



# City Council Meeting Schedule March 2023

---

The City broadcasts City Council meetings on the City's website  
<https://www.go2kennewick.com/CouncilMeetingBroadcasts>.

March 7, 2023  
Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

March 14, 2023  
Tuesday, 6:30 p.m.

WORKSHOP MEETING  
1. Pilot Tumbleweed Burner Program  
2. CivicClerk Training  
3. Fireworks Regulations  
4. Open Use of Illegal Substances

March 21, 2023  
Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

March 28, 2023  
Tuesday, 6:30 p.m.

WORKSHOP MEETING  
1. Kennewick Public Facilities District (KPF) Annual Update  
2. Industrial Area Utilities Extensions  
3. Council Ethics Policy

To assure disabled persons the opportunity to participate in or benefit from City services, please provide twenty-four (24) hour advance notice for additional arrangements to reasonably accommodate special needs.

Please be advised that all Kennewick City Council Meetings are Audio and Video Taped

# Council Workshop Coversheet



Agenda Item Number	1.	Meeting Date	03/14/2023
Agenda Item Type	Presentation		
Subject	Pilot Tumbleweed Burner Program		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	Public Works		

Info Only	<input checked="" type="checkbox"/>
Policy Review	<input type="checkbox"/>
Policy DevMnt	<input type="checkbox"/>
Other	<input type="checkbox"/>

## Summary

The Pilot Tumbleweed Burner Program has been a joint effort involving Fire, Parks and Public Works Departments. The purpose of the program is to provide an additional tool to address disposal of Tumbleweeds for both City operations and residents of Kennewick.

Staff will be present at the meeting to provide demo of the Tumbleweed Burner and share draft Procedures, Operational Guidelines and Wavier/Hold Harmless documents.

Once finalized, the intent is to roll out the Pilot Tumbleweed Burner program this spring and make it available to City of Kennewick residents consistent with the above referenced documents. Following the first year of operation, staff would evaluate the program and make the necessary changes to address any issues that may arise during the first year of operations.

Through

Attachments: Policy

Dept Head Approval

Cary Roe  
 Mar 09, 10:44:42 GMT-0800 2023

City Mgr Approval

Marie Mosley  
 Mar 10, 13:12:12 GMT-0800 2023



## City of Kennewick Tumbleweed Burn Trailer Procedure

The City of Kennewick has a tumbleweed burn trailer that is available for use. In addition to use by the City of Kennewick, the trailer is also available to be used by City of Kennewick residents that have a need to safely dispose of tumbleweeds that have collected on their property.

Anyone that uses the trailer is responsible to ensure the trailer is being used in a manner that is consistent with the burning rules and regulations put in place and enforced by the Benton County Clean Air Authority.

### OVERVIEW

- Equipment is trailer mounted requiring a vehicle capable of towing XXXX lbs and outfitted with a standard X" ball hitch and XXXXXX plug for trailer lights.
- Equipment may only be used by City of Kennewick residents that have a verified City of Kennewick utility account. A fee for damage to the trailer or equipment may be assessed to the utility account associated with the person that checks the equipment out.
- Equipment may only be used to burn wind-blown tumbleweeds.
- Equipment cannot be used for commercial or for-profit purposes.
- Any person or group may not check out the tumbleweed burner for more than 72 hours..
- The City of Kennewick shall have priority use of the equipment.
- At the sole discretion of the City, reservations may be cancelled without notice.
- For equipment problems and or damage, User of equipment to immediately notify the City at 509-585-4419.
- Use of alcohol, illegal drugs or other impairments are prohibited while using and operating City equipment.
- No one under the age of 18 is allowed to use or operate equipment.
- The City of Kennewick is not responsible for accidents, injuries or loss due to use of equipment by a User.
- User of equipment shall be responsible for contacting the Benton Clean Air Authority at 783-1304 ext. 7 to verify tumbleweed burning is permitted prior to each use of equipment.
- User shall refrain from burning tumbleweeds on windy and/or non-burn days
- User of equipment shall be responsible for the pickup and return of the equipment to the City's XXXXXXXX located at XXXX as follows:
  - Pickup time: (Monday-Friday excluding Holidays) between XXam – XXam
  - Return time: (Monday-Friday excluding Holidays) between XXam – XXam
- The misuse of City equipment or failure to comply with these general rules and regulations will be sufficient reason for denial of further use.



