

**ORDINANCE NO. 2023-16**

**AN ORDINANCE OF THE CITY OF RICHLAND, WASHINGTON,  
AMENDING RICHLAND MUNICIPAL CODE TITLE 9: CRIME  
RELATED TO CONTROLLED SUBSTANCES VIOLATIONS AND  
PENALTIES.**

**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 unconstitutional because the statute imposed strict liability and did not require proof that the offender knowingly possessed a controlled substance. Without proof of knowledge, the Court held that the statute violated constitutional due process. In response, the Washington State Legislature provided a temporary fix by adopting a revised RCW 69.50.4013 during its 2021 legislative session, reducing the penalty from felony to misdemeanor for a person to knowingly possess a controlled substance. However, through this same legislation, the Washington State Legislature also enacted RCW 10.31.115, which prohibits law enforcement from arresting or citing someone for unlawful possession of a controlled substance unless the offender has twice been “diverted” to voluntary social services; and

**WHEREAS**, the 2021 legislation sunsets on July 1, 2023; and

**WHEREAS**, the Washington State Legislature failed to address the sunseting *Blake* legislation during the 2022-2023 regular legislative session, resulting in a special session and adoption of permanent drug-related legislation through SB 5536 on May 16, 2023; and

**WHEREAS**, SB 5536 criminalizes knowing possession and knowing use in public of counterfeit or controlled substances (i.e., drugs such as fentanyl and other opioids, methamphetamine, heroin, and cocaine) and prohibits the knowing possession of non-prescribed legend drugs, as well as their knowing use in a public place; and

**WHEREAS**, SB 5536 eliminates the mandatory diversion requirements of RCW 10.31.115; and

**WHEREAS**, SB 5536 also preempts all local ordinances concerning regulation of the use, selling, giving, delivery, and possession of drug paraphernalia (with very limited exceptions); and

**WHEREAS**, certain sections of SB 5536 take effect on July 1, 2023 while others sections are not effective until August 15, 2023; and

**WHEREAS**, because SB 5536 preempts local regulation in the field of controlled substances and drug paraphernalia, amendments to the Richland Municipal Code are necessary to repeal local laws that became inconsistent with state law after passage of SB 5536; and

**WHEREAS**, the City's best interests are served by adopting the controlled substances provisions of SB 5536 by reference to allow local jurisdiction and prosecution of misdemeanor and gross misdemeanor controlled substance offenses occurring in the City of Richland.

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

Section 1. Chapter 9.09 of the Richland Municipal Code, entitled Controlled Substances, as first enacted by Ordinance No. 2023-01, is hereby amended as follows:

**Chapter 9.09  
CONTROLLED SUBSTANCES**

**Sections:**

~~9.09.010 Use of dangerous drugs in public. RCW sections adopted.~~

~~9.09.020 Unlawful deposit of dangerous drugs and drug paraphernalia. Medical cannabis – Affirmative defenses.~~

~~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. RCW sections adopted.~~

The following Revised Code of Washington (RCW) sections, as currently enacted or as hereafter amended or recodified from time to time, are hereby adopted by reference and shall be given the same force and effect as if set forth herein in full:

RCW 69.41.010 Definitions - Legend Drugs

RCW 69.41.030 Possession of Legend Drugs without Prescription or Order

RCW 9.47A.010 Definitions.

RCW 9.47A.020 Unlawful inhalation - Exception.

RCW 9.47A.030 Possession of certain substances prohibited, when.

RCW 9.47A.040 Sale of certain substances prohibited, when.

RCW 9.47A.050 Penalty.

RCW 69.50.101 Definitions.

RCW 69.50.102 Drug paraphernalia - Definitions.

RCW 69.50.4011 Counterfeit Substances - Penalty.

RCW 69.50.4013 Possession of Controlled Substances - Penalty - Possession of usable Cannabis, Cannabis Concentrate, or Cannabis Infused Product - Delivery

RCW 69.50.4014 Possession of forty grams or less of marijuana - Penalty.

RCW 69.50.412 Prohibited acts: E-Penalties.

RCW 69.50.4121 Drug paraphernalia - Selling or giving - Penalty.

