

ORDINANCE NO. 2023-

AN ORDINANCE concerning Title 6, Public Safety and Morals; amending the City of Yakima Municipal Code Chapter 6.08 Drug Related Offenses to adopt provisions of SB 5536 (“*Blake Fix*”) which regulates possession of counterfeit, controlled, and legend drugs, drug paraphernalia, and drug use in public, repealing YMC 6.08.060 (Loitering for purposes for drug activity), and RCW 69.50.425, RCW 69.41.070, YMC 6.08.030, YMC 6.08.210, and YMC 6.08.300 as housekeeping measures.

WHEREAS, In *State v. Blake*, 197 Wn.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 Substance Act, unconstitutional because the statute did not require proof that the offender knowingly possessed a controlled substance; and

WHEREAS, the Legislature adopted RCW 69.50.4013 during the 2021 legislative session, which provided a temporary correction to the law. However, before an arrest could be made, the 2021 legislation required officers to inform individuals on their first two violations that they could voluntarily enter treatment, but the legislation created no incentive for an offender to choose treatment. The 2021 legislation will sunset on July 1, 2023; and

WHEREAS, the 2023 “*Blake Fix*”, SB 5536, prohibits the unlawful possession of counterfeit, controlled, and legend substances, and drug paraphernalia, prohibits public use of counterfeit, controlled, and legend drugs, and encourages the use of pretrial diversion programs to allow defendants to meaningfully engage in treatment programs; and

WHEREAS, Governor Inslee signed SB 5536 (*Blake Fix*) into law and portions of the law take affect on July 1, 2023; and

WHEREAS, SB 5536 preempts local regulation and repeals local laws and ordinances that are inconsistent with the of state law; and

WHEREAS, the Yakima City Council believes it is in the best interest of the citizens of the City of Yakima to adopt provisions of SB 5536 and allow local jurisdiction matters to be prosecuted in the Municipal Court; now, therefore,

BE IT ORDAINED BY THE CITY OF YAKIMA:

Section 1. Chapter 6.08 is hereby amended to read as follows;

Chapter 6.08 DRUG-RELATED OFFENSES

Sections:

6.08.015 Statutes adopted.

~~**6.08.030 Seizure and forfeiture.**~~

6.08.040 Severability.

~~**6.08.060 Loiter for the purpose of engaging in drug-related activity.**~~

~~**6.08.210 Use or display of medical marijuana.**~~

~~**6.08.300 Possession of legend drug without prescription or order prohibited—
Exception and penalties.**~~

6.08.015 Statutes 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

69.41.030 Possession of Legend Drugs without Prescription or Order

9.47A.010 Definition.

9.47A.020 Unlawful inhalation—Exception.

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

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

9.47A.050 Penalty.

69.50.101 Definitions.

69.50.102 Definitions—Drug paraphernalia.

69.50.4011 Counterfeit Substances – Penalty.

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

69.50.4014 Possession of forty grams or less of marijuana—Penalty.

69.50.412 Prohibited acts.

69.50.4121 Drug paraphernalia—Selling or giving—Penalty.

~~69.50.425 Misdemeanor violations—Minimum penalty.~~

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

69.51A.060 Use or Display of Medical Marijuana

(Ord. 2015-021 § 23, 2015: Ord. 2012-50 § 2, 2012).

~~**6.08.030 Seizure and forfeiture.**~~

~~A.—Property Subject to Seizure and Forfeiture. All drug paraphernalia as defined by RCW 69.50.102 is subject to seizure and forfeiture to the city of Yakima.~~

~~B.—Procedure for Seizure and Forfeiture.~~

~~(1) Drug paraphernalia may be seized and held as evidence in connection with an arrest for a violation of any provision of this chapter, and forfeited to the city or otherwise disposed of as may be ordered by the court.~~

~~(2) The Yakima County district court or other court of competent jurisdiction may issue a warrant for the seizure of drug paraphernalia. Drug paraphernalia seized pursuant to a warrant is subject to forfeiture by court order.~~

~~(3) Any peace officer having probable cause to believe that property constitutes drug paraphernalia, so as to be subject to seizure and forfeiture, may seize the property, provided that court proceedings for the forfeiture thereof shall be commenced no later than five days after the initial seizure.~~

~~C.— Abandoned or Lost Drug Paraphernalia. Drug paraphernalia in the possession of the city which is abandoned or lost, or for whom the owner cannot be determined, shall be disposed of in the same manner as other contraband property.~~

~~D.— Ownership of Forfeited Property. Property forfeited pursuant to this chapter shall be the sole property of the city of Yakima. (Ord. 2477 § 1 (part), 1980).~~

6.08.040 Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect within the invalid provision or application, and to this end the provisions of this chapter are severable. (Ord. 2477 § 1 (part), 1980).

6.08.060 Loiter for the purpose of engaging in drug-related activity.

~~A.— It is unlawful for any person to loiter in or near any thoroughfare, place open to the public or near any public or private place in a manner and under circumstances manifesting the purpose to engage in drug-related activity contrary to any of the provisions of Chapters 69.41, 69.50 or 69.52 of the Revised Code of Washington.~~

~~B.— No arrest shall be made for a violation of this section unless the arresting officer first affords such person an opportunity to explain such conduct, and no person shall be convicted of violating this section if it appears at trial that the explanation given was true and disclosed a lawful purpose.~~

~~C.— Included among the circumstances which may be considered in determining whether such purpose is manifested, but not limited thereto, are:~~

- ~~1.— Such person is a known, unlawful drug user, possessor, or seller;~~
- ~~2.— It is known that such person has been convicted in any court within this state within a period of two years of any violation involving the use, possession or sale of any of the substances referred to in Chapters 69.41, 69.50 and 69.52 of the Revised Code of Washington, or, within two years, such person has been convicted of any violation of any of the provisions of said chapters of the Revised Code of Washington;~~
- ~~3.— The area involved is by public repute known to be an area of unlawful drug use and trafficking;~~
- ~~4.— The premises involved are known to have been reported to law enforcement as a place suspected of drug activity pursuant to Chapter 69.52 of the Revised Code of Washington;~~
- ~~5.— Any vehicle involved is known to be registered to a known unlawful drug user, possessor, or seller or for which there is an outstanding warrant for a crime involving drug-related activity;~~
- ~~6.— Such person behaves in such a manner as to raise a reasonable suspicion that he or she is about to engage in or is then engaged in an unlawful drug-related activity;~~

~~7. Such person takes flight upon the appearance of a police officer;~~

~~8. Such person manifestly endeavors to conceal himself or herself or any object that reasonably could be involved in an unlawful drug-related activity;~~

~~9. Such person refuses to identify himself or herself upon the request of an identified police officer.~~

~~D. Loitering for the purpose of engaging in drug-related activity is a misdemeanor. (Ord. 98-3 § 11, 1998; Ord. 94-22 § 24, 1994; Ord. 3097 § 1, 1988).~~

~~6.08.210 Use or display of medical marijuana.~~

~~RCW 69.51A.060(1) as currently enacted or as hereafter amended or recodified from time to time is hereby adopted by reference. (Ord. 2011-33 § 1, 2011).~~

~~6.08.300 Possession of legend drug without prescription or order prohibited—Exception and penalties.~~

~~RCW 69.41.030 and 69.41.070 are hereby adopted by reference. (Ord. 2003-44 § 1, 2003).~~

Section 2. This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter.

PASSED BY THE CITY COUNCIL, signed and approved this 20th day of June, 2023.

Janice Deccio, Mayor

ATTEST:

Rosalinda Ibarra, City Clerk

Publication Date:

Effective Date: