



City Council Meeting Schedule May 2019

May 7, 2019
Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

May 14, 2019
Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. Port of Kennewick Partnership (20 minutes)
2. KMC Policy Changes (Beaton - 45 minutes)
3. KMC Title 18 Code Amendment Options (Beaton - 15 minute)
4. Executive Session RCW 42.30.110(b) Real Estate (10 minutes)

May 21, 2019
Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

May 28, 2019
Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. Workplace Safety Update (Lemieux - 15 minutes)
2. Televising Council Meetings Update (Palmer - 10 minutes)
3. Annual Comp Plan Amendment Docket (McCormick - 20 minutes)
4. 2019 AWC Elected Officials Essential Webinar - Public Sector Resource Management (Mosley - 60 minutes)

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 Taped

May 2019
Updated 05/09/19

Council Workshop Coversheet



Agenda Item Number	1.	Meeting Date	05/14/2019
Agenda Item Type	Presentation		
Subject	Port of Kennewick Partnership Update		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	City Manager		

Info Only	☒
Policy Review	☐
Policy DevMnt	☐
Other	☐

Summary

Port of Kennewick CEO Tim Arntzen will be providing Council an update on current and upcoming projects in Kennewick and our on-going successful partnership endeavors.

Through

Evelyn Lusignan
May 09, 15:21:39 GMT-0700 2019

Attachments: Presentation

Dept Head Approval

City Mgr Approval

Marie Mosley
May 10, 11:45:14 GMT-0700 2019



Clover Island & Columbia Drive Revitalizing Kennewick's Historic Waterfront

**City Council Workshop
May 14, 2019**

1135 Shoreline Project

Making THIS



**2019 -
2021**

Look like THIS!





Kennewick's Historic Waterfront

Columbia Drive



Port Owned Properties

Kennewick's Historic Waterfront



Columbia Drive / Duffy's Pond



Duffy's Pond Trail

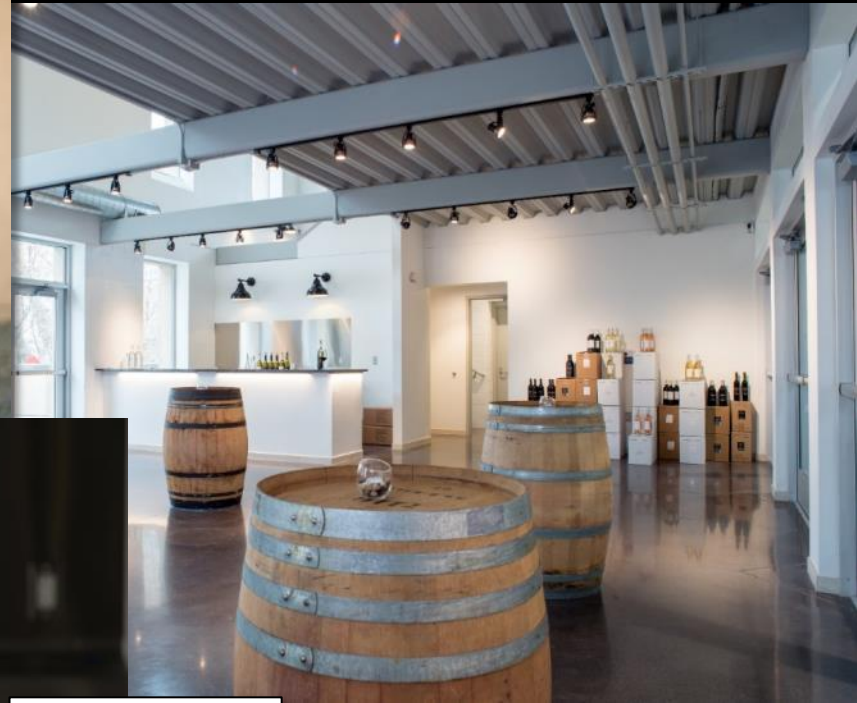


**Opened
Feb. 2018**



Columbia Gardens Wine & Artisan Village

Columbia Gardens ...Wine & Artisan Village





Phase 2A
Completed
April 2019

An aerial photograph showing a large, rectangular dirt lot in the center, surrounded by newly paved roads and parking areas. To the right, there are several buildings with red roofs. A river flows along the top edge of the site, bordered by trees and a grassy bank. The foreground shows a multi-lane road with some vehicles. The overall scene depicts a completed construction phase for a facility.

