

CHAPTER 9.32

DRUGS AND DRUG PARAPHERNALIA

SECTION:

9.32.010: Definitions

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9.32.010: Definitions: As used in this Chapter:

(1) “Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

- (a) A practitioner, or
- (b) The patient or research subject at the direction and in the presence of the practitioner.

(2) “Controlled Substance” means a drug, substance, or immediate precursor in Schedules I through V of Article II, RCW 69.50.

(3) “Counterfeit Substance” means a controlled substance of which, or the container of, labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(4) “Deliver” or “Delivery” means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(5) “Drug” means (1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in components, parts, or accessories.

(6) The term “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, the possession of which is in violation of RCW 69.50. It includes, but is not limited to:

- (a) Kits used, intended to use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

- (b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- (c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
- (d) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;
- (e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
- (g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;
- (h) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (i) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- (j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
- (k) Hypodermic syringes, needles and other objects used, intended to use, or designed for use in parenterally injecting controlled substances into the human body;
- (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing a controlled substance into the human body, the possession of which is a violation of this Chapter or RCW 69.50, such as:
 - (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (ii) Water pipes;
 - (iii) Carburetion tubes and devices;
 - (iv) Smoking and carburetion masks;
 - (v) Miniature cocaine spoons, and cocaine vials;
 - (vi) Chamber pipes;
 - (vii) Carburetor pipes;
 - (viii) Electric pipes;
 - (ix) Air-driven pipes;
 - (x) Chillums;
 - (xi) Bongs;
 - (xii) Ice pipes or chillers.
- (m) In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors and subject to applicable rules or evidence, the following:
 - (i) Statements by an owner or by anyone in control of the object concerning its use;

- (ii) Prior course of dealing or habit of the owner or person in control of the object;
- (iii) The proximity of the object, in time and space, to a direct violation of this Chapter or RCW 69.50;
- (iv) The proximity of the object to controlled substances;
- (v) The existence of any residue of controlled substances on the object;
- (vi) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this Chapter or RCW 69.50; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this Chapter shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
- (vii) Instructions, oral or written, provided with the object concerning its use;
- (viii) Descriptive materials accompanying the object which explain or depict its use;
- (ix) National and local advertising concerning its use;
- (x) The manner in which the object is displayed for sale;
- (xi) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a license distributor or dealer of tobacco products;
- (xii) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
- (xiii) The existence and scope of legitimate uses for the object in the community;
- (xiv) Expert testimony concerning its use.

(7) “Immediate Precursor” means a substance which the State Board of Pharmacy has found to be and rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(8) “Manufacturer” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

- (a) By a practitioner as an incident to his administering or dispensing of an controlled substance in the course of his professional practice, or
- (b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(9) “Marijuana” means all parts of the plant of the genus *Cannabis L.*, 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 stocks of the plant, fiber produced from the stocks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stocks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(10) “Person” means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(11) “Production” includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance. (Ord. 5475 Sec. 1, 2012; Ord. 5336 Sec. 1, 2011; Ord. 2504 Sec. 1 (part), 1980)

9.32.020: Prohibited Acts:

(1) It is unlawful for a person under the age of 21 to possess marijuana, unless the same was obtained directly from, or pursuant to, a valid prescription or order from a medical practitioner while acting in the course of his medical practice, or except as otherwise authorized by the laws of the State of Washington. Unlawful possession of marijuana by a person under the age of 21 is a misdemeanor.

(2) It is unlawful to intentionally smell or inhale the fumes of any glue, cement, or other adhesive containing one or more of the following chemical compounds, for the purpose of becoming intoxicated, inebriated, excited, or stupefied: Acetone, acetate, benzene, butyl alcohol, ethyl alcohol, ethylene, trichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether, or toluene; provided, that this Section shall not be construed as applying to the inhalation of any anesthesia for medical or dental purposes. Glue-sniffing is a misdemeanor.

