

ORDINANCE NO. 08-21

AN ORDINANCE of the City of Richland amending Richland Municipal Code Sections 9.10.020, 9.10.025, 9.11.020, and 9.24.070 to add a knowledge element consistent with *State of Washington v. Blake*.

WHEREAS, the City has need, from time to time, to update the Richland Municipal Code (RMC) to bring it into alignment with state or federal law; and

WHEREAS, on February 25, 2021, in a 5-4 decision, the Washington State Supreme Court invalidated as unconstitutional RCW 69.50.4013(1), which criminalized possession of controlled substances under a strict liability theory; and

WHEREAS, the Richland Municipal Code contains ordinances that proscribe unlawful possession of marijuana, drug paraphernalia and liquor under a strict liability theory, and as such, may run afoul of *State of Washington v. Blake*; and

WHEREAS, to ensure the constitutionality of these code sections, amendments are necessary to add the *mens rea* of knowledge.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Richland Municipal Code Section 9.10.020, entitled Possession unlawful, as first enacted by Ordinance No. 99-76, and last amended by Ordinance No. 01-13, is hereby amended as follows:

9.10.020 Possession unlawful.

It is unlawful for any person to knowingly possess more than 28.35 grams of marijuana unless the same was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the laws of the state of Washington. Except as provided in RCW 69.50.401(2)(c), every person convicted of a violation of the provisions of this section for possessing more than 28.35 grams of marijuana shall be guilty of unlawful possession of marijuana, a misdemeanor.

Except as provided in RCW 69.50.401(2)(c), any person found guilty of possession of more than 28.35 grams of marijuana is guilty of a misdemeanor.

Section 2. Richland Municipal Code Section 9.10.025, entitled Possession of marijuana under the age of 21 – Penalty, as first enacted by Ordinance No. 01-13, is hereby amended as follows:

9.10.025 Possession of marijuana under the age of 21 – Penalty.

It is unlawful for any person under the age of 21 years to knowingly possess marijuana in an amount less than 40 grams, as defined in RMC 9.10.010, unless pursuant to a valid

prescription or order of a practitioner in the course of his professional practice.

Section 3. Richland Municipal Code Section 9.11.020, entitled Possession of paraphernalia – Unlawful conduct, as first enacted by Ordinance No. 63-80, and last amended by Ordinance No. 01-13, is hereby amended as follows:

9.11.020 Possession of paraphernalia – Unlawful conduct.

It is unlawful for any person to knowingly use, or to possess with the intent to use, drug paraphernalia to plan, 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 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, ~~the possession of which controlled substance is in violation of~~ Chapter 69.50 RCW, or to sell, deliver, possess with the intent to sell or deliver, or manufacture with the intent to sell or 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 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, ~~the possession of which controlled substance is in violation of~~ Chapter 69.50 RCW. Except as provided in RCW 69.50.401(2)(c), any person found guilty of possession of drug paraphernalia is guilty of a misdemeanor.

Section 4. Richland Municipal Code Section 9.24.070, entitled Purchase, possession or consumption by minors prohibited, as first enacted by Ordinance No. 99-76, and last amended by Ordinance No. 29-20, is hereby amended as follows:

9.24.070 Purchase, possession, or consumption by minors prohibited.

A. Except in the case of liquor given or permitted to be given to a person under the age of 21 years by his or her parent or guardian for beverage or medicinal purposes, or administered to him or her by his or her physician or dentist for medicinal purposes, or used in connection with religious services, no person shall give or otherwise supply liquor to any person under the age of 21 years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control.

B. No person under the age of 21 years shall knowingly acquire or knowingly have in his or her possession or purchase, drink, or consume liquor, except in the case of liquor given or permitted to be given to such person as provided in subsection A of this section, ~~by his parent or guardian for beverage or medicinal purposes or administered to him by his physician or dentist for medicinal purposes, or used in connection with religious services.~~

C. No person under the age of 21 years shall attempt to obtain any liquor contrary to the provisions of this section.

D. It is unlawful for any person under the age of 21 years to be or remain in any public place after having consumed liquor as evidenced by:

1. The odor of intoxicants on the breath; or

2. Observations by the officer through other sense perception; except in the case of liquor given or permitted to be given to a person under the age of 21 years as provided in subsection A of this section. ~~by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or used in connection with religious services.~~ "Public place or places" is defined in RCW 66.04.010(35). Any person under the age of 21 years who is found to have consumed liquor shall be presumed to have consumed the same within the city limits of the city of Richland.

Section 5. This Ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

Section 6. Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 7. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including but not limited to the correction of scrivener's errors/clerical errors, section numbering, references, or similar mistakes of form.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the 20th day of April, 2021.




Ryan Lukson, Mayor

Attest:



Jennifer Rogers, City Clerk

Approved as to form:



Heather Kintzley, City Attorney

Date Published: April 25, 2021