Phase 2A: roads, utilities, and parking





SWAMPY'S
BBQ SAUCE & EATERY

Follow Us On



509-205-99

- 
CUPCAKES
 \$2.00 each & 12 for \$20.00
 Vanilla, Raspberry, Lemon, Chocolate, Strawberry, Blueberry, Peach, Caramel, Mint, and many more flavors.
- MINIS**
 \$1.00 each & 12 for \$10.00
 Vanilla, Raspberry, Lemon, Chocolate, Strawberry, Blueberry, Peach, Caramel, Mint, and many more flavors.
- COOKIES**
 \$1.00 each & 12 for \$10.00
 Vanilla, Raspberry, Lemon, Chocolate, Strawberry, Blueberry, Peach, Caramel, Mint, and many more flavors.
- SMORES BARS**
 \$2.00 each & 12 for \$20.00
 Vanilla, Raspberry, Lemon, Chocolate, Strawberry, Blueberry, Peach, Caramel, Mint, and many more flavors.
- PARFAIT CUPS**
 \$2.00 each & 12 for \$20.00
 Vanilla, Raspberry, Lemon, Chocolate, Strawberry, Blueberry, Peach, Caramel, Mint, and many more flavors.
- LEMON CHEESECAKE BARS**
 \$2.00 each & 12 for \$20.00
 Vanilla, Raspberry, Lemon, Chocolate, Strawberry, Blueberry, Peach, Caramel, Mint, and many more flavors.
- CROISSANTS**
 \$1.00 each & 12 for \$10.00
 Vanilla, Raspberry, Lemon, Chocolate, Strawberry, Blueberry, Peach, Caramel, Mint, and many more flavors.

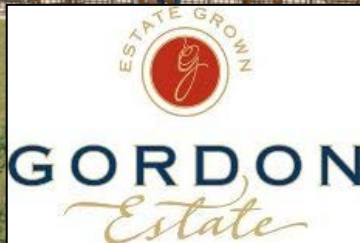


www.FrostMeSweet.com





Phase 2B
Contract
Awarded
April 2019





**Completion
expected
spring 2020**

Phase 2B: new building and parking lot

Columbia Gardens ...Wine & Artisan Village



An aerial photograph showing Vista Field, a large airport with a long runway and taxiway, surrounded by industrial and commercial buildings, parking lots, and a body of water in the background. The sky is blue with scattered clouds.

Vista Field Redevelopment



**Phase One
20 acres at
center of
Vista Field**



**April 2019
– Spring
2020**

Phase One: roads, utilities, linear park & water features

**Phase
One at
build-out**





Opportunities for Vibrancy



VISTA FIELD

- Community-Driven Plan
- Infrastructure Focus
- Regional Town Center
- Potential for $\frac{1}{2}$ *Billion* in Private-Sector \$
- 1,000+ Residential Units
- 740,000 s.f. Commercial

Thank You



Council Workshop Coversheet



Agenda Item Number	2.	Meeting Date	05/14/2019
Agenda Item Type	Presentation		
Subject	KMC Policy Changes		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	City Attorney		

Info Only	☐
Policy Review	☐
Policy DevMnt	☒
Other	☐

Summary

The proposed Council Code of Ethics is intended to replace the existing policy statement in the KAC. It will provide a more formal process to address ethics complaints against Council Members. This proposed code would add a new chapter to Title 2 of the KMC. This draft has been reviewed by the Budget and Administrative Committee. In reviewing other cities' ethics codes, staff utilized the City of Kirkland's code as a template for this draft. This draft is intended as a starting point for Council review and discussion; there is no legal requirement to adopt an ethics code nor is there a legal requirement to process complaints in a specific manner. Our insurance risk pool WCIA requires that we have an ethics policy as a means to reduce risk related to Council conduct. Examples from other cities vary from simple statements of policy to full permanent standing ethics boards. Council will need to decide what level of formality is needed to address Council ethics.

Through

Bonnie Lanning
May 08, 13:43:22 GMT-0700 2019

Dept Head Approval

Lisa Beaton
May 08, 15:14:57 GMT-0700 2019

City Mgr Approval

Marie Mosley
May 10, 11:12:09 GMT-0700 2019

Attachments:

Presentation
Draft Ethics Code

PROPOSED COUNCIL CODE OF ETHICS

REVIEW OF DRAFT CODE

REVIEW OF ENFORCEMENT OPTIONS

COUNCIL WORKSHOP

MAY 14, 2019

PROPOSED COUNCIL CODE OF ETHICS

- Provide a more formal extensive Ethics' Code adding a new chapter to Title 2 of the KMC;
- Provide a clear process to submit a claim;
- Clarify who can submit a claim;
- Provide a process to resolve claims;
- Council will retain right to make the final decisions.

PROPOSED COUNCIL CODE OF ETHICS

- **Prohibited conduct:**

- Conflict of Interest;
- Appearance of Conflict;
- Misuse of Public Position or Resources;
- Representation of Third Parties;
- Solicitation of Charitable Contributions;
- Gifts and Favors;
- Confidential Information.

PROPOSED COUNCIL CODE OF ETHICS

- **Ethical Standards:**

- Compliance with Other Laws;
- Personal Integrity;
- Working for Common Good;
- Respect for Process;
- Commitment to Transparency;
- Conduct of Public Meetings;
- Decisions Based on Merit;
- Ex Parte Communications;
- Attendance;
- Nepotism;
- Advocacy;
- Policy Role of Officials.