CHECK-IN / CHECK-OUT PROCEDURES

EQUIPMENT CHECK-OUT INSPECTION

Items to be checked by xxx personnel: (initial boxes)

- Propane tank – full
- Tire pressure – 35 psi
- Equipment operational and clean
- Fire extinguisher verified and ready for use
- User provided with two (2) pitch-forks
- Weed burner
- Two (2) wheel chocks
- Three (3) ash pails
- Six (6) traffic cones
- One (1) rake
- One (1) garden hoe

Public Works name: \_\_\_\_\_ Date: \_\_\_\_\_

Items to be confirmed by User: (initial boxes)

- User has been shown proper operation of equipment by City maintenance personnel.
- User is responsible for properly hooking up and towing equipment and has verified that brake lights and turn signals work on the equipment.
- User has reviewed the condition of the equipment.
- User acknowledges that propane tank is to be returned full.
- User acknowledges that they may be invoiced for the repair of any damage noted after use.

User name: \_\_\_\_\_ Date: \_\_\_\_\_

EQUIPMENT CHECK-IN INSPECTION

The inspection of the Equipment will be conducted by City following each use and prior to being used by the City or another party.

City personnel: (initial boxes)

- Trailer returned on-time
- Damage noted:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Propane tank returned full
- Equipment operational and clean
- Fire extinguisher verified and ready for use
- Two (2) pitch-forks
- Weed burner
- Two (2) wheel chocks
- Three (3) ash pails
- Six (6) traffic cones
- One (1) rake
- One (1) garden hoe

Name: \_\_\_\_\_ Date: \_\_\_\_\_

User name: \_\_\_\_\_ Date: \_\_\_\_\_



### OPERATIONAL GUIDELINES

1. Check with Benton Clean Air Authority prior to using
  - a. Daily Burn Decision website: <https://bentoncleanair.org/burning/daily-burn-decision/>
  - b. Residential Burn Line: (509) 783-6198
2. Check the area around and above the trailer to make sure there is a minimum of 15 feet of clearance from flammable objects.
3. Check the wind speed and direction to ensure smoke and ash does not go in an unwanted or hazardous direction.
4. Unhook the trailer from the towing vehicle and secure with wheel chocks.
5. Unload the propane tank and set a safe distance away from the trailer.
6. Open the rear doors and load the trailer with tumbleweeds then shut and latch the door.
7. Check to make sure people are a safe distance from the burn trailer.
8. Light the weed burning torch in a safe space.
9. Insert the torch into the hole on the side of the trailer to light the weeds.
10. Shut the flame off on the weed burning torch.
11. Let the tumbleweeds burn down and wait for the fire to go out completely before opening the doors and re-loading weeds and repeat steps 7 through 10.
12. After completion, remove the ash from the burn trailer and put in the metal buckets provided.
  - a. Place lids on buckets
  - b. Do not empty the buckets into a garbage container.
13. Re-fill the propane tank before returning the burn trailer.



## WAIVER FOR TUMBLEWEED BURN TRAILER

The City of Kennewick encourages the use of city-owned equipment by the community as long as the use is of lawful purpose and does not interfere with the conduct of City of Kennewick, its programs, or the primary purpose for which the equipment is intended. Community use of equipment is subject to the terms of City of Kennewick Policy and Procedures and the current schedule of user fees. Funds may be charged for the use of City of Kennewick equipment to ensure that funds intended for City of Kennewick use are not used for other purposes. Permission to use a particular piece of equipment may be denied based upon availability, or if the City, in its discretion, concludes that the proposed activity is not in the public's best interest; however, no person shall be denied access to equipment because of race, creed, color, sex, origin, or any other protected class under applicable law.

### **AGREEMENT, RELEASE, INDEMNIFICATION AND HOLD HARMLESS**

The person or organization entering into a use agreement with the City of Kennewick for the use of the trailer-mounted tumbleweed firebox certifies that the information given in this application is current and correct. The undersigned further states that he/she has the authority to make this application for the Applicant and agrees that the Applicant will observe all rules and regulations. The Applicant further agrees to reimburse the City of Kennewick for any damages arising from the Applicant's use of said equipment. Any accident involving injury to participants or damages to the equipment occurring during the use of the equipment will be reported to the City of Kennewick immediately. FURTHERMORE, the applicant agrees as follows:

I am aware of and expressly assume all of the various risks of serious injury and/or death associated with or arising out of the use of the equipment.

