

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to controlled substances; adding the crimes of possession of a controlled substance and use of a controlled substance in a public place; amending Section 12A.09.020 of the Seattle Municipal Code; and adding a new Section 3.28.141 to the Seattle Municipal Code.

..body

WHEREAS, in 2021, the Washington State Supreme Court struck down Washington’s criminal statute prohibiting possession of a controlled substance in the case of *State v. Blake*; and

WHEREAS, in *State v. Blake*, the Washington Supreme Court determined it was necessary for the State to require proof of *knowing* possession of a controlled substance to obtain a conviction; and

WHEREAS, in response to *State v. Blake*, the State Legislature passed ESB 5476, which it subsequently amended in May 2023 with 2E2SSB 5536; and

WHEREAS, prior to *State v. Blake*, drug possession was a Class C felony, and cases in Seattle were referred to the King County Prosecuting Attorney for review and a determination of whether to file criminal charges and were processed through the King County Superior Court system; and

WHEREAS, 2E2SSB 5536 reclassifies the knowing possession of a controlled substance, and the knowing use of a controlled substance in a public place, as gross misdemeanors; and

WHEREAS, the reclassification provisions took effect on July 1, 2023, and certain other provisions of the law will take effect on August 15, 2023, and January 1, 2025; and

WHEREAS, with the State’s reclassification of these offenses to gross misdemeanors, it is necessary for The City of Seattle to adopt the State statute so that the Seattle City

1 Attorney may receive and evaluate referrals submitted by Seattle police, and consider
2 these offenses for prosecution or alternative disposition in the Municipal Court; and

3 WHEREAS, in lieu of jail booking and referral to the prosecutor, 2E2SSB 5536 encourages law
4 enforcement to offer a referral to assessment and services, which may include, but are not
5 limited to, arrest and jail alternative programs, law enforcement assisted diversion
6 programs, and the recovery navigator program; and

7 WHEREAS, people suffering from substance use disorders need treatment, and arrest in the case
8 of knowing possession or use in a public place of a controlled substance should occur
9 only when there is a threat to the peace and wellbeing of the community or a threat of
10 harm to others; and

11 WHEREAS, whenever possible, the City should seek to divert individuals into case management
12 and substance use disorder treatment services, and police arrest policies under this
13 ordinance should reflect officers' best attempt to distinguish between the need to arrest
14 and efforts to divert; and

15 WHEREAS, as the county's designated Behavioral Health Administrative Service Organization,
16 King County is responsible, in part, for delivering countywide services related to mental
17 and behavioral health and substance use disorder care and treatment; and

18 WHEREAS, The City of Seattle is committed to coordinating with King County government as
19 it endeavors to provide these services to county residents, including those within Seattle;
20 and

21 WHEREAS, the City recognizes that prior federal, state, and local drug offense law enforcement
22 and policies, including the "war on drugs," disproportionately impacted Black,

1 Indigenous, and People of Color and caused trauma and pain that lingers still today in
2 these communities; and

3 WHEREAS, The City of Seattle is committed to not repeating the errors of the past and will
4 work to have the implementation of this ordinance balance public safety with the well-
5 being of individuals using controlled substances; and

6 WHEREAS, this ordinance and related efforts to increase the availability of substance use
7 disorder care and treatment services, including diversion from the criminal justice
8 system, are necessary to protect the peace and welfare of the city, the City government’s
9 primary responsibility as stated in the preamble to the City Charter; and

10 WHEREAS, consistent with Mayor Bruce Harrell’s Executive Order 2023-04 addressing the
11 Opioid and Synthetic Narcotics Crisis, issued on April 17, 2023, which identified
12 treatment and services geared towards addressing substance abuse and overdose and
13 committed to prioritizing enforcing sales and distribution related crimes; and

14 WHEREAS, in furtherance of Executive Order 2023-04, the Mayor announced on June 12, 2023
15 the creation of a stakeholder workgroup, the Fentanyl Systems Task Force, to advance
16 effective and sustainable solutions to address the knowing possession or public use of
17 controlled substances in public places; and

