

ORDINANCE NO. 1597

CITY OF LACEY

AN ORDINANCE OF THE CITY OF LACEY RELATING TO POSSESSION OF CONTROLLED, COUNTERFEIT SUBSTANCES, MARIJUANA, ALCOHOL, LEGEND DRUGS, AND DRUG PARAPHERNALIA, AMENDING SECTIONS 9.40.040, 9.44.030, 9.44.040, AND 9.44.060 OF THE LACEY MUNICIPAL CODE, ADDING A NEW SECTION 9.44.045 TO THE LACEY MUNICIPAL CODE, AND APPROVING A SUMMARY FOR PUBLICATION.

WHEREAS, a recent ruling by the Washington State Supreme Court in *State v. Blake* invalidated a state statute regulating possession of certain substances; and

WHEREAS, staff have reviewed similar sections of the Lacey Municipal Code in light of *Blake*; and

WHEREAS, staff have identified several sections of the code that need to be updated in light of *Blake*; and

WHEREAS, the state passed Laws of 2021, Chapter 311 (hereafter referred to as ESB 5476) in response to *Blake*; and

WHEREAS, ESB 5476 designates the crimes of Possession of a Controlled Substance and Possession of a Counterfeit Substance as gross misdemeanors; and

WHEREAS, Washington Municipalities have the authority and responsibility to prosecute crimes committed within their boundaries; and

WHEREAS, the City Council finds that the adoption of the amendments and addition will be in the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, as follows:

Section 1. Section 9.40.040 of the Lacey Municipal Code is hereby amended as follows:

9.40.040 Minors purchasing and possessing liquor.

It is unlawful for a minor to:

- A. Purchase or attempt to purchase any liquor; or
- B. Acquire, knowingly possess or consume any liquor; or

C. Be in a public place or in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. “Exhibiting the effects of having consumed liquor” means that a person has the odor of liquor on his or her breath and either:

1. Is in possession of or close proximity to a container that has or recently had liquor in it; or

2. By speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor.

D. Provided, however, that subsection B of this section shall not apply to liquor given or permitted to be given to a minor by his parent or guardian for beverage or medicinal purposes and consumed in the presence of a parent or guardian; or administered to him by his physician or dentist for medicinal purposes; or used in connection with a religious service and the amount consumed is the minimal amount necessary for the religious service.

Section 2. Section 9.44.030 of the Lacey Municipal Code is hereby amended as follows:

9.44.030 Possession of marijuana.

Any person who knowingly possesses forty grams or less of marijuana shall be guilty of a misdemeanor. However, the possession, by a person twenty-one years of age or older, of up to: one ounce of usable marijuana; sixteen ounces of marijuana-infused product in solid form; or seventy-two ounces of marijuana-infused product in liquid form is not a violation of this section. The prosecutor is encouraged to divert cases under this section for assessment, treatment, or other services.

Section 3. Section 9.44.040 of the Lacey Municipal Code is hereby amended as follows:

9.44.040 Use of drug paraphernalia

A. It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, ~~test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body~~ a controlled substance other than marijuana. Any person who violates this subsection is guilty of a misdemeanor.

B. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, ~~test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body~~ a controlled substance other than marijuana. Any person who violates this subsection is guilty of a misdemeanor.

C. Any person eighteen years of age or over who violates subsection B of this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his junior is guilty of a gross misdemeanor.

D. It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.

Section 4. Section 9.44.060 of the Lacey Municipal Code is hereby amended as follows:

9.44.060 Legend drugs--Use restricted to licensed practitioners.

It shall be unlawful for any person to sell, deliver, or knowingly possess any legend drug except upon the order or prescription of a physician under Chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under Chapter 18.57 RCW, a dentist under Chapter 18.32 RCW, a podiatric physician and surgeon under Chapter 18.22 RCW, a veterinarian under Chapter 18.92 RCW, a commissioned medical or dental officer in the United States Armed Forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the Veterans Administration in the discharge of his or her official duties, a registered nurse under Chapter 18.88 RCW when authorized by a board of nursing, an osteopathic physician assistant under Chapter 18.57A RCW when authorized by the committee of osteopathic examiners, a physician's assistant under Chapter 18.71A RCW when authorized by the board of medical examiners, a physician licensed to practice medicine and surgery or a physician licensed to practice osteopathy and surgery, a dentist licensed to practice dentistry, a podiatric physician or surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine, in any province of Canada which shares a common border with the state of Washington or in any state of the United States; provided, however, that the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment; provided further, that nothing in this chapter or Chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the Department of Social and Health Services from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners. Violation of this section involving possession shall be deemed a misdemeanor. The prosecutor is encouraged to divert cases under this section for assessment, treatment, or other services.

Section 5. There is hereby added to the Lacey Municipal Code a new section, 9.44.045, to read as follows:

9.44.045 Possession of a controlled or counterfeit substance.

Any person who knowingly possesses a controlled substance or a counterfeit substance, as set out in RCW 69.50.4011, is guilty of a misdemeanor. The prosecutor is encouraged to divert cases under this section for assessment, treatment, or other services.

Section 6. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance should be held to be invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 7. CORRECTIONS. The City Clerk and the codifiers of this ordinance are authorized to make corrections to this ordinance including, but not limited to, the corrections of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

Section 8. The Summary attached hereto is hereby approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, at a regularly-called meeting thereof, held this 15th day of July, 2021.

CITY COUNCIL

By: Andy D. Snyder
Mayor

Approved as to form:

[Signature]
City Attorney

Attest:

Pari Edmonds
City Clerk

SUMMARY FOR PUBLICATION
ORDINANCE NO 1597
CITY OF LACEY

The City Council of Lacey, Washington passed on July 15, 2021, Ordinance No. 1597, entitled “AN ORDINANCE OF THE CITY OF LACEY RELATING TO POSSESSION OF CONTROLLED, COUNTERFEIT SUBSTANCES, MARIJUANA, ALCOHOL, LEGEND DRUGS, AND DRUG PARAPHERNALIA, AMENDING SECTIONS 9.40.040, 9.44.030, 9.44.040, AND 9.44.060 OF THE LACEY MUNICIPAL CODE, ADDING A NEW SECTION 9.44.045 TO THE LACEY MUNICIPAL CODE, AND APPROVING A SUMMARY FOR PUBLICATION.”

The main points of the Ordinance are described as follows:

1. The Ordinance amends sections 9.40.040, 9.44.030, 9.44.040, and 9.44.060 of the Lacey Municipal Code.
2. The Ordinance adopts a new section 9.44.045 of the Lacey Municipal Code, pertaining to possession of controlled or counterfeit substances.
3. The Ordinance approves this summary for Publication.

A copy of the full text of this Ordinance will be mailed without charge to any person requesting the same from the City of Lacey.

Published: July 19, 2021.