In consideration for granting this request, and being fully aware of all of the risks, I hereby RELEASE the City of Kennewick and its officials, employees, volunteers and agents ("the Released Parties"), and agree to waive any right of recovery that I AND/OR THE ORGANIZATION, AS APPLICABLE, may have, including the right to bring a legal claim, cause of action, or lawsuit for any bodily injury, death, damage to property, or other harmful consequences in any way arising out of use of the equipment. I understand that this release extends to all claims of any kind and every nature, known, unknown, suspected or unsuspected, in any way arising out of or related to use of the equipment.

I agree to defend, indemnify and hold harmless the Released Parties from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the use of the equipment or from any activity, work or thing done, permitted, or suffered by Applicant in or about the equipment, except only such injury or damage as shall have been occasioned by the sole negligence of the Released Parties.



**I HAVE CAREFULLY READ THIS DOCUMENT, INCLUDING THE RULES AND REGULATIONS, AND AGREE ON MY OWN BEHALF AND ON BEHALF OF THE ORGANIZATION, AS APPLICABLE.**

Person in charge / responsible for equipment (printed): \_\_\_\_\_

Date: \_\_\_\_\_

Signature Name: \_\_\_\_\_

DRAFT

# Council Workshop Coversheet



Agenda Item Number	2.	Meeting Date	03/14/2023
Agenda Item Type	Presentation		
Subject	CivicClerk Presentation		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	Management Services		

Info Only	<input checked="" type="checkbox"/>
Policy Review	<input type="checkbox"/>
Policy DevMnt	<input type="checkbox"/>
Other	<input type="checkbox"/>

## Summary

Staff is implementing a new agenda management system. This new platform will streamline agenda creation & delivery as well as provides in-meeting management tools such as electronic voting. Our consultant, Jesse Proquis from CivicClerk will be providing City Council training on the Live Meeting/Board Portal.

Through

Terri Wright Mar 09, 08:10:11 GMT-0800 2023
--

Attachments:

Dept Head Approval

Christina Palmer Mar 09, 09:43:29 GMT-0800 2023
--

City Mgr Approval

Marie Mosley Mar 10, 13:12:42 GMT-0800 2023
--

# Council Workshop Coversheet



Agenda Item Number	3.	Meeting Date	03/14/2023
Agenda Item Type	Presentation		
Subject	Proposed Fireworks KMC Modifications		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	Fire Department		

Info Only	<input checked="" type="checkbox"/>
Policy Review	<input type="checkbox"/>
Policy DevMnt	<input type="checkbox"/>
Other	<input type="checkbox"/>

## Summary

On June 1, 2022, Council adopted Ordinance No. 5984 relating to the manufacture, sale, and discharge of fireworks, and amended sections 15.30.240 and 15.30.290 of the KMC. The policy decision made by Council legalized the sale and discharge of approved fireworks beginning in 2023. In order to operationalize the policy decision made by Council, staff has been working on a number of recommended amendments to the KMC that will need to be considered by Council in advance of April 1, 2023.

The attached presentation is intended to highlight the key areas staff has been working on over the past couple of months. Staff would like to receive any input Council may have on the proposed modifications before bringing a draft copy of the recommended KMC amendments to Council for consideration on the evening on March 21, 2023.

Through

Chad Michael  
Mar 08, 11:31:44 GMT-0800 2023

Attachments: Presentation

Dept Head Approval

Chad Michael  
Mar 08, 11:31:47 GMT-0800 2023

City Mgr Approval

Marie Mosley  
Mar 10, 14:38:15 GMT-0800 2023

A large, vibrant firework explosion is the central focus of the image. It consists of multiple bright white bursts that fan out into a large, multi-colored cloud of purple, pink, and green sparks. The background is a dark night sky. In the lower portion of the image, the silhouettes of buildings and streetlights are visible, suggesting an urban setting. A bright starburst light is visible in the upper left corner of the image area.