(3) It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise induce into the human body a controlled substance the possession of which is in violation of RCW 69.50. Violation of this subsection is a misdemeanor.

(4) It is unlawful for any person to deliver, possess with the intent to deliver, or manufacture with the intent to 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, the possession of which is in violation of RCW 69.50. Violation of this subsection is a misdemeanor.

(5) Except for violations of KMC 9.32.020(6), any person who violates any provision of this Chapter in a school or on a school bus, or within 1,000 feet of a school bus route stop designated by the Kennewick or Richland School Districts, or within 1,000 feet of the perimeter of Kennewick or Richland School District grounds, in a public park, in a public housing project designated by the City Council as a drug free zone, or on a public transit

vehicle or in a public transit stop shelter, shall be punished by a fine of not less than \$500.00 and ten days imprisonment, and no portion of such fine or imprisonment shall be suspended.

(6) It is unlawful to open a package containing marijuana, useable marijuana, or a marijuana-infused product, or 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 3 civil infraction under KMC 1.12.030(3) and Chapter 7.80 RCW, not including statutory assessments.

(7) The possession, by a person twenty-one years of age or older of useable marijuana or marijuana-infused products in amounts that do not exceed the following: (a) One ounce of useable marijuana; (b) Sixteen ounces of marijuana-infused product in solid form; or (c) Seventy-two ounces of marijuana-infused product in liquid form; is not a violation of this section, this chapter, or any other provision of the Kennewick Municipal Code.

(8) It is unlawful for a person to possess useable marijuana in excess of one ounce, but less than 40 grams, except as otherwise authorized by the laws of the State of Washington. Unlawful possession of marijuana in excess of one ounce, but less than 40 grams, is a misdemeanor. (Ord. 5510 Sec. 1, 2013: Ord. 5475 Sec. 2, 2012: Ord. 5336 Sec. 2, 2011: Ord. 5169 Sec. 1, 2007: Ord. 3955 Sec. 1, 2001: Ord. 3924 Sec. 1, 2000: Ord. 3881 Sec. 1, 1999: Ord. 3790 Sec. 1, 1998: Ord. 3433 Sec. 1, 1993: Ord. 3060 Sec. 1, 1987: Ord. 2504 Sec. 1 (part), 1980: Ord. 2089 Sec. 2 (part), 1977)

9.32.030: Seizure and Forfeiture:

- (1) The following are subject to seizure and forfeiture:
 - (a) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this Chapter or RCW 69.50;
 - (b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this Chapter or RCW 69.50;
 - (c) All property which is used, or intended for use, as a container for property described in paragraphs (a) and (b);
 - (d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in paragraphs (a) or (b), except that:
 - (i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this Section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Chapter or Chapter 69.41 or 69.52 RCW;
 - (ii) No conveyance is subject to forfeiture under this Section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;
 - (iii) No conveyance is subject to forfeiture under this Section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.401;
 - (iv) A forfeiture of a conveyance encumbered by a bona fide security

interest is subject to the interest of the secured party if the secured party neither had knowledge of, nor consented to the act or omission; and

- (v) When the owner of a conveyance has been arrested under this Chapter or Chapter 69.41 or 69.52 RCW, the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;
 - (e) All books, records, and research products and materials, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this Chapter and RCW 69.50;
 - (f) All drug paraphernalia as defined in this Chapter or RCW 69.50;
 - (g) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance or drug paraphernalia in violation of this Chapter or RCW 69.50; all proceeds traceable to such an exchange; and all monies, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this Chapter or RCW 69.50; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent. Rebuttable Presumption: All monies, coin and currency found in close proximity to forfeitable controlled substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof is upon claimants of the property to rebut this presumption.
- (2) Property subject to forfeiture under this Chapter may be seized by the police department upon process issued by any superior court having jurisdiction over the property. Seizure without process may be made if:
- (a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
 - (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal, injunction or forfeiture proceeding based upon this Chapter;
 - (c) A police officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
 - (d) A police officer has probable cause to believe that the property was used or is intended to be used in violation of this Chapter.
- (3) In the event of seizure pursuant to subsection (2), proceedings for forfeiture shall be deemed commenced by the seizure. The police department shall cause notice to be served within 15 days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule, including but not limited to, service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen-day period following the seizure.
- (4) If no person notifies the police department in writing of his claim of ownership or right to possession of items specified in subsection (1)(d) or (g) of this Section within 45

days of the seizure, the item seized shall be deemed forfeited.

