

ORDINANCE 1796

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, REPEALING AND REPLACING CHAPTER 9.45 OF THE NORTH BEND MUNICIPAL CODE TO BE ENTITLED "DRUG AND ALCOHOL POSSESSION"; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE; AND ESTABLISHING AN EXPIRATION DATE

WHEREAS, in State v. Blake, 197 Wn.2d 170 (2021), the Washington State Supreme Court found former RCW 69.50.4013, which made it a strict liability offense to possess a controlled substance in violation of the Uniform Controlled Substances Act, unconstitutional because the statute did not require proof that the offender knowingly possessed a controlled substance. Without proof of knowledge, the Court held the statute violated constitutional due process. In response, the state legislature adopted RCW 69.50.4013 during its 2021 legislative session, which provided a temporary correction to the law to make it unlawful for an individual to knowingly possess a controlled substance. However, before any arrests could occur, this legislation required officers to inform individuals on their first two violations that they could voluntarily enter treatment. The legislation provided no incentive for offenders to enter treatment, and for a number of other reasons, the legislation proved impractical. This legislation sunsets on July 1, 2023; and

WHEREAS, the Washington State Legislature, on May 16, 2023, passed the Second Engrossed Second Substitute Senate Bill 5536 that will make possession or public use of small amounts of illegal drugs a modified gross misdemeanor; and

WHEREAS, substance use disorder is ravaging this region, and the number of controlled substance-related deaths continues to rapidly increase. The lack of adequate laws surrounding controlled substances creates an opportunity for those who produce, import, and sell deadly drugs to prey on those suffering from addiction. The illicit drug market drives violent crime throughout the region. Property crimes, which are committed to fund addiction, have impacted our residents and business community; and

WHEREAS, substance use disorder is a medical issue and treatment services are necessary. However, without proper encouragement, an individual with a substance use disorder cannot be expected to make the decision to stop using on their own. The power of addiction continues to control individuals and there is no incentive to end the cycle of use. While no single response will solve the drug epidemic facing our community, continued inaction will only exacerbate the problem by normalizing drug use, creating a bigger market for the distribution of controlled substances, and increasing the opportunity for people to become addicted. In turn, deaths will increase as will drug-related violence and property crimes; and

WHEREAS, this ordinance will make it a gross misdemeanor crime in North Bend for individuals to possess a controlled substance, a legend drug, or a counterfeit controlled substance, and a misdemeanor to possess drug paraphernalia or to unlawfully dispose of a controlled substance, counterfeit controlled substance, a legend drug, or drug paraphernalia. It will additionally prohibit the public use of those same substances, which will be punished as a gross misdemeanor. Importantly, the ordinance includes treatment as an alternative to jail; 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; and

WHEREAS, while the bulk of the Second Engrossed Second Substitute Senate Bill 5536 becomes effective July 1, 2023, portions of the bill are not effective until August 14, 2023; and

WHEREAS, the City Council finds it is in the best interest to establish a local ordinance to provide similar regulation for the period of time between July 1 and August 14, 2023;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. NBMC Chapter 9.45 (Controlled Substances), Repealed and Replaced:
North Bend Municipal Code Chapter 9.45 relating to Controlled Substances is hereby repealed in its entirety and replaced to read as set forth in Exhibit A attached hereto by this reference as if fully set forth herein.

Section 2. Severability: Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date: This ordinance shall be published in the official newspaper of the City and shall take effect and be in full force on July 1, 2023.

Section 4. Expiration Date: The following sections shall expire effective August 14, 2023:

- 9.45.030, Controlled substances—Possession or use in public—Penalty.
- 9.45.040, Legend drugs—Possession or use in public—Penalty.
- 9.45.050, Counterfeit controlled substances—Possession or use in public—Penalty.
- 9.45.060, Possession of drug paraphernalia.

- 9.45.080, Unlawful deposit of dangerous drugs and drug paraphernalia.
- 9.45.090, Alternative deferred prosecution program.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6TH DAY OF
JUNE, 2023.**

CITY OF NORTH BEND:

Rob McFarland, Mayor

APPROVED AS TO FORM:

Lisa Marshall, City Attorney

ATTEST/AUTHENTICATED:

Published: June 16, 2023

Effective: July 1, 2023

Susie Oppedal, City Clerk