## Additional KMC Amendments Recommended for the Manufacture, Sale, and Discharge of Fireworks in the City of Kennewick



# Recommended Rule Changes

Staff have prepared additional recommended KMC amendments to facilitate and put into effect:

- Issuing of retail and wholesale fireworks sales permits
- Dates and hours fireworks are authorized to be sold
- Fire safety standards for firework retail stands
- Prohibiting fireworks discharge during extreme fire danger
- Designation of no fireworks zones



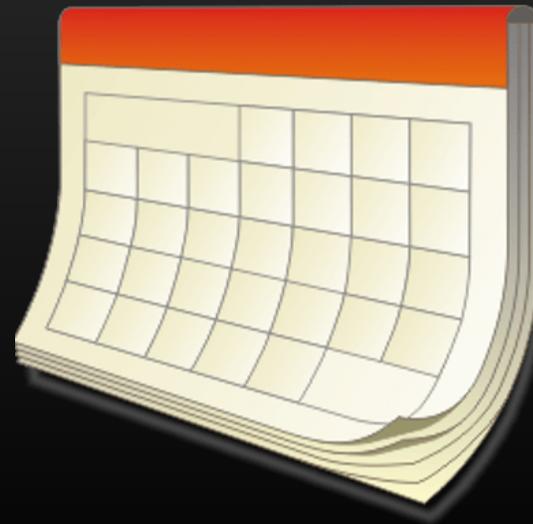
# Rule Change History

On June 21, 2022, Council adopted Ordinance No. 5984 relating to the manufacture, sale, and discharge of fireworks and amending sections 15.30.240 and 15.30.290 of the KMC.



# Retail and Wholesale Permits

- Applications received April 1 – June 1 each year
- Cost: \$100
- Permits valid April 1 – January 31 (of following calendar year)





# Retail and Wholesale Dates/Hours

**June 28**

**12pm – 11pm**

**June 29 – July 4**

**9am – 11pm**

**July 5**

**9am – 9pm**

**In accordance with  
State Law RCW 70.77.395**

**December 27 – 31**

**12pm – 11pm**

*Happy  
New Year*



# Fireworks Stands

- Locations allowed per KMC rules authorizing commercial activities
- No stands shall be located within 20' of any other building or structure nor within 100' of any gasoline station, oil storage tank, or premises where flammable liquids are kept or stored





# Fireworks Stands

Permitted stands will be inspected by Fire Prevention personnel to ensure conformance with:

- Applicable construction standards
- Request exits
- Requisite fire extinguishers
- Safety zone around stand: no smoking or open flames, no combustible materials, no parking within 25', etc.



# Fireworks Discharge Dates/Hours

**June 28**

**12pm – 11pm**

**June 29 – July 3,  
July 5**

**9am – 11pm**

**July 4**

**9am – 12am**

**In accordance with  
State Law RCW 70.77.395**

**December 31 –  
January 1**

**6pm – 1am**

*Happy  
New Year*



# Fireworks Discharge Prohibited

During periods of extreme fire danger, as determined by the fire chief or the fire chief's designee, the city manager may prohibit the discharge of any or all fireworks within city limits.





# Add'l Recommended Rule Changes

Additional recommended KMC amendments :

- Prohibit the discharge of fireworks during a parade or at any place of public use unless permitted by the Fire Code Official or designee
- Update: *“Any and all fireworks deemed to be in violation of this section may be seized and properly destroyed by the police.”*



## Next Steps

- March 21, 2023: Council to consider recommended KMC rule changes
- March 2023: staff to continue to prepare for receiving and processing permits
- *April 1, 2023*: begin receiving and processing permits
- *June 2023*: inspect permitted fireworks stands
- June, July, and December: monitor and evaluate impacts



# Questions



# Council Workshop Coversheet



Agenda Item Number	4.	Meeting Date	03/14/2023
Agenda Item Type	Presentation		
Subject	Options to Address Illegal Substances Open Use		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	City Attorney		

Info Only	<input type="checkbox"/>
Policy Review	<input type="checkbox"/>
Policy DevMnt	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>