18 WHEREAS, the Mayor’s Fentanyl Systems Task Force and its subgroups will review and make
19 policy and implementation recommendations on effective substance use disorder
20 diversion services and treatment programs consistent with 2E2SSB 5536, identifying
21 options for pre-arrest, pre-booking, pre-trial and post-sentencing diversion; and

1 WHEREAS, the Mayor’s Fentanyl Systems Task Force and its subgroups will further evaluate a
2 potential successor to community court and other innovative possibilities for effective
3 and restorative post-file diversion and court systems; and

4 WHEREAS, the Mayor will issue a Public Health and Safety Executive Order requiring that (a)
5 the Seattle Police Department (SPD) create a policy establishing diversion and treatment
6 as the standard approach for most instances of knowing possession and public use of
7 controlled substances, and setting guidelines on circumstances when an arrest is
8 appropriate, and (b) City departments collect data with sufficient frequency to achieve a
9 general baseline of data or average number in order to measure the number of individuals
10 the City is trying to assist; and

11 WHEREAS, the Public Health and Safety Executive Order will further set expectations around
12 outreach to be conducted with those possessing and publicly using controlled substances;
13 individuals who reside with, care for, or interact with those possessing and publicly using
14 controlled substances; members of the of the criminal justice system; members of the
15 treatment and service provider community; and others directly affected by public drug
16 use; NOW, THEREFORE,

17 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

18 Section 1. The City finds and declares:

19 A. In recent years, drug overdoses and overdose deaths have increased dramatically in
20 Washington State. As of February 2023, according to the Centers for Disease Control and
21 Prevention, Washington has the highest increase in overdose deaths—24 percent over 2022—in

1 the country, from 2,348 to 2,910.¹ In Seattle, there were 589 overdose deaths in 2022, compared
2 to 342 in 2021, an increase of 72 percent.

3 B. Between January 1, 2023, and June 30, 2023—the first six months of the year—Seattle
4 has recorded 378 overdose deaths compared to 202 in the same period in 2022, an increase of 87
5 percent. There were also 2,237 non-fatal overdose events, compared to 1,075 in 2022, an
6 increase of 108 percent.² The widespread availability and use of these deadly synthetic drugs are
7 straining City resources and, as such, negatively impacts the provision of other emergency
8 medical services.

9 C. Most of these nonfatal overdose incidents and overdose deaths involve synthetic
10 fentanyl, synthetic methamphetamine, or both.³ These drugs are readily available, inexpensive,
11 and deadly.

12 D. This is a regional crisis as well. In all of King County, including Seattle, in the first six
13 months of 2023, emergency medical responses to opioid overdoses have surged to 4,108
14 compared to 2,374 in 2022, an increase of 73 percent.⁴

15 E. The public use of controlled substances has historically been unchecked in certain
16 areas of the city, harming individual users, adjacent businesses, transit riders, and people
17 traveling to school, work, retail stores, or trying to enjoy the City’s parks and other public places.
18 Significant crime and street disorder are associated with selling, possessing, and using these
19 drugs in public spaces.

20 F. From January 1 to April 16, 2023, the Seattle Fire Department (SFD) reported 210
21 overdose responses by SFD, SPD, and the public, with 40% of first overdose reversal dosages

¹ Source: <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> accessed July 28, 2023.

² Source: Seattle Fire Department and Public Health—Seattle-King County.

³ Source: Public Health Seattle-King County overdose dashboard accessed July 28, 2023.

⁴ Source: Public Health Seattle-King County EMS dashboard accessed July 28, 2023.

1 administered by a bystander and 60% occurring in a public place. Given this, the enforcement
2 strategy for public use and possession offenses must consider the potential harm that can be done
3 if people using drugs avoid public spaces where they can be helped by first responders and the
4 public; and

5 F. The use of controlled substances in public places creates a public health and safety
6 threat to the peace and welfare of the City, and all available resources and tools should be used to
7 address this crisis.

