

ORDINANCE NO. 2023-01

**AN ORDINANCE OF THE CITY OF RICHLAND, WASHINGTON,
ADDING A NEW CHAPTER 9.09 ENTITLED CONTROLLED
SUBSTANCES TO TITLE 9 OF THE RICHLAND MUNICIPAL
CODE.**

WHEREAS, the City has need, from time to time, to update the Richland Municipal Code (RMC) to promote the health, safety and general welfare of the citizens of Richland; and

WHEREAS, in *State v. Blake*, 197 W.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 a person to knowingly possess a controlled substance. However, through this same legislation, the legislature enacted RCW 10.31.115, which prohibits law enforcement from arresting or citing someone for unlawful possession of a controlled substance under the offender has twice been “diverted” to voluntary social services; and

WHEREAS, the limitation imposed by RCW 10.31.115 has resulted in offenders openly using and possessing illegal drugs in public places, while simultaneously removing law enforcement’s ability to effectively remove the problem, all to the detriment of community members who face an increased risk of harm attributable to the adverse impacts associated with the use of illicit drugs in public; and

WHEREAS, while the use of cannabis and alcohol, both legal substances, is prohibited in public, there is no comparable state law that prohibits the use of illegal or controlled substances, like methamphetamine, heroin and fentanyl, in public; and

WHEREAS, although state law does preempt the field of setting penalties for violations of the state’s Uniform Controlled Substances Act, Ch. 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, for ease of reference, RMC 9.12.120 regarding unlawful possession of a legend drug will be eliminated from Chapter 9.12 Miscellaneous Crimes and recodified in new Chapter 9.09 Controlled Substances.

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

Section 1. Title 9 of the Richland Municipal Code, entitled Crime, as first enacted by Ordinance No. 99-76, and most recently amended by Ordinance No. 2022-28, is hereby amended to add a new Chapter 9.09, entitled Controlled Substances, as follows:

Chapter 9.09
CONTROLLED SUBSTANCES

Sections:

9.09.010 Use of dangerous drugs in public.

9.09.020 Unlawful deposit of dangerous drugs and drug paraphernalia.

9.09.030 RCW section adopted – Unlawful possession of a legend drug.

9.09.040 Penalties for violations.

9.09.010 Use of dangerous drugs in public.

A. It is unlawful for any person to intentionally use any dangerous drug in a public place, except as now or hereafter authorized or expressly permitted by the laws of the state or except upon the written or oral order or prescription of a physician, surgeon, dentist, or other medical professional licensed to practice in the state and legally authorized to prescribe controlled substances.

B. Definitions. For purposes of this section, the following terms or words shall be interpreted as follows:

1. Dangerous drug means any controlled substance classified in Schedule I, II, III or IV of Chapter 69.50 RCW excluding cannabis, as it now exists or shall hereafter be added to, deleted from, modified, or amended.

2. Public place means an area generally visible to public view and includes without limitation any place where the public has a right of access, which includes without limitation sidewalks, parking lots and parking garages, streets, alleys, highways, or roads; public buildings and grounds, including schools, parks, playgrounds, and meeting halls; establishments to which the public is invited including restaurants, theaters, stores, gas stations, meeting halls, lobbies, halls and dining rooms of hotels, bars, taverns, pubs, or establishments where beer or soft drinks may be sold, and their associated parking lots, parking structures, walkways, doorways, and entrances; railroad trains, light rail facilities, buses, and other public conveyances of all kinds and character, and their associated stations and platforms used in conjunction therewith which are open to unrestricted use and access by the public; and all other places of like or similar nature.

3. Use means any effort taken in furtherance of an attempt to inject, ingest, inhale or otherwise introduce a controlled substance into the human body.

9.09.020 Unlawful deposit of dangerous drugs and drug paraphernalia.

It shall be unlawful for any person to knowingly dump, throw, deposit, or discharge onto the ground or into any body of water any dangerous drug, as that term is defined in RMC 9.09.010(B)(1), or drug paraphernalia, as defined in RCW 69.50.102, as those referenced provisions are currently enacted or hereafter amended or recodified.

9.09.030 RCW section adopted – Unlawful possession of a legend drug.

RCW 69.41.030, pertaining to possession of legend drug without prescription or order prohibited, as now or hereafter amended, is hereby adopted by reference as a part of this chapter in all respects as though the section were set forth herein in full.

9.09.040 Penalties for violations.

Unless another section expressly provides otherwise, any person who violates any provision of this chapter shall be guilty of a misdemeanor.

Section 2. Richland Municipal Code Section 9.12.120, entitled RCW section adopted – Unlawful possession of a legend drug, as first enacted by Ordinance No. 29-20, is hereby amended as follows:

~~9.12.120 RCW section adopted – Unlawful possession of a legend drug.
RCW 69.41.030, pertaining to possession of legend drug without prescription or order prohibited, as now or hereafter amended, is hereby adopted by reference as a part of this chapter in all respects as though the section were set forth herein in full.~~

Section 3. This Ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

Section 4. 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 5. 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 17th day of January, 2023.


Terry Christensen, Mayor

Attest:


Jennifer Rogers, City Clerk

Approved as to Form:


Heather Kintzley, City Attorney

First Reading: January 3, 2023
Second Reading: January 17, 2023
Date Published: January 22, 2023