

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LEWIS COUNTY, WASHINGTON**

**A CRIMINAL ORDINANCE OF LEWIS COUNTY,)
WASHINGTON PROHIBITING THE POSSESSION OF) ORDINANCE NO. 1324
CONTROLLED SUBSTANCES, COUNTERFEIT)
SUBSTANCES, AND LEGEND DRUGS;)
PROHIBITING CERTAIN RELATED ACTIVITIES; AND)
MIRRORING STATE PENALTIES FOR SUCH CRIMES)**

WHEREAS, Chapter 69.50 RCW regulates controlled substances and counterfeit controlled substances, setting criminal penalties for violations of its provisions; and

WHEREAS, Chapter 69.41 RCW regulates legend drugs, setting criminal penalties for violations of its provisions; and

WHEREAS, the Washington State Supreme Court's February 25, 2021 decision in *State v. Blake*, No. 96873-0, rendered RCW 69.50.4013 void for failing to include a constitutionally required mental element within the crime of possession of a controlled substance; and

WHEREAS, the *Blake* decision's reasoning potentially threatens certain other possession provisions in Chapters 69.50 and 69.41 RCW, but also makes clear that including the required mental element would remedy the constitutional problem in such provisions; and

WHEREAS, it appears unlikely that the State Legislature will be able to pass statutes remedying the constitutional problem in the 2021 legislative session; and

WHEREAS, under Article XI, Section 11 of the state constitution, Lewis County has the power to pass police and sanitary regulations unless in conflict with general laws, which may include duplicating state-law crimes by local ordinance; and

WHEREAS, Lewis County desires to reinforce the state crimes affected by the Blake decision against challenge by duplicating them in county ordinance with the required mental element; and

WHEREAS, under RCW 36.01.160 and RCW 36.32.120(7), when duplicating state-law crimes, a county is required to duplicate state-law penalties as well; and

WHEREAS, Lewis County and many other counties have duplicated state-law penalties to create gross misdemeanors for, among other things, violations of the dangerous dog statute (Ch. 16.08 RCW), the subdivision statute (Ch. 58.17 RCW), and the Shoreline Management Act (Ch. 90.58 RCW), which penalties would not be lawful but for the fact that counties must match state-law penalties when criminalizing the same conduct the state criminalizes;

WHEREAS, in the controlled substances context, RCW 69.50.608 requires that local ordinances must be consistent with Chapter 69.50 RCW and provide for the same penalties therein; and

WHEREAS, the penalties for possession and the related crimes addressed in this ordinance are specified in Chapters 69.50 and 69.41 RCW, as well as the Sentencing Reform Act, Chapter 9.94A RCW; and

WHEREAS, those penalties persist even as to the now-invalidated RCW 69.50.4013, because they remain prescribed in Chapter 9.94A RCW, which was not invalidated by the *Blake* decision.

NOW THEREFORE, having made the above findings, be it ordained as follows:

- I. New Chapter. A new chapter of Title 9 of the Lewis County Code is hereby created to include the following provisions:

Section 1. Possession of controlled substance—Penalty—Possession of useable marijuana, marijuana concentrates, or marijuana-infused products—Delivery.

(1) It is unlawful for any person knowingly to possess a controlled substance (as defined in RCW 69.50.101) 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 except as otherwise authorized by this chapter.

(2) Except as provided in Section 2 of this chapter, any person who violates this section is guilty of a Class C felony punishable consistent with chapters 9A.20 RCW and 9.94A RCW.

(3)(a) The possession, by a person twenty-one years of age or older, of useable marijuana, marijuana concentrates, or marijuana-infused products in amounts that do not exceed those set forth in RCW 69.50.360(3) is not a violation of this chapter.

(b) The possession of marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products being physically transported or delivered within the state, in amounts not exceeding those that may be established under RCW 69.50.385(3), by a licensed employee of a common carrier when performing the duties authorized in accordance with RCW 69.50.382 and 69.50.385, is not a violation of this chapter.

(4)(a) The delivery by a person twenty-one years of age or older to one or more persons twenty-one years of age or older, during a single twenty-four hour period, for noncommercial purposes and not conditioned upon or done in connection with the provision or receipt of financial consideration, of any of the following marijuana products, is not a violation of this chapter:

- (i) One-half ounce of useable marijuana;

(ii) Eight ounces of marijuana-infused product in solid form;

(iii) Thirty-six ounces of marijuana-infused product in liquid form; or

(iv) Three and one-half grams of marijuana concentrates.