## Summary

On February 25, 2021, the Washington Supreme Court declared Washington's drug possession statute unconstitutional because it lacked a mental state, potentially resulting in punishment for innocent conduct. On May 24, 2021, the Washington State Legislature adopted Revised Code of Washington (RCW) 69.50.4013, which made knowing possession of a controlled substance a misdemeanor for persons who knowingly possessed a controlled substance for the third time (the law requires that the offender has twice before been "diverted" to voluntary social services before they can be arrested/prosecuted). The change in laws related to the possession of controlled substances have resulted in legitimate community concerns about people openly using and possessing illegal drugs in public places. Despite the fact that there are laws prohibiting the public use of legal substances such as cannabis and alcohol, the legislature has failed to enact any comparable state law that prohibits the use of illegal or controlled substances in public places.

As was discussed at the workshop meetings in June 2021, regarding adoption of RCW 69.50.4013 by reference, state law expressly preempts the field of setting penalties for violations of the state's Uniform Controlled Substances Act. This preemption does not prohibit cities from enacting local laws that are not inconsistent with that 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.

This workshop item is intended to inform Council of the option to adopt two (2) ordinances that would criminalize 1) the use of dangerous drugs in public and 2) the depositing of said drugs or related drug paraphernalia in public locations. These ordinances were adopted by the City of Kent four months ago and by the City of Richland last month.

Through	Laurencio Sanguino Mar 08, 16:35:37 GMT-0800 2023	Attachments: Presentation Memorandum
Dept Head Approval	Lisa Beaton Mar 08, 16:47:02 GMT-0800 2023	
City Mgr Approval	Marie Mosley Mar 10, 13:27:13 GMT-0800 2023	

# Options to Address Public Use of Controlled Substances

March 14, 2023

Laurencio Sanguino  
Kennewick City Attorney's Office

## Status of Law in Relation to Possession of Controlled Substances



## Possession of a Controlled Substance

- *State v. Blake*, 197 Wash. 2d 170, 481 P.3d 521 (2021)
  - Revised Code of Washington (RCW) 69.50.4013
  - Kennewick Municipal Code (KMC) 9.32.020(I)
- Senate Bill (SB) 5476
  - Made knowing possession of a controlled substance a misdemeanor
  - Required law enforcement officers and prosecutors to refer suspects to drug treatment the first and second time unless the agency's records indicate that the suspects were referred two or more times
  - "Sunsets" July 1, 2023. If law is not modified prior to that time it will revert to pre-*Blake* status and be void due to the *Blake* decision.





## Possession of a Controlled Substance

- SB 5536
  - Makes knowing possession of a controlled or counterfeit substance a gross misdemeanor
  - Creates pretrial diversion programs
  - Requires courts to vacate possession convictions for defendants who complete drug treatment
  - Encourages, but does not require, law enforcement agencies and prosecutors to refer defendants to drug treatment



## Possession of a Controlled Substance

- Amended SB 5536
  - Requires the VSP Toxicology Laboratory to test drug samples within 45 days
  - Permits defendants to resolve possession charges through therapeutic courts with the prosecutor's consent
  - Requires courts to complete drug evaluations within 7 days of defendants' admission to diversion programs
  - Requires courts to sentence defendants who refuse to complete drug evaluations or treatment or are convicted for the second time to a minimum sentence of 21 days of jail time
  - Requires courts to sentence defendants who are convicted for the third time to a minimum sentence of 45 of jail time



## Referrals

- Kennewick Police Department (KPD)
  - 337 referrals
    - 254 adult referrals
    - 83 juvenile referrals
  - 22 suspects referred two times
    - 19 adults
    - 3 juveniles
  - 2 suspects referred three or four times
  - 0 suspects charged



## Status of Law in Relation to Consumption of Controlled Substances



## Consumption of a Controlled Substance

- Washington State Legislature
  - 6 possession of a controlled substance bills
  - 0 consumption of a controlled substance bills during the 2023-24 legislative session
  - No existing state law prohibiting public use of controlled substances other than cannabis (RCW 69.50.445) and alcohol (RCW 66.44.100)