RCW 69.50.445 Opening package of or consuming marijuana, useable marijuana, or marijuana infused product in view of general public - Penalty.

~~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. Medical cannabis – Affirmative defenses.~~**

~~The state of Washington, by enactment of Chapter 69.51A RCW, has recognized the medical benefits of prescribed cannabis and has legalized medical cannabis use when appropriately prescribed and obtained. The City of Richland hereby adopts Chapter 69.51A RCW as it currently exists or as it may be amended in regard to legalized medical cannabis and any affirmative defenses therein.~~

~~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. Chapter 9.10 of the Richland Municipal Code, entitled Marijuana, as first enacted by Ordinance No. 99-76, and last amended by Ordinance No. 08-21, is hereby repealed in its entirety.

**Chapter 9.10  
MARIJUANA**

**Sections:**

~~9.10.010 Definition.~~

~~9.10.020 Possession unlawful.~~

~~9.10.025 Possession of marijuana under the age of 21—Penalty.~~

~~9.10.030 Misdemeanor violations—Minimum penalties.~~

~~9.10.035 Second or subsequent offenses.~~

~~9.10.040 Medical marijuana—Affirmative defenses.~~

~~9.10.050 Public consumption—Violation.~~

~~9.10.010 Definition.~~

~~For the purpose of this chapter, “marijuana” means all parts of the plant of the genus Cannabis i., whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds, or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, or a cake made from the seeds of the plant, any compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or case, or the sterilized seed of the plant which is incapable of germination.~~

~~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.~~

~~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.~~

~~9.10.030 Misdemeanor violations—Minimum penalties.~~

~~A person who is convicted of a misdemeanor violation of any provision of this chapter shall be punished by imprisonment for not less than 24 consecutive hours, and by a fine of not less than \$250.00. On a second or subsequent conviction, the fine shall not be less than \$500.00. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition~~



~~of the minimum imprisonment will pose a substantial risk to the defendant's physical or mental well-being or that local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of 40 hours of community restitution. If a minimum term of imprisonment is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person indigent, the minimum fine shall not be suspended or deferred.~~

~~**9.10.035 Second or subsequent offenses.**~~

~~A. Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.~~

~~B. For purposes of this section, an offense is considered a second or subsequent offense if, prior to his or her conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs.~~

~~**9.10.040 Medical marijuana—Affirmative defenses.**~~

~~The state of Washington, by enactment of Chapter 69.51A RCW, has recognized the medical benefits of prescribed marijuana and has legalized medical marijuana use when appropriately prescribed and obtained. The city of Richland hereby adopts Chapter 69.51A RCW as it currently exists or as it may be amended in regard to legalized medical marijuana and any affirmative defenses therein.~~

~~**9.10.050 Public consumption—Violation.**~~

~~As provided by the passage of Initiative 502 following the November 2012 election, it is unlawful to open a package containing marijuana, useable marijuana, or a marijuana infused product or to consume marijuana, useable marijuana, or a marijuana infused product, in view of the general public. A person who violates this section is guilty of a class three civil infraction under Chapter 7.80 RCW and will be prosecuted in the Benton County district court.~~

Section 3. Chapter 9.11 of the Richland Municipal Code, entitled Drug Paraphernalia, as first enacted by Ordinance No. 63-80, and last amended by Ordinance No. 08-21, is hereby repealed in its entirety.

**Chapter 9.11  
DRUG PARAPHERNALIA**

**Sections:**

~~**9.11.010 Drug paraphernalia—Selling or giving—Penalty.**~~

~~**9.11.020 Possession of paraphernalia—Unlawful conduct.**~~

~~**9.11.030 Misdemeanor violations—Minimum penalties.**~~

~~**9.11.040 Second or subsequent offenses.**~~

~~**9.11.050 Drug paraphernalia—Affirmative defenses.**~~



**9.11.010 Drug paraphernalia—Selling or giving—Penalty.**

~~A. Every person who sells or gives, or permits to be sold or given, to any person any drug paraphernalia in any form commits a Class I civil infraction under Chapter 7.80 RCW. For purposes of this section, “drug paraphernalia” means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance other than marijuana. Drug paraphernalia includes, but is not limited to, objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cocaine into the human body, such as:~~