PROPOSED COUNCIL CODE OF CONDUCT

- **Complaint Process:**

- Two council members are required to sign a written complaint before it can be submitted to the Ethics' Officer;
- Complaint must set forth specific facts and allege which provisions of the code are violated with enough detail for the Ethics' Officer to make a determination of sufficiency;
- Complaint must be signed under penalty of perjury by the person(s) submitting it in a manner consistent with RCW 9A.72.

PROPOSED COUNCIL CODE OF ETHICS

- **Creation of Ethics' Officer Position – Similar to a Hearings Examiner:**
 - Appointed by City Manager;
 - Conducts review of the complaint;
 - Determines sufficiency;
 - Determines at what level to resolve, formal or informal;
 - May issue Notice of Insufficiency or dismissal of the complaint;
 - May Issue a Finding of Sufficiency;
 - May recommend Council enter into a stipulation with person complained against.

PROPOSED COUNCIL CODE OF ETHICS

- **Public Hearing:**

- Conducted by Ethics' Officer;
- Ethics' Officer may issue subpoenas, call witnesses, compel production of books, records or other evidence as needed;
- Official who is the subject of the complaint may respond in writing, attend the hearing, with or without counsel, cross examine witnesses, provide testimony;
- Hearing will be recorded; burden of proof is preponderance;
- Ethics' Officer will complete findings of fact, conclusions of law, and a recommended disposition within 30 days after conclusion of the hearing;
- A copy is sent to the complainant and the person complained against as well as a copy to City Council for a final decision.

PROPOSED COUNCIL CODE OF ETHICS

- **City Council Action:**
 - Final decision is made by majority vote in a public meeting; deliberations may be in Executive Session;
 - The person complained of may not participate in Executive Session and shall not vote on the matter pertaining to themselves.

PROPOSED COUNCIL CODE OF ETHICS

- **Disposition:**

- Upon a finding by the Ethics' Officer that a violation of the Code of Ethics has occurred, the City Council may take any of the following actions by majority vote:
 - Dismissal of complaint without penalties;
 - Referral to another agency with jurisdiction over the violation;
 - Admonition – oral non-public statement made by the mayor to the official;
 - Reprimand – administered to the official by a motion of reprimand by the majority of City Council;
 - Censure – a resolution of censure read to the person in public.

PROPOSED COUNCIL CODE OF ETHICS

- **Disposition (Continued):**

- Civil Penalty – Council assess a civil penalty of up to one thousand dollars;
- Declare a contract void as provided in RCW 42.23.050;
- Other penalties – City Council may impose a restriction, loss of a committee assignment, or loss of appointment as a representative of the City for any regional or multi-jurisdictional body or membership on any board;
- Review of Civil Penalties – if Council orders an official to pay a civil penalty, the official may seek a writ of review from superior court;
- All other non-monetary dispositions are the final decision of Council and not appealable;
- Any action taken under the proposed code must be commenced within two years from the date of violation.

PROPOSED COUNCIL CODE OF ETHICS

Questions?



CHAPTER 2.06 COUNCIL CODE OF ETHICS

- 2.06.010: Policy.
- 2.06.020: Definitions.
- 2.06.030: Prohibited Conduct.
- 2.06.040: Ethical Standards.
- 2.06.050: Ethics' Officer.
- 2.06.060: Complaints, Investigations, Hearings and Enforcement.

2.06.010: Policy:

- (1) Purpose. The Kennewick City Council has adopted a Code of Ethics for members of the City Council to promote public confidence in the integrity of local government and its fair operation. This Code of Ethics will provide the basis for education and training for Council Members, both elected and appointed, to ensure that the highest standards and best practices with regard to ethics will be followed.
- (2) Intent. The citizens and businesses of Kennewick are entitled to have fair, ethical and accountable local government that has earned the public's full confidence. The City Council is committed to upholding the City of Kennewick Core Values which state:

We will provide excellent public service and ensure the safety and wellbeing of our community and one another through the empowerment of each employee. We value integrity, inclusiveness, stewardship and communication.

We are accountable to our community for innovation and collaborative efforts that anticipate needs, leverage resources and deliver solutions.

Integrity: We hold ourselves to the highest standard of professionalism and ethical conduct.

Inclusiveness: We embrace diversity and value different perspectives as we work together for the common good.

Stewardship: We ensure the public's resources are used responsibly to provide the greatest benefit.

Communication: We will listen and engage in an open, honest and timely exchange of information.

In keeping with the City of Kennewick's commitment to excellence, the effective functioning of democratic government therefore requires that:

- (1) Public officials, both elected and appointed, comply with the laws and policies affecting the operations of government;
- (2) Public officials be independent, impartial and fair in their judgment and actions;

- (3) Public office be used for the public good, not for personal gain; and
- (4) Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

2.06.020: Definitions:

- (1) “Official” means a member of the City Council elected or appointed..
- (2) “Relative” means spouse or domestic partner, child, step-child, parent, step-parent, parent-in-law, grandparent, grandchild, sibling, aunt, uncle, niece, nephew, son- or daughter-in-law, brother- or sister-in-law.