## Preemption

- The state of Washington fully occupies and preempts the entire field of **setting penalties** for violations of the controlled substances act. RCW 69.50.608
- City is not preempted from adopting laws that are not inconsistent with state law
- Kennewick could criminalize public consumption without violating state preemption because existing and proposed state laws address **possession** of a controlled substance and consumption of cannabis rather than consumption of a controlled substance



## Consumption of a Controlled Substance

- Kent City Code (KCC) 9.12.20 and Richland Municipal Code (RMC) 9.09.010
  - Make it 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
  - Define “dangerous drug” as any controlled substance
  - Define “public place” as an area generally visible to public view
  - Define “use” as any effort or attempt to inject, ingest, inhale or otherwise introduce a controlled substance into the person’s body



## Consumption of a Controlled Substance

- KCC 9.12.22 and RMC 9.09.020
  - Make it unlawful for any person to knowingly dump, throw, deposit, or discharge onto the ground or into any body of water any dangerous drug
- KMC 10.08.050
  - Makes it unlawful for any person to willfully or negligently throw, place, or deposit upon or along any street or alley, upon public or private property any debris, paper, litter, glass bottle, glass, can, nail, tack, wire, trash or garbage, lighted material, or other waste substance



Questions?



## KENNEWICK CITY ATTORNEY'S OFFICE

March 8, 2023

TO: Kennewick City Council

CC: Marie Mosley, City Manager, City of Kennewick  
Chris Guerrero, Chief of Police, Kennewick Police Department  
Lisa Beaton, City Attorney, City of Kennewick  
Jessica Foltz, Assistant City Attorney, City of Kennewick  
Sarah Zimmerman, Assistant City Attorney, City of Kennewick

FROM: Laurencio Sanguino, Assistant City Attorney, City of Kennewick

RE: Consumption of a Controlled Substance

---

On February 25, 2021, the Washington State Supreme Court decision in *State v. Blake*, 197 Wash. 2d 170, 481 P. 3d 521 (2021) rendered Revised Code of Washington (RCW) 69.50.4013 (possession of a controlled substance) and Kennewick Municipal Code (KMC) 9.32.020(1) (formerly possession of marijuana) unconstitutional and unenforceable. On May 24, 2021, the Washington State Legislature amended RCW 69.50.4013, making knowing possession of a controlled substance a misdemeanor and requiring law enforcement officers and prosecutors to refer suspects to drug treatment the first and second time unless the agency's records indicate that the suspects were referred two or more times. If the Legislature does not act, RCW 69.50.4013 will revert to pre-*Blake* status and be unenforceable as of July 1, 2023.

### **BACKGROUND AND SUMMARY OF RELEVANT LAW**

The Legislature has reviewed six possession of a controlled substance bills and zero consumption of a controlled substance bills during the 2023-24 legislative session, only one of which is alive.

Senate Bill (SB) 5536 (1) makes knowing possession of a controlled or counterfeit substance a gross misdemeanor, (2) creates pretrial diversion programs, and (3) requires the court to vacate a possession conviction for a defendant who completes drug treatment. The bill encourages, but does not require, law enforcement agencies and prosecutors to refer a defendant to drug treatment. Agencies are

## KENNEWICK CITY ATTORNEY'S OFFICE

currently required to refer a suspect to drug treatment the first and second time pursuant to RCW 10.31.115 unless the agency's records indicate that the suspect was referred two or more times, which is problematic because regional and statewide tracking systems do not exist. Although the Kennewick Police Department (KPD) is able to track its referrals, it is unclear whether it is able to reliably track the Pasco Police Department (PPD), Richland Police Department (RPD), West Richland Police Department (WRPD), Benton County Sheriff's Office (BCSO), or Franklin County Sheriff's Office (FCSO)'s referrals.

SB 5536 bill passed to the Senate Rules Committee on Friday, February 24, 2023, and is expected to pass to the Senate. The amended bill (1) requires the Washington State Patrol (WSP) Toxicology Laboratory to test drug samples within forty-five (45) days, (2) permits defendants to resolve possession charges through therapeutic courts with the prosecutor's consent, (3) requires courts to complete drug evaluations within seven (7) days of defendants' admission to diversion programs, (4) requires courts to sentence defendants who refuse to complete drug evaluations or treatment or are convicted for the second time to a minimum sentence of twenty-one (21) days of jail time, and (5) requires courts to sentence defendants who are convicted for the third time to a minimum sentence of forty-five (45) days of jail time.

