



City Council

Approval of an Ordinance Relating to Controlled Substances and Amending Olympia Municipal Code Section 9.28.010 by Adopting RCW 69.50.4013, as Amended by Engrossed Senate Bill 5476, Chapter 311, Addressing the State v. Blake Decision - First and Final Reading

Agenda Date: 6/22/2021
Agenda Item Number: 4.K
File Number:21-0614

Type: ordinance **Version:** 1 **Status:** Passed

Title

Approval of an Ordinance Relating to Controlled Substances and Amending Olympia Municipal Code Section 9.28.010 by Adopting RCW 69.50.4013, as Amended by Engrossed Senate Bill 5476, Chapter 311, Addressing the *State v. Blake* Decision - First and Final Reading

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve on first and final reading the Ordinance relating to controlled substances and amending Olympia Municipal Code Section 9.28.010 by adopting RCW 69.50.4013, as amended by ESB 5476, Chapter 311, Laws of 2021 addressing the *State v. Blake* Decision on first and final reading.

Report

Issue:

Whether to adopt RCW 69.50.4013 relating to controlled substances, as amended by ESB 5476, Chapter 311, Laws of 2021 Addressing the *State v. Black* Decision on first and final reading.

Staff Contact:

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Background and Analysis:

From the 2016 US Surgeon General Executive Summary:

"In 2015, over 27 million people in the United States reported current use of illicit drugs or misuse of prescription drugs, and over 66 million people (nearly a quarter of the adult and adolescent population) reported binge drinking in the past month. Alcohol and drug misuse and related disorders

are major public health challenges that are taking an enormous toll on individuals, families, and society. Neighborhoods and communities as a whole are also suffering as a result of alcohol- and drug-related crime and violence, abuse and neglect of children, and the increased costs of health care associated with substance misuse. It is estimated that the yearly economic impact of substance misuse is \$249 billion for alcohol misuse and \$193 billion for illicit drug use.”

The Washington Supreme Court ruled in *State v. Blake*, 197 Wn.2d 170, in February of 2021 that the state statute against possession of a controlled substance, RCW 69.50.4013 was unconstitutional. The reasoning of the court was that the felony penalties on top of the strict liability of the crime, allowing unknowing possessors to be convicted of unlawful possession of a controlled substance, was unconstitutional.

As a result of that ruling, possession of a controlled substance was no longer unlawful on a state level, even if it remained a federal crime. The legislature responded by amending RCW 69.50.4013 in Engrossed Senate Bill (ESB) 5476. The new bill added that possession of the controlled substance required the possessor to know or reasonably should know that they are in possession of the controlled substance. They also changed the crime from a Class C felony to a simple misdemeanor. They went further to require law enforcement to refer a person in possession of a controlled substance to chemical dependency treatment twice before that person could be charged. The bill also allowed prosecution to refer a person in possession of a controlled substance to chemical dependency instead of prosecution. ESB 5476 became effective May 13, 2021.

Adoption of RCW 69.50.4013 authorizes the prosecution of possession of a controlled substance. Conviction of a violation of RCW 69.50.4013 allows the Olympia Municipal Court to order a person into chemical dependency treatment when they might be unwilling to pursue treatment on their own or just with a referral from law enforcement.

RCW 35A.11.090 provides that ordinances necessary for immediate preservation of public peace, health, and safety or for the support of city government and its existing public institutions, and which contain a statement of urgency and are passed by unanimous vote of the council shall take immediate effect as provided by law.

Neighborhood/Community Interests (if known):

There is an inherent interest in protecting the public’s health.

Options:

1. Approve the Ordinance amending OMC 9.28.010 by adopting RCW 69.50.4013 on first and final reading. The legislative amendments in ESB 5476, Chapter 311, Laws of 2021, will be incorporated into the Olympia Municipal Code immediately.
2. Do not approve the Ordinance. The state legislative amendments to RCW 69.50.4013 in ESB 5476, Chapter 311, Laws of 2021, will not be incorporated into the Olympia Municipal Code.
3. Consider the Ordinance at another time. The state legislative amendments to RCW 69.50.4013 in ESB 5476, Chapter 311, Laws of 2021, will not be incorporated into the Olympia Municipal Code.

Financial Impact:

Unknown at this time.

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Attachments:
Ordinance