2.06.030: Prohibited conduct:

- (1) Conflicts of Interest. In order to ensure their independence and impartiality on behalf of the common good, officials shall not participate in government decisions in which any of the following has a financial interest: (a) the official; (b) a relative; (c) an individual with whom the official resides; or (d) an entity that the official serves as an officer, director, trustee, partner or employee. Officials shall abstain from participating in deliberations and decision-making where conflicts exist. This section shall not apply: (a) to decisions regarding taxes or fees; (b) if the financial interest is shared with more than ten percent of the City’s population; or (c) if the financial interest exists solely because of the official’s ownership of less than one percent of the outstanding shares of a publicly traded corporation.
- (2) Appearance of Conflict. If it could appear to a reasonable person, having knowledge of the relevant circumstances, that the official’s judgment is impaired because of either: (a) a personal or business relationship not covered under the foregoing subsection; or (b) a transaction or activity engaged in by the official, the official shall make a public, written disclosure of the facts giving rise to the appearance of a conflict before participating in the matter.
- (3) Misuse of Public Position or Resources. Except for infrequent use at little or no cost to the City, officials shall not use public resources that are not available to the public in general, such as city staff time, equipment, supplies or facilities, for other than a city purpose.
- (4) Representation of Third Parties. Except in the course of official duties, officials shall not appear on behalf of the financial interests of third parties before the bodies on which the officials serve or in interaction with assigned staff. The members of the City Council shall not appear on behalf of the financial interest of third parties before the Council or any board, commission or proceeding of the City, or in interaction with staff.
- (5) Solicitations of Charitable Contributions. No official may make direct personal solicitations for charitable contributions from city employees.
- (6) Gifts and Favors. Officials shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the public in general. They may not solicit or receive any thing of monetary value from any person or entity where the thing of monetary value has been solicited, or received or given or, to a reasonable person, would appear to have been solicited, received or given with intent to give or obtain special consideration or influence as to any action by the official in his or her official

- capacity; provided, that nothing shall prohibit campaign contributions which are solicited or received and reported in accordance with applicable law.
- (7) Confidential Information. Officials shall not disclose or use any confidential information gained by reason of their official position for other than a city purpose. “Confidential information” means: (a) specific information, rather than generalized knowledge, that is not available to a person who files a public records request; and (b) information made confidential by law.

2.06.040: Ethical Standards:

In addition to Section 2.06.030 of the Code of Ethics, which shall be administered by the Ethics’ Officer, officials are also required to comply with the following standards:

- (1) Compliance with Other Laws. Officials shall comply with federal, state and city laws in the performance of their public duties. These laws include, but are not limited to: the United States and Washington Constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures and open processes of government; and city ordinances and policies. See Appendix A. As required by RCW 42.17.750, no official shall knowingly solicit or encourage, directly or indirectly, any political contribution from any city employee. Except under limited circumstances described in RCW 42.17.130, no official may use or authorize the use of the facilities of the City for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition in a manner not available to the general public on the same terms.
- (2) Personal Integrity. The professional and personal conduct of officials must be above reproach and avoid even the appearance of impropriety. Officials shall refrain from abusive conduct, threats of official action, personal accusations or verbal attacks upon the character or motives of other members of Council, boards and commissions, the staff or public. Officials shall maintain truthfulness and honesty and not compromise themselves for advancement, honor, or personal gain. Additionally, officials shall not directly or indirectly induce, encourage or aid anyone to violate the Code of Ethics and it is incumbent upon officials to make a good faith effort to address apparent violations of this Code of Ethics.
- (3) Working for the Common Good. Recognizing that stewardship of the public interest must be their primary concern, officials will work for the common good of the people of Kennewick and not for any private or personal interest, and they will ensure fair and equal treatment of all persons, claims and transactions coming before the City Council, boards and commissions. Officials need to be mindful that making special requests of staff – even when the response does not benefit the official personally – puts staff in an awkward position. Questions for city staff members shall be submitted to the City Manager who will then coordinate with staff to provide a response.
- (4) Respect for Process. Officials shall perform their duties in accordance with the processes and rules of order established by the City Council and board and commissions governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council by city staff.