### ***Kent and Richland's Consumption of a Controlled Substance Ordinances***

In response to community concerns related to public use of drugs and the subsequent depositing of drug paraphernalia in public places, the City of Kent adopted ordinances to criminalize that behavior in September of 2022. These ordinances were adopted by the City of Richland last month and could be an option for Kennewick to address some of the practical problems caused by the change in drug possession laws.

Kent City Code (KCC) 9.12.20(A) (Use of dangerous drugs in public) and Richland Municipal Code (RMC) 9.09.010(A) read,

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

## KENNEWICK CITY ATTORNEY'S OFFICE

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.

KCC 9.12.20(A) and 9.09.010(A) read,

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.

KCC 9.12.22 and RMC 9.09.020 read,

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 KCC 9.12.20(B)(1) [RCW 69.50.102], as those referenced provisions are currently enacted or hereafter amended or recodified.

### ***Preemption***

Article 11, Section 11 of the Washington State Constitution permits cities to make and enforce local ordinances that do not conflict with general laws. The Washington State Supreme Court presumes that an ordinance is valid. *Heinsma v. Vancouver*, 144 Wash. 2d 556, 561, 29 P. 3d 709, 712 (2001). A challenger must prove that (1) the local ordinance conflicts with a state law or (2) the legislature manifests its intent to preempt the field. *Brown v. Yakima*, 116 Wash. 2d 556, 559, 807, P. 2d 353, 354-55 (1991); *Kennedy v. Seattle*, 94 Wash. 2d 376, 383-84, 617 P. 2d 713, 718 (1980); *Lenci v. Seattle*, 63 Wash 2d. 664, 669, 388 P. 2d 926, 930 (1964); *Bellingham v. Schampera*, 57 Wash. 2d 106, 109, 356 P. 2d 292, 294 (1960). If there is not room for concurrent jurisdiction or the conflict between the ordinance and law cannot be reconciled, the former must yield to the latter. *Diamond Parking, Inc. v. Seattle*, 78 Wash. 2d

## KENNEWICK CITY ATTORNEY'S OFFICE

778, 781, 479 P 2d 47, 49 (1971); *Spokane v J-R Distribs., Inc.*, 90 Wash 2d. 722, 730, 585 P. 2d 784, 788 (1978).

RCW 69.50.608 states, “[t]he state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities... may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city...”. The ordinances adopted by Kent and Richland are unlikely to be determined to be preempted because (1) existing and proposed state laws address possession of a controlled substance and consumption of cannabis, not consumption of a controlled substance and (2) RCW 69.50.608 provides room for concurrent jurisdiction. RCW 69.50.608 preempts inconsistent penalties, not consistent local ordinances. In *Tacoma v. Luvene*, the Washington State Supreme Court held that Tacoma Municipal Code (TMC) 8.72.010, which prohibits drug loitering, and RCW 69.50.407, which prohibits a person from attempting or conspiring to commit an offense defined in Chapter 69.50, did not prohibit the same conduct. *Tacoma v. Luvene*, 118 Wash. 2d 826, 835, 827 P. 2d 1374, 1379 (1992). Furthermore, it held that TMC 8.72.010 was not unconstitutionally overbroad or vague. *Id.*, at 844, 1384-85.

### **CONCLUSION**

If Kennewick is interested in criminalizing consumption of a controlled substance, it may do so for the reasons outlined above.



# City Council Meeting Schedule April 2023

---

The City broadcasts City Council meetings on the City's website

<https://www.go2kennewick.com/CouncilMeetingBroadcasts>.

April 4, 2023

Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

April 11, 2023

Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. Visit Tri-Cities Annual Update
2. Therapeutic Courts Update
3. Public Safety Sales Tax Update

April 18, 2023

Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

April 25, 2023

Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. Year-End Financial Review
2. Spring Budget Adjustment
3. Fire Department Annual Report
4. Police Department Annual Report

To assure disabled persons the opportunity to participate in or benefit from City services, please provide twenty-four (24) hour advance notice for additional arrangements to reasonably accommodate special needs.

Please be advised that all Kennewick City Council Meetings are Audio and Video Taped