

ORDINANCE NO. C36379

An Ordinance concerning loitering for the purposes of drug-related activity and the unauthorized use of controlled substances in public places; amending section 10.60.030 and creating a new section 10.60.100 of the Spokane Municipal Code.

WHEREAS, the use of controlled substances without a prescription and the supervision of a medical professional can result in physical injury or death; and

WHEREAS, the use of controlled substances without a prescription and the supervision of a medical professional often exacerbates mental health conditions; and

WHEREAS, using controlled substances can alter a person's brain or brain chemistry with negative health consequences; and

WHEREAS, persons using controlled substances can become addicted to such substances resulting in negative physical and mental health consequences and damage to family and personal relationships; and

WHEREAS, Fentanyl is a synthetic opioid that is 50 times more potent than heroin and 100 times more potent than morphine. Just two milligrams of fentanyl, which is equal to 10-15 grains of table salt, is considered a lethal dose. and

WHEREAS, contact with trace amounts of fentanyl can be deadly for anyone especially kids, and

WHEREAS, the use of controlled substances without a prescription or medical supervision is more likely to result in addiction; and

WHEREAS, the use of controlled substances without a prescription is positively correlated with criminal behavior; and

WHEREAS, the City has taken steps to address these problems through teaming police officers with mental health professionals and the municipal court's Community Court Program; and

WHEREAS, state law now requires that persons subject to arrest for possession of a controlled substance be referred to assessment and services in lieu of arrest at least twice before he or she may be arrested; and

WHEREAS, this state requirement has resulted in increased use of controlled substances in public; and

WHEREAS, the use of controlled substances in public increases public disorder

and the negative effects of using controlled substances without a prescription; and

WHEREAS, the use of controlled substances in public negatively affects children and youth and normalizes the use of controlled substances without a prescription; and

WHEREAS, the use of alcohol and marijuana by persons of legal age is prohibited in public; and

WHEREAS, prohibiting the use of controlled substances in public will enhance public health and safety; and

NOW, THEREFORE, the City of Spokane does hereby ordain as follows:

Section 1. Section 10.60.030 of the Spokane Municipal Code is amended as follows:

Section 10.60.030 Loitering for the Purpose of Engaging in Drug-related Activity

A. No person may loiter in or near any thoroughfare, skywalk, park, school or any place open to the public in a manner and under circumstances manifesting a purpose to engage in drug-related activity contrary to any of the provisions of chapter 69.41 RCW, chapter 69.50 RCW or chapter 69.52 RCW.

~~B. ((No arrest may be made under this section unless the arresting officer first affords the subject an opportunity to explain such conduct. It is a defense under this section that the explanation given was true and disclosed a lawful purpose.))~~

B. Circumstances which may be considered in determining whether a purpose to engage in drug-related activity contrary to any of the provisions of chapter 69.41 RCW, chapter 69.50 RCW or chapter 69.52 RCW is manifested include, but are not limited to, the following:

1. The person is a known unlawful drug user. A “known unlawful drug user” is a person who:

a. has, within the knowledge of the arresting officer, been convicted:

i. in any court within this state, including a juvenile court, of any violation involving the use, possession or sale of any of the substances referred to in chapter 69.41 RCW, chapter 69.50 RCW and chapter 69.52 RCW; or

ii. of any violation of any of the provisions of said chapters of the Revised Code of Washington or substantially similar laws of any:

a.) political subdivision of this state, or

- b.) other state; or
 - b. displays physical characteristics of drug intoxication or usage, such as “needle tracks”; or
 - c. possesses drug paraphernalia as defined in chapter 69.50 RCW; or
 - d. has, within the knowledge of the arresting officer, used, possessed or sold any controlled substance in violation of any of the provisions of chapter 69.41 RCW, chapter 69.50 RCW or chapter 69.52 RCW, regardless of whether the person was arrested for such use, possession or sale.
- 2. The person is currently subject to an order prohibiting his presence in a high drug activity geographic area.
- 3. The area involved is by public repute known to be an area of unlawful drug use and trafficking.
- 4. The premises involved are known to have been reported to law enforcement as a place suspected of drug activity pursuant to chapter 69.53 RCW.
- 5. The person behaves in such a manner as to raise a reasonable suspicion that he is about to engage in or is then engaged in an unlawful drug-related activity, including, by way of example only, acting as “lookout.”
- 6. The person is identified by the officer as a member of an association, group, organization or gang which has illegal drug activity as one of its significant characteristics, history or purpose.
- 7. The person transfers small objects or packages for currency in a furtive fashion.
- 8. The person takes flight upon the appearance of a police officer.
- 9. The person manifestly endeavors to conceal himself or any object which reasonably could be involved in an unlawful drug-related activity.
- 10. The person refuses to identify himself upon request of an identified police officer.
- 11. There is being used a vehicle known to be registered to a:
 - a. known unlawful drug user, or

- b. person for whom there is an outstanding warrant for a crime involving drug-related activity.

C. In determining whether a person is manifesting a purpose to engage in drug-related activity contrary to any of the provisions of chapter 69.41 RCW, chapter 69.50 RCW or chapter 69.52 RCW, the cumulative knowledge of all officers involved may be considered by the arresting officer.

D. A violation of this section is a gross misdemeanor.

Section 2. A new section 10.60.100 of the Spokane Municipal Code is created as follows:

Section 10.60.100 Use of a Controlled Substance in a Public Place.

A. Violation

1. It is unlawful for any person to knowingly use a controlled substance in a public place unless the controlled substance has been lawfully prescribed to the person using it.
2. “Use” means any effort taken in furtherance of an attempt to inject, ingest, inhale or otherwise introduce a controlled substance into the human body.
3. “Public place” means an area generally visible to public view, and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles (whether moving or not), and buildings open to the public, and doorways, windows, drive-up windows, and entrances to buildings or dwellings that are visible to public view.
4. Use of a controlled substance in a public place is a gross misdemeanor.

B. Referral for Treatment

When a police officer has probable cause that a person has committed the crime of possession of a counterfeit substance, possession of a controlled substance, possession of a legend drug, or possession of drug paraphernalia, the officer shall seize the substance(s) and related paraphernalia and place those items onto property. The officer will offer a referral to assessment and services in the manner provided by RCW 10.31.115. When a police officer has probable cause that a person has committed the crime of use of a controlled substance in a public place, the officer shall seize the substance(s) and related paraphernalia and may, but is not required to, offer a referral and is authorized to book the person into jail regardless of whether that person has previously been offered a referral.

Section 2. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

Section 3. Upon approval by the city attorney, the city clerk or the code reviser are authorized to 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 their sections and subsections.

PASSED by the City Council on _____

Council President

Attest:

Approved as to form:

City Clerk

City Attorney

Mayor

Date

Effective Date