- (5) **Commitment to Transparency.** Transparency, openness, and accountability are fundamental values of the City – and are also required by the laws of the state of Washington. The public has a right to inspect and copy public records unless exempt by law from disclosure. All materials relating to the conduct of city government that are prepared, possessed, used or retained by any official, including email, text messages and other electronic records, are subject to requirements for retention, protection, and disclosure. Officials may assume that all copies of materials received from city staff have already been archived and do not need to be retained. Officials shall not discard, damage, or destroy the original copy of any public record unless directed by the city public records officer (the city clerk), who has responsibility to ensure that the City complies with the record retention schedules established under Chapter 40.14 RCW. Officials shall promptly provide any records requested by the public records officer in response to a disclosure request under the Public Records Act, Chapter 42.56 RCW. It is the responsibility of the public records officer, together with the city attorney, to decide which records meet the definition of “public record” and whether or not they are exempt from disclosure; officials must not take it upon themselves to decide whether a record meets the definition of a public record, that a record is exempt from disclosure, or to otherwise conceal a record.
- (6) **Conduct of Public Meetings.** Officials shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.
- (7) **Decisions Based on Merit.** Officials shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.
- (8) **Ex Parte Communications.** In quasi-judicial matters, officials shall publicly disclose substantive information that is relevant to a matter under consideration by the Council or boards and commissions, which they may have received from sources outside of the public decision-making process.
- (9) **Attendance.** Attendance at regular council meetings by Council Members is required absent being excused. The process for excusing an absence is as follows; after roll call at a regular city council meeting, the mayor will entertain a motion to excuse the absence of council members for that meeting, approval of the motion by a majority of the Council Members present is sufficient to excuse the absence. As provided in RCW 35A.12.060, a Council Member shall forfeit his or her office by failing to attend three consecutive regular meetings of the Council without being excused by the Council. Unless excused, members of boards and commissions are expected to attend all meetings.
- (10) **Nepotism.** A Council Member may not vote or participate in the interview or appointment of a relative to boards or commissions or other appointed positions.
- (11) **Advocacy.** When acting in an official capacity as a city official representing the City, officials shall represent the official policies or positions of the City Council, board or commission to the best of their ability when the City Council, board or commission has taken a position or given an instruction. When presenting their individual opinions and positions, members shall explicitly state they do not

represent their body or the City of Kennewick, nor will they allow the inference that they do. Officials have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to make or display endorsements during council meetings, board/commission meetings, or other official city meetings. However, this does not preclude officials from participating in ceremonial occasions, community events, or other events sponsored by civic groups.

- (12) Policy Role of Officials. Officials shall respect and adhere to the council-manager structure of Kennewick city government as outlined by Chapter 35A.13 RCW. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, boards and commissions, and city staff. Except as provided by state law, officials shall not interfere with the administrative functions of the City or the professional duties of city staff; nor shall they impair the ability of staff to implement Council policy decisions.

APPENDIX A

Ch. 9A.72 RCW	Perjury and interference with official proceedings
RCW 35A.12.060	Vacancy for nonattendance
Ch. 35A.13 RCW	Council-manager plan of government
RCW 35A.13.020	Incompatible offices
Ch. 40.14 RCW	Preservation and destruction of public records
RCW 42.17.130	Use of public office or agency facilities in campaigns—Prohibition—Exceptions
RCW 42.17.750	Solicitation of contributions by public officials or employees
Ch. 42.23 RCW	Code of Ethics for municipal officers—Contract interests
Ch. 42.36 RCW	Appearance of fairness doctrine—Limitations
Ch. 42.56 RCW	Public Records Act

2.06.050: Ethics Officer:

- (1) The City Council creates the position of Ethics' Officer. The City Manager will contract with one or more individuals to fill this position. The Ethics' Officer will provide for annual review of the Code of Ethics, review of training materials provided for education regarding the Code of Ethics, and advisory opinions concerning the Code of Ethics. The Ethics' Officer shall also be responsible for the prompt and fair enforcement of its provisions when necessary.
- (2) The Ethics' Officer, in addition to other duties, may recommend changes or additions to this Code of Ethics to the City Council. The Ethics' Officer shall provide input into and review the training materials and program developed for this Code of Ethics.

2.06.060: Complaints, investigations, hearings and enforcement:

The Ethics' Officer may resolve inadvertent and minor violations of the Code of Ethics informally, unless the Ethics' Officer determines that doing so would not serve the public interest. When a violation is neither inadvertent nor minor, the Ethics' Officer shall initiate an action in accordance with this section.

(1) Complaint Process.