- ~~1. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;~~
- ~~2. Water pipes;~~
- ~~3. Carburetion tubes and devices;~~
- ~~4. Smoking and carburetion masks;~~
- ~~5. Miniature cocaine spoons and cocaine vials;~~
- ~~6. Chamber pipes;~~
- ~~7. Carburetor pipes;~~
- ~~8. Electric pipes;~~
- ~~9. Air-driven pipes;~~
- ~~10. Ice pipes or chillers.~~

~~B. It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.~~

~~C. Nothing in subsection (A) of this section prohibits legal distribution of injection syringe equipment through public health and community based HIV prevention programs, and pharmacies.~~

**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 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 Chapter 69.50 RCW. Except as provided in RCW 69.50.401(2)(e), any person found guilty of possession of drug paraphernalia is guilty of a misdemeanor.~~



**~~9.11.030 Misdemeanor violations— Minimum penalties.~~**

~~A person who is convicted of a misdemeanor violation of any provision of this chapter shall be punished by imprisonment for not less than 24 consecutive hours, and by a fine of not less than \$250.00. On a second or subsequent conviction, the fine shall not be less than \$500.00. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition of the minimum imprisonment will pose a substantial risk to the defendant's physical or mental well-being or that local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of 40 hours of community restitution. If a minimum term of imprisonment is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person indigent, the minimum fine shall not be suspended or deferred.~~

**~~9.11.040 Second or subsequent offenses.~~**

~~A. Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.~~

~~B. For purposes of this section, an offense is considered a second or subsequent offense if, prior to his or her conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to narcotic drugs, depressant, stimulant, or hallucinogenic drugs.~~

**~~9.11.050 Drug paraphernalia— Affirmative defenses.~~**

~~The state of Washington, by enactment of Chapter 69.51A RCW, has recognized the medical benefits of prescribed marijuana and has legalized medical marijuana use when appropriately prescribed and obtained. The city of Richland hereby adopts Chapter 69.51A RCW as it currently exists or as it may be amended in regard to legalized medical marijuana and the use of drug paraphernalia including any affirmative defenses therein.~~

Section 4. Richland Municipal Code Section 9.14.020, entitled Disorderly persons defined and enumerated, as first enacted by Ordinance No. 99-76, and last amended by Ordinance No. 40-15, is hereby amended as follows:

**9.14.010 Disorderly persons defined and enumerated.**

The following persons are declared to be disorderly persons:

~~A. Any person found to be ingesting any illegal drug in a place where it can be viewed by a member of the public; or~~

~~AB. Any person fighting or encouraging others to fight in any public place in the city; or~~

~~BC. Any person who uses, in the presence of another person, vulgar, profane, or indecent language, or who makes any vulgar, profane, obscene or indecent gesture, under circumstances which create a reasonable fear of imminent assault; or~~

~~CD. Any person who intentionally obstructs vehicular or pedestrian traffic:~~

1. By the linking of arms or joining of hands, lying down, sitting or standing in the street or public right-of-way thus preventing the flow of vehicular or pedestrian traffic, or by placing a parked vehicle or other objects in such a manner to obstruct the flow of traffic; or
2. Obstructs pedestrian or vehicular traffic and refuses or intentionally fails to cease such activity when ordered to do so by a police officer; or

~~DE. Any person who intentionally inhales vapors or fumes of any substance listed in RCW 9.47A.010 as it currently exists, or as it may be amended, for the purpose of inducing euphoria, hallucination or intoxication, except as authorized by law; or~~

DF. Any person who visits or resorts to any place with knowledge that any of the above acts are being conducted, practiced or carried on illegally therein.;


EG. It shall be an affirmative defense to the crime of disorderly conduct that the action constituting disorderly conduct was permitted by the city pursuant to a permit issued.

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 18<sup>th</sup> day of July, 2023.

  
 Mayor

Attest:

  
 Jennifer Rogers, City Clerk

Approved as to Form:

  
 Heather Kintzley, City Attorney

First Reading: July 6, 2023  
 Second Reading: July 18, 2023  
 Date Published: July 23, 2023