8 Section 2. Section 12A.09.020 of the Seattle Municipal Code, last amended by Ordinance
9 126691, is amended as follows:

10 **12A.09.020 Adoption of RCW sections**

11 The following RCW sections as amended are adopted by reference:

12 * * *

13 43.43.754’s crime of refusal to provide DNA

14 69.50.101 – Definitions (except that cannabis is not included in the definition of
15 “controlled substance”)

16 69.50.204 – Schedule I (except that cannabis is not included)

17 69.50.206 – Schedule II

18 69.50.208 – Schedule III

19 69.50.210 – Schedule IV

20 69.50.212 – Schedule V

21 69.50.4013(1), (2), (7), and (8) as amended by 2E2SSB 5536 (68th Legislature, 2023 1st

22 Special Session), Section 2

1 The section created by 2E2SSB 5536, Section 9 (except that these provisions apply to all
2 misdemeanors and gross misdemeanors for public use and possession of a controlled substance)

3 The section created by 2E2SSB 5536, Section 10 (except that these provisions apply to
4 all misdemeanor and gross misdemeanors for public use and possession of a controlled
5 substance)

6 * * *

7 Section 3. A new Section 3.28.141 is added to the Seattle Municipal Code as follows:

8 **3.28.141 Policies governing arrests for public use and possession of controlled substances**

9 A. Policy. Consistent with the Public Health and Safety Executive Order, SPD will adopt
10 policies governing arrests for public use and possession of a controlled substance. SPD will train
11 its officers on these new policies.

12 B. Body-worn videos. When officers interact with individuals knowingly possessing a
13 controlled substance or using a controlled substance in a public space, officers shall comply with
14 SPD policies and procedures for body-worn video cameras and/or other equipment intended to
15 record officer interactions with the public.

16 C. Probable cause. An officer must have probable cause to believe that an individual
17 knowingly possesses a controlled substance or is knowingly using a controlled substance in a
18 public place.

19 D. Diversion. Diversion, treatment, and other alternatives to booking are the preferred
20 approach when enforcing the crimes adopted under this Section 3.28.141 consistent with the
21 statutory authority of 2E2SSB 5536, Sections 2, 9, and 10.

22 1. SPD policies adopted under this Section 3.28.141 will contain guidance on
23 diversion.

1 2. SPD policies will state that diversion and referral to services is the preferred
2 response to possession and public use while acknowledging that arrests are warranted in some
3 situations.

4 E. Threat of harm to others. When considering making an arrest for knowing possession
5 or public use, officers will determine whether the individual, through their actions and conduct,
6 presents a threat of harm to others. This determination is based on the totality of the
7 circumstances and the officer’s training and experience. SPD policy will identify factors to guide
8 officers when assessing the threat of harm presented by the individual. The threat of harm
9 standard governs officer decisionmaking and is not an element of the crime to be proved during
10 the prosecution of possession or public use offenses and cannot be used as a defense at trial.

11 F. Threat of harm to self. When an officer determines there is probable cause to believe
12 public possession or public use of a controlled substance has occurred as described under this
13 Section 3.28.141, and the user does not pose a threat of harm to others, the officer will then make
14 a reasonable attempt to contact and coordinate efforts for diversion, outreach, and other
15 alternatives to arrest. An officer will not arrest in this situation absent articulable facts and
16 circumstances warranting such action. A determination of a threat of harm will govern officer
17 decisionmaking and will not be an element of the crime to be proved during the prosecution of
18 possession or public use offenses and cannot be used as a defense at trial.

19 G. Officer safety. Nothing in this Section 3.28.141 is intended to compromise the safety
20 or well-being of police officers.

21 H. Reporting. If an officer determines, based on the totality of circumstances, that an
22 arrest is authorized by this Section 3.28.141, an arrest report shall be completed by the officer
23 that includes, at a minimum, the facts underlying probable cause, an assessment of the threat

- 1 presented by the individual engaged in possession and public use, and whether, and in what
- 2 manner, arrest or diversion was considered and utilized.

1 Section 4. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the _____ day of _____, 2023,
5 and signed by me in open session in authentication of its passage this _____ day of
6 _____, 2023.

7 _____
8 President _____ of the City Council

9 Approved / returned unsigned / vetoed this ____ day of _____, 2023.

10 _____
11 Bruce A. Harrell, Mayor

12 Filed by me this _____ day of _____, 2023.

13 _____
14 Scheereen Dedman, City Clerk

15 (Seal)