- (a) Complaint Requirements – Service. Two officials are required to sign off on a written complaint before it can be filed with the Ethics' Officer alleging one or more violations of this Code of Ethics by an official. The complaint must set forth specific facts with enough precision and detail for the Ethics' Officer to make a determination of sufficiency. It must be signed under penalty of perjury by the officials submitting it in a manner consistent with Chapter 9A.72 RCW. The complaint shall be filed with the city clerk who will date stamp it as received and forward it to the Ethics' Officer.
- (b) Finding of Sufficiency. The Ethics' Officer shall make a determination of sufficiency within thirty days of receipt of the written complaint. A complaint shall be sufficient if the allegations, if established, would violate Section 2.06.030 or 2.06.040 of this code. The Ethics' Officer's determination is not reviewable. If the finding is one of sufficiency of the complaint, then the Ethics' Officer shall investigate the complaint as set forth below.
- (c) Dismissal. The Ethics' Officer shall dismiss the complaint if the Ethics' Officer determines that the violation was inadvertent and minor; or a violation occurred, but appropriate actions have been taken to fully address the allegedly unethical conduct. A decision for dismissal as noted above is final and not reviewable.
- (d) Notice. Notice of action by the Ethics' Officer shall be provided as follows:
 - (i) Notice of a finding of insufficiency or dismissal of a complaint by the Ethics' Officer shall be sent to the officials who made the complaint and the official complained against within seven days of the decision by the Ethics' Officer. A finding of insufficiency or dismissal of a complaint by the Ethics' Officer is final and binding, and no administrative or other legal appeal is available through the Ethics' Officer.
 - (ii) Within seven days of the Ethics' Officer rendering a finding of sufficiency, the city clerk shall send notice to the officials who made the complaint and the official complained against, of the Ethics' Officer's determination. If, after investigation, the Ethics' Officer has reason to believe that a material violation of Section 2.06.030 or 2.06.040 has occurred, the city clerk shall give notice of the public hearing which will be held to determine if a violation has occurred. Notice shall be provided at least thirty days prior to the date set for the hearing. The official complained against shall have the right to file a written answer to the charge and to appear at

the hearing with or without legal counsel, submit testimony, be fully heard, and to examine and cross examine witnesses.

- (e) Stipulations. At any time after a complaint has been filed with the Ethics' Officer, the Ethics' Officer may seek and make recommendations that the City Council enter into a stipulation with the official complained against. The recommended stipulation will include the nature of the complaint, relevant facts, the reasons the Ethics' Officer thinks a stipulation is appropriate, an admission of the violation by the official complained against, a promise by the official complained against not to repeat the violation, and if appropriate, a recommended remedy or penalty. The recommended stipulation shall be sent to the officials who made the complaint and the official complained against and forwarded to the City Council for action.
- (2) Conduct of Hearings.
- (a) All hearings on complaints found to be sufficient shall be conducted by the Ethics' Officer. The hearing shall be informal, meaning that the Ethics' Officer shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The Ethics' Officer may call witnesses on his or her own motion and compel the production of books, records, papers, or other evidence as needed. To that end, the Ethics' Officer shall issue subpoenas and subpoenas duces tecum. All testimony shall be under oath administered by the Ethics' Officer. The Ethics' Officer may adjourn the hearing from time to time to allow for the orderly presentation of evidence. The Ethics' Officer shall prepare an official record of the hearing, including all testimony, which shall be recorded by mechanical device, and exhibits; provided, that the Ethics' Officer shall not be required to transcribe such records unless presented with a request accompanied by payment of the cost of transcription.
 - (b) Within thirty days after the conclusion of the hearing, the Ethics' Officer shall, based upon a preponderance of the evidence, make and fully record in his or her permanent records, findings of fact, conclusions of law, and his or her recommended disposition. A copy of the findings, conclusions, and recommended disposition shall be sent to the officials who made the complaint and to the official complained against. Additional copies of the findings, conclusions, and recommendations shall be forwarded to the City Council.
- (3) City Council Action. Final City Council action to decide upon stipulations and recommendations from the Ethics' Officer or findings, conclusions, and recommendations from the Ethics' Officer shall be by majority vote in a public meeting. Deliberations by the Council may be in executive session. The member of the Council against whom the complaint was made will not participate in any executive session and shall not vote on any matter involving him or herself. However, upon request of the member of the Council against whom the complaint was made, a public hearing or public meeting before the Council will be held on the issue of penalties.

- (4) Disposition. In the event the Ethics' Officer finds that the person against whom the complaint was made has violated the Code of Ethics, then the City Council may take any of the following actions by a majority vote of the Council. The action of the City Council shall be final and not subject to further review or appeal except as may be otherwise provided by law or as provided in subsection (5) of this section.
- (a) Dismissal. Dismissal of the complaint without penalties.
 - (b) Referral. A complaint may be referred to another agency with jurisdiction over the violation, such as the public disclosure commission. Final action on the complaint may be stayed pending resolution of the matter by the agency to which it was referred.
 - (c) Admonition. An admonition shall be an oral non-public statement made by the mayor, or his/her designee, or if the complaint is against the mayor, the mayor pro-tem or his/her designee, to the official.
 - (d) Reprimand. A reprimand shall be administered to the official by a motion of reprimand by the majority of the City Council.
 - (e) Censure. A resolution of censure shall be a resolution read personally to the person in public. The resolution shall be prepared by the City Council and shall be signed by the mayor, or if the complaint is against the mayor, the mayor pro-tem. The person shall appear at a City Council meeting at a time and place directed by the City Council to receive the resolution of censure. Notice shall be given at least twenty calendar days before the scheduled appearance at which time a copy of the proposed resolution of censure shall be provided to the person. The resolution of censure shall be read publicly, and the person shall not make any statement in support of, or in opposition thereto, or in mitigation thereof. The resolution of censure shall be read at the time it is scheduled whether or not the official appears as required.
 - (f) Civil Penalties. The City Council may assess a civil penalty of up to one thousand dollars or three times the economic value of anything received in violation of this Code of Ethics or three times the economic value of any loss to the City, whichever is greater. Any monetary penalty assessed civilly shall be placed in the City's general fund.
 - (g) Contract Void. As provided by RCW 42.23.050, any contract made in violation of Chapter 42.23 RCW, "Code of Ethics for municipal officers – contract interests," is void.
 - (h) Other Penalties. The City Council may impose a restriction, loss of a committee assignment, or loss of appointment as a representative of the city for any regional or multijurisdictional body or membership on any board or commission which requires an appointment or confirmation of an appointment by the City Council.
- (5) Review of Civil Penalties. If the City Council orders an official to pay a civil penalty, the official may seek a writ of review from the superior court pursuant to Chapter 7.16 RCW, within thirty days of the City Council's order.
- (6) Protection Against Retaliation. Neither the City nor any official may take or threaten to take, directly or indirectly, official or personal action, including but