(5) If any person notifies the police department in writing of his claim to ownership or right of possession of the items specified in subsection (1)(d) or (g) of this Section within 45 days of the seizure, he shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the Chief of Police, except that any person asserting a claim of right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than \$500.00. A hearing before the Chief shall be conducted as provided in subsection (8) of this Section. The burden of producing evidence shall be upon the person claiming to be the lawful owner or claiming to have a lawful right to possession of items specified in subsections (1)(d) or (g) of this Section. The Police Department shall promptly return the article or articles to the claimant upon a determination by the Chief or court that the claimant is the present lawful owner or is lawfully entitled to possession of the items specified in subsection (1)(d) or (g) of this Section.

(6) When property is forfeited under this Chapter the police may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this Chapter or RCW 69.50;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds of all money forfeited under this Chapter shall be used for payment of all proper expenses of the investigation leading to the seizure, including any monies delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the Prosecuting or City Attorney, and court costs. Fifty percent of the money remaining after payment of such expenses shall be deposited in the criminal justice training account established under RCW 43.101.210 which shall be appropriated by law to the Washington State Criminal Justice Training Commission and fifty percent shall be deposited in the General Fund of the City;

(c) Request the sheriff to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the Bureau of Narcotics and Dangerous Drugs for disposition.

(7) Controlled substances listed in schedules I, II, III, IV, and V, RCW 69.50, that are possessed, transferred, sold or offered for sale in violation of this Chapter or RCW 69.50, are contraband and shall be seized and summarily forfeited to the City. Controlled substances listed in schedules I, II, III, IV, and V, RCW 69.50, which are seized or come into possession of the Police Department, the owners of which are unknown, are contraband and shall be summarily forfeited to the City.

(8) Whenever a notice of claim or right is received, the Chief shall set a date for hearing the matter and shall advise the claimant of the time and place thereof. Should the claimant file an affidavit of prejudice against the Chief of Police, the Chief shall forward the matter to the City Manager who shall appoint a hearing officer therefor. At the hearing, the claimant shall be entitled to present all relevant evidence showing that the property is not subject to forfeiture under this Section. At the conclusion of the hearing, the Chief or hearing officer shall enter written findings of fact, conclusions of law and a decision. Any person

aggrieved thereby, may appeal to the Superior Court of Benton County in accord with the provisions of RCW Title 34.

(9) Species of plants from which controlled substances, in Schedules I and II, RCW 69.50, may be derived, which have been planted or cultivated in violation of this Chapter or RCW 69.50, or of which the owners or cultivators are unknown, or which are growing wild, may be seized and summarily forfeited to the City.

(10) The failure, upon demand by a police officer, of the person in occupancy or in control of land or premises upon which the species of plant are grown or being stored, to produce an appropriate registration or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(11) Property is summarily forfeited to the City without further proceeding in the event that the owner thereof is convicted of a violation of this Chapter, 69.50 of the Revised Code of Washington or 9.32.020, inclusive, of the Kennewick Municipal Code, except in the case of conveyances, if the conviction arises from an incident involving the property to be forfeited. (Ord. 5475 Sec. 3, 2012; Ord. 3514 Sec. 1, 1994; Ord. 3060 Sec. 5 (part), 1987; Ord. 2659 Sec. 4 1982; Ord. 2504 Sec. 1 (part), 1980)