

CITY OF UNION GAP, WASHINGTON
ORDINANCE NO. 3005

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNION GAP, WASHINGTON, AMENDING CHAPTER 8.12.230 CONTROLLED SUBSTANCES OF THE MUNICIPAL CODE AND CREATING A NEW SECTION 8.12.235 POSSESSION OF A CONTROLLED SUBSTANCE WITHOUT A PRESCRIPTION.

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, 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, on February 25, 2021, the Washington State Supreme Court held in the case of *State v. Blake*, No. 96873-0, that RCW 69.50.4013(1) the statute that criminalized the possession of a controlled substance without a prescription- exceeds the state's police power and violates the due process clauses of the state and federal constitutions; and

WHEREAS, the Supreme Court's ruling has the effect of eliminating any criminal penalties for the possession of a controlled substance without a prescription; and

WHEREAS, the Supreme Court's ruling also eliminates the authority of police officers to arrest persons possessing a controlled substance without a prescription or obtaining search warrants to search for controlled substances possessed without a prescription; and

WHEREAS, the lack of criminal penalties for the possession of controlled substances without a prescription will immediately result in an increase in the negative health and safety consequences associated with the use of controlled substances without a prescription; and

WHEREAS, the lack of enforcement authority of the police will interfere with the City's initiatives to address addiction and criminal activity associated with the use of controlled

substances without a prescription by eliminating incentives for individuals to enter treatment or obtain necessary social services; and

WHEREAS, the effect of eliminating criminal penalties and police authority in regard to the possession and use of controlled substances without a prescription will have an immediate, direct, and negative impact on the health, safety, and welfare of the City's inhabitants; and

WHEREAS, this is a public emergency ordinance necessary for the protection of public health and public safety, and should be effective upon adoption.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. The Recitals set forth above are adopted as findings of fact in support of this emergency ordinance.

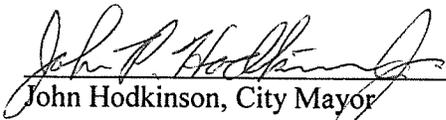
SECTION 2. Section 8.12.230 of the municipal code is amended and a new section 8.12.235 is created as set forth in Exhibit A.

SECTION 3. 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 4. 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.

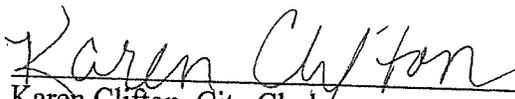
SECTION 2. This ordinance shall become effective five (5) days after its passage and publication as required by law.

Ordained BY THE CITY COUNCIL this 22nd day of March, 2021.


John Hodkinson, City Mayor

ATTEST:

APPROVED AS TO FORM:


Karen Clifton, City Clerk


Bronson Brown, City Attorney

EXHIBIT A

8.12.230 - Controlled substances.

The following statutes of the state of Washington, including any future amendments and additions thereto, and repeals thereof are adopted by reference:

- RCW
- 69.50.101 Definitions
 - 69.50.102 Drug paraphernalia—Definitions
 - 69.50.204(e)(14) Schedule I—Marijuana
 - 69.50.206 Schedule II
 - 69.50.208 Schedule III
 - 69.50.210 Schedule IV
 - 69.50.212 Schedule V
 - 69.50.214 Controlled Substance analog
 - 69.50.309 Containers
 - 69.50.401 Prohibited acts: A - penalties
 - 69.50.412 Prohibited acts: E - penalties
 - 69.50.425 Misdemeanor violations—Minimum imprisonment
 - 69.50.505 Seizure and forfeiture
 - 69.50.506 Burden of proof
 - 69.50.509 Search and seizure of controlled substances
 - 69.50.4014 Possession of forty grams or less of marihuana—Penalty

NEW SECTION. 8.12.235

Possession of a controlled substance without a prescription

- (1) It is unlawful for any person to knowingly possess a controlled substance or to possess a controlled substance with intent to use it, 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 chapter 69.50 RCW.
- (2) Any person who violates this section is guilty of a gross misdemeanor punishable by up to 364 days in jail and a \$5,000 fine.
- (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 section or 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 section or this chapter.
- (c) 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 section or this chapter.
- (d) It is unlawful for a person under twenty-one years of age to knowingly possess or possess with intent to use marijuana, marijuana-infused products, or marijuana concentrates, regardless of THC concentration. This does not include qualifying patients with a valid authorization. Violation of this subsection is a misdemeanor punishable by up to 90 days in jail and a \$1,000 fine.