not limited to discharge, discipline, personal attack, harassment, intimidation, or change in job, salary, or responsibilities, against any person because that person files a complaint with the Ethics' Officer.

- (7) Public Records. Records filed with the Ethics' Officer become public records that may be subject to inspection and copying by members of the public, unless an exemption in law exists. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by RCW 42.56.230(2), identity information may be redacted when an unsubstantiated complaint is made available in response to a public records request; however, in each case, the justification for the redaction shall be explained fully in writing. A finding by the Ethics' Officer determining that a complaint is sufficient shall contain at the beginning the following specific language:

NOTICE: ANY PORTION OF THIS FINDING DETERMINING SUFFICIENCY OF ANY PORTION OF A COMPLAINT DOES NOT DETERMINE THE TRUTH OR FALSITY OF THE ALLEGATIONS CONTAINED IN THE COMPLAINT FILED WITH THE ETHICS' OFFICER. THE ETHICS' OFFICER HAS ONLY DETERMINED THAT IF CERTAIN FACTS CONTAINED IN THE COMPLAINT ARE FOUND TO BE TRUE DURING A LATER HEARING TO BE CONDUCTED BY THE ETHICS' OFFICER, THEN VIOLATION(S) OF THE CODE OF ETHICS MAY BE FOUND TO HAVE OCCURRED.

The City shall release copies of any written reports resulting from an investigation of a sustained complaint, any Ethics' Officer orders, and any written censures or reprimands issued by the City Council, in response to public records requests consistent with Chapter 42.56 RCW and any other applicable public disclosure laws.

- (8) Liberal Construction – Limitation Period – Effective Date.
- (a) This Code of Ethics shall be liberally construed to effectuate its purpose and policy and to supplement existing laws that relate to the same subject.
 - (b) Any action taken under this Code of Ethics must be commenced within two years from the date of violation.

Council Workshop Coversheet



Agenda Item Number	3.	Meeting Date	05/14/2019
Agenda Item Type	Presentation		
Subject	KMC Title 18 Code Amendment Options		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	City Attorney		

Info Only	☐
Policy Review	☐
Policy DevMnt	☒
Other	☐

Summary

Council has requested staff look into what authority the City has to regulate needle exchange. The attached presentation is intended to review the current state of the law in Washington regarding needle exchange and discusses regulating this type of use through the City's zoning code.

Through

Bonnie Lanning
May 09, 15:57:50 GMT-0700 2019

Dept Head Approval

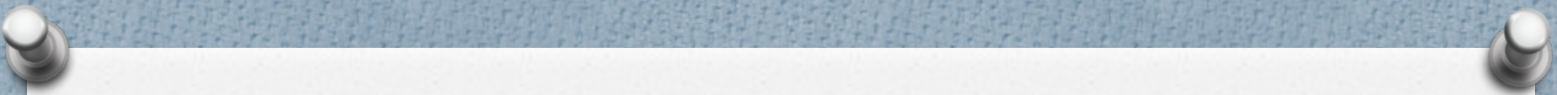
Lisa Beaton
May 09, 16:08:20 GMT-0700 2019

City Mgr Approval

Marie Mosley
May 10, 11:27:56 GMT-0700 2019

Attachments: Presentation





Title 18 KMC Changes Needle Exchange

City Authority to Regulate
Land Use Options

Council Workshop
May 14, 2019

Title 18 KMC Changes

City Authority to Regulate

- o Needle Exchange Legal Framework:
 - o *Spokane County Health District v. Brockett*, 120 Wn.2d 140 (1992):
 - o Washington State Supreme Court considered the legality of a local health board regulation authorizing the establishment of a needle exchange program in Spokane. The court held that the program did not constitute unlawful distribution of drug paraphernalia;
 - o Court stated, “we uphold the Spokane County Health District needle exchange program as a valid measure instituted to protect *public health* under RCW 70.05.060 and 70.05.070;
 - o Court also concluded, “the Spokane County Health District needle exchange program permissible under the constitution and statutes of this state.”

