordinance, a violation of subsection (b)(1) or (b)(2) of this section is punishable by imprisonment for up to 364 days, or by a fine of not more than \$1,000, or by both such imprisonment and fine. The prosecutor is encouraged to divert such cases for assessment, treatment, or other services.

(c) Except as authorized by state law, *see specifically* RCW 69.41.030, it is unlawful for any person to:

- (1) knowingly possess any legend drug; or,
- (2) knowingly use any legend drug in a public place.

No person may be charged with both knowing possession and knowing use in a public place under this section relating to the same course of conduct.

A violation of this section is a misdemeanor. The prosecutor is encouraged to divert such cases for assessment, treatment, or other services.

(d) Except as authorized by state law, no person under 21 years of age may manufacture, sell, distribute, or knowingly possess cannabis, cannabis-infused products, or cannabis

6 concentrates, regardless of THC concentration. This does not include qualifying patients with a valid authorization.

Except as provided in RCW [69.50.401\(2\)\(c\)](#) or as otherwise authorized by this chapter, any person found guilty of knowing possession of forty grams or less of cannabis is guilty of a misdemeanor. The prosecutor is encouraged to divert cases under this section for assessment, treatment, or other services.

Section 4. FMC 9.20.020 Drug paraphernalia.

As the State Legislature in its May 2023 adoption of Second Engrossed Second Substitute Senate Bill 5536 preempted all local governments' ability to regulate and criminalize drug paraphernalia unless adopted as per state law, the City hereby adopts RCW 69.50.412 and RCW 69.50.4121 as amended in SB 5536 and in any manner subsequently amended by the State's legislature.

Section 5. FMC 9.20.030 Definitions

For the purpose of this chapter, the following definitions shall apply:

- (a) "public place" has the same meaning as defined in RCW 66.04.010, but the exclusions in RCW 66.04.011 do not apply.
- (b) "use a counterfeit substance" means to introduce the substance into the human body by injection, inhalation, ingestion, or any other means.
- (c) "use a controlled substance" means to introduce the substance into the human body by injection, inhalation, ingestion, or any other means.
- (d) "use any legend drug" means to introduce the drug into the human body by injection, inhalation, ingestion, or any other means.

Section 6. FMC 9.20.040. Diversion of charges/cases encouraged.

Pursuant to state law, the City Attorney, or their designee, is encouraged to divert such charges/cases for assessment, treatment, or other services. Discretion for such activities shall lie solely with the City Attorney or their designee.

Section 7. Errors Allowed to be corrected.

The City Attorney or the City Clerk may make necessary corrections to this ordinance, including scrivener's errors or clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or numbering or referencing of ordinances or municipal code chapters, their sections and subsections.