(b) The act of delivering marijuana or a marijuana product as authorized under this subsection (4) must meet one of the following requirements:

(i) The delivery must be done in a location outside of the view of general public and in a nonpublic place; or

(ii) The marijuana or marijuana product must be in the original packaging as purchased from the marijuana retailer.

(5) No person under twenty-one years of age may knowingly possess, manufacture, sell, or distribute marijuana, marijuana-infused products, or marijuana concentrates, regardless of THC concentration. This does not include qualifying patients with a valid authorization.

(6) The possession by a qualifying patient or designated provider of marijuana concentrates, useable marijuana, marijuana-infused products, or plants in accordance with chapter 69.51A RCW is not a violation of this chapter.

Section 2. Possession of forty grams or less of marijuana—Penalty.

Except as provided in RCW 69.50.401(2)(c) or as otherwise authorized by law, any person who knowingly possesses forty grams or less of marijuana is guilty of a misdemeanor punishable consistent with chapter 9A.20 RCW.

Section 3. Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions—Penalty.

(1) It shall be unlawful for any person to knowingly sell, deliver, or possess any legend drug except as permitted by RCW 69.41.030, now or as hereafter amended.

(2)(a) A violation of this section involving the sale, delivery, or possession with intent to sell or deliver is a class B felony punishable according to chapters 9A.20 RCW and 9.94A RCW.

(b) A violation of this section involving possession is a misdemeanor.

Section 4. Counterfeit substances—Penalties.

(1) Except as authorized by Chapter 69.50 RCW, it is unlawful for any person to knowingly create, deliver, or possess a counterfeit substance.

(2) Any person who violates this section with respect to:

(a) A counterfeit substance classified in Schedule I or II which is a narcotic drug, or flunitrazepam classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(b) A counterfeit substance which is methamphetamine, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(c) Any other counterfeit substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapters 9A.20 RCW and 9.94A RCW;

(d) A counterfeit substance classified in Schedule IV, except flunitrazepam, is guilty of a class C felony punishable according to chapter 9A.20 RCW and 9.94A RCW;

(e) A counterfeit substance classified in Schedule V, is guilty of a class C felony punishable according to chapter 9A.20 RCW and 9.94A RCW.

Section 5: Construction

(1) This chapter is intended to criminalize conduct criminalized under state law, with constitutionally required mens rea, and to mirror state penalties for such crimes.

(2) If any penalty specified in this chapter is deemed to be in excess of that authorized by law, the maximum permissible penalty authorized by law shall be the maximum permissible penalty under this chapter. In such case, an interpreting court shall construe this chapter to continue to have full force and effect except insofar as the maximum penalties have been reduced.

(3) If any penalty specified in this chapter is deemed to be out of conformity with RCW 69.50.608 such that is preempted, the penalty shall be adjusted to be in conformity with RCW 69.50.608. In such case, an interpreting court shall construe this chapter to continue to have full force and effect except insofar as the maximum penalties have been increased or reduced, as the case may be.

Section 6. Severability

If any provision of this chapter is deemed unconstitutional or contrary to law, it shall be severed, and the rest of this chapter shall continue in full force and effect.

Section 7. Geographic Scope

(1) This chapter shall apply to all unincorporated portions of Lewis County.

(2) This chapter shall also apply to all incorporated portions of Lewis County. However, the governing body of any incorporated municipality within Lewis County may remove the municipality from the effect of this chapter by (a) duly passing a resolution declaring this chapter to have no effect in such municipality and (b) delivering a certified copy of the resolution to the Lewis County Board of County Commissioners. Upon delivery as set forth herein, this chapter shall cease to have any force and effect within the boundaries of such incorporated municipality.

Section 8. Sunset

This chapter is temporary. It shall cease to have any effect as of 12:01AM on July 1, 2021.

- II. Effective Date. This ordinance is in the public interest and shall be effective immediately upon passage.

PASSED IN REGULAR SESSION THIS 30th day of March, 2021, after a public hearing was held, pursuant to notice published in the Chronicle on March 18, 2021.

APPROVED AS TO FORM:
Jonathan Meyer, Prosecuting Attorney

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON

By:

Gary Stamper, Chair

ATTEST:
Rieva Lester, Clerk of the Board

Lindsey R. Pollock, DVM, Vice Chair

By:

Sean D. Swope, Commissioner