Title 18 KMC Changes City Authority to Regulate

- State Supreme Court noted that the Board of Health and the health officer, derive their power from the Washington State Constitution, which enables local officials to pass rules and regulations concerning public health.

Title 18 KMC Changes

City Authority to Regulate

- o RCW 71.24.590(1)(b) states may license or certify only opioid treatment programs that will be sited in accordance with the appropriate city land use ordinances. Cities may require conditional use permits with reasonable conditions for the siting of programs.

Title 18 KMC Changes

City Authority to Regulate

- o RCW 71.24.590(4) opioid treatment program means:
 - o (a) dispensing medication approved by the federal drug administration for the treatment of opioid use disorder and dispensing medication for the reversal of opioid overdose; and
 - o (b) providing a comprehensive range of medical and rehabilitative services.

Title 18 KMC Changes

City Authority to Regulate

- o RCW 69.50.412(5): It is lawful for any person over the age of eighteen to possess sterile hypodermic syringes and needles for the purpose of reducing blood-borne diseases;
- o RCW 69.50.412(3): a person (over 18) who delivers drug paraphernalia to a person under eighteen years of age who is at least three years his junior is guilty of a gross misdemeanor.

Title 18 KMC Changes

City Authority to Regulate

- Needle exchange delivery to a minor, does not appear to be allowed under state law:
 - RCW 71.34.530: Age of consent to seek outpatient treatment is 13 years old;
 - However, RCW 71.34.020(24) defines “outpatient treatment” to be “any of the nonresidential services mandated under Chapter 71.24 and provided by licensed or certified service providers as identified by RCW 71.24.025;
 - Needle exchange personnel are not licensed or certified service providers, and do not provide outpatient services as defined under this statute.

Title 18 KMC Changes

City Authority to Regulate

- o Can Needle Exchange be banned in the City by citizen initiative? No, for two reasons:
 - o Needle exchanges are not an illegal use under state law; they are approved by the State Department of Health as a legitimate means of “harm reduction;” as noted in the *Spokane County Health District v. Brockett*, state and local health departments have authority under the state constitution and state statute to authorize and support public health programs, like needle exchange;
 - o Citizens in non-charter code cities do not automatically have the powers of initiative and referendum on local issues. Per RCW 35A.11.080-.100, code cities may adopt code provisions which allow for the powers of initiative and referendum. Kennewick has not adopted those provisions.

Title 18 KMC Changes

City Authority to Regulate

- o Can Needle Exchange be banned in the City by Council action?
 - o Needle exchanges are not an illegal use under state law; they are approved by the State Department of Health as a legitimate means of “harm reduction;” as noted in the *Spokane County Health District v. Brockett*, state and local health departments have authority under the state constitution and state statute to authorize and support public health programs, like needle exchange.

Title 18 KMC Changes

City Authority to Regulate

- o City of Kennewick can:
 - o Define “Needle Exchange” as a specific land use in its zoning code, Title 18;
 - o Decide which zones to permit Needle Exchange; like Commercial Regional, Commercial General – locations where an opioid treatment clinic might be located;
 - o Decide whether to permit outright with criteria or require a conditional use permit;
 - o Can prohibit “safe injection” sites and/or programs.

Title 18 KMC Changes

City Authority to Regulate

- o City can apply typical Land Use Criteria:
 - o Distance restrictions:
 - o Cannot be located within 500 feet of any residential or urban mixed use zone;
 - o And/or 500 feet of any public or private school, or any trade or vocational school that on a regular basis has at least one student under the age of 18;
 - o Cannot be within 1,000 feet of another needle exchange.

Title 18 KMC Changes

City Authority to Regulate

- o Other Land Use/Public Safety Criteria:
 - o Business hours limited to daytime hours;
 - o Comply with building, fire safety, and health codes;
 - o Proper disposal of used needles; secured garbage containers;
 - o If stand-alone needle exchange, no delivery of needles/syringes to minors;
- o Questionable whether City can require one-for-one exchange of needles. State DOH advocates for “needs-based syringe access.”

Title 18 KMC Changes Needle Exchange

◦ Next Steps:

- Confer with the State Department of Health;
- Prepare draft code amendments;
- Planning Commission Workshop;
- SEPA review and notice to DOC;
- Planning Commission Public Hearing and Recommendation;
- Council Final Decision.

Title 18 KMC Changes Needle Exchange

QUESTIONS?



City Council Meeting Schedule June 2019

June 4, 2019

Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

June 11, 2019

Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. Legislative Updates (Mosley - 15 minutes)
2. Columbia Park Reconveyance (Walsh/Mosley - 15 minutes)
3. Zintel Canyon Mitigation Update (Mitigation Team - 15 minutes)

June 18, 2019

Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

June 25, 2019

Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. Committee Updates

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 Taped

June 2019
Updated 5/7/19