



City Council Meeting Schedule January 2021

City Council passed Resolution 20-08 on June 23, 2020, which temporarily designates the location for regular, special and study session meetings to the virtual location until Benton County enters into Phase Three of the Governor's Safe Start Reopening Plan. The City broadcasts City Council meetings on the City's website <https://www.go2kennewick.com/CouncilMeetingBroadcasts>.

January 5, 2021

Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

January 12, 2021

Tuesday, 6:30 p.m.

WORKSHOP MEETING (the workshop meeting will be done via Zoom and broadcast on the City's website <https://www.go2kennewick.com/CouncilMeetingBroadcasts>)

1. Criminal Code Batch Amendments
2. State and Local Authority Regarding Business Reopening
3. Fire Station Process Update
4. Executive Session – RCW 42.30.110(g) City Manager's Pay for Performance Review (15 minutes)
5. Closed Session – RCW 42.30.140(4)(b) Collective Bargaining beginning immediately at the conclusion of the workshop

January 19, 2021

Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

January 26, 2021

Tuesday, 6:30 p.m.

WORKSHOP MEETING (the workshop meeting will be done via Zoom and broadcast on the City's website <https://www.go2kennewick.com/CouncilMeetingBroadcasts>)

1. CourseCo Annual Operating Plan
2. Workplace Safety Annual Update

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	01/12/2021
Agenda Item Type	Presentation		
Subject	Criminal Code Amendments		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	City Attorney		

Info Only	☐
Policy Review	☐
Policy DevMnt	☐
Other	☒

Summary

In accordance with office goals for the 2019/2020 biennium, the City Attorney's Office conducted a comprehensive review of the criminal provisions of Titles 8, 9, and 10 of the Kennewick Municipal Code (KMC) in 2020. It was discovered that numerous sections of the code need to be updated to reflect and/or comply with changes in state law. Additional amendments have been identified due to issues encountered when prosecuting cases under certain code sections. The amendments will be presented in batches, grouped by priority and chapter.

The group of amendments being discussed in this presentation are first priority and involve proposed changes to KMC Chapters 9.32 - Drugs and Drug Paraphernalia, 9.52 - Noise, and 10.09 - Proceedings to Keep the Peace. The amendments proposed to chapter 9.32 involve the addition of terms and definitions that will help the City more adequately prosecute misdemeanor and gross misdemeanor drug crimes.

The amendment proposed to chapter 9.52 will expand and clarify an example of unnecessary noise to allow prosecution of violations involving the naturally amplified human voice. These type of violations were originally intended to be encompassed by the current language in this section but were recently determined not to be by a judge, who interpreted the word "amplification" to mean mechanical amplification.

Finally, it is being recommended that chapter 10.09 involving peace bonds be repealed in full due to lack of use and constitutional concerns. This section allows the court to require persons alleged to have breached the peace or committed a crime of violence to post a bond to discourage future violent behavior. Failure to post the bond is punishable as a misdemeanor and the bond can be required for a year even in the event that a criminal charge forming the basis for the bond is dismissed. It is believed that this chapter has not been utilized in at least 25 years. At this time, deterrence of violent behavior can be adequately addressed by imposing pre-trial release conditions and/or bail for persons with pending charges and with probation for those who have been convicted. In addition to the City not needing to utilize this chapter, it also presents constitutional concerns. A similar state law provision was repealed in 1992. The legislative history associated with that action indicates that the legislature had significant constitutional concerns about peace bonds. This was largely because of the lack of due process involved in requiring a bond to be posted by someone who was not charged with a crime and had not had the opportunity to challenge the decision to require the bond.

Through

Jessica Foltz
Jan 06, 11:34:31 GMT-0800 2021

Attachments: Presentation

Dept Head Approval

Lisa Beaton
Jan 06, 12:20:05 GMT-0800 2021

City Mgr Approval

Marie Mosley
Jan 07, 09:58:08 GMT-0800 2021

Kennewick City Council Workshop

January 12, 2021

Laurencio Sanguino and Tyler Grandgeorge, Assistant City Attorneys
Kennewick City Attorney's Office



Code Amendments

- Comprehensive review of criminal sections of the municipal code was done in 2020.
- Proposed amendments will be presented in batches based on priority and chapter.
- Amendments in this group are first priority and are based on changes in state law or issues faced during the prosecution of cases based on these sections.



Chapter 9.32 – Drugs and Drug Paraphernalia

9.32.020 – Prohibited Acts

- Amendments to KMC 9.32.020(1) are proposed because currently, that section does not criminalize the possession of marijuana concentrates, marijuana products, or marijuana-infused products by those under 21 years of age.
 - State law criminalizes this conduct (see RCW 69.50.4013, 69.50.4014).
 - These items are growing in popularity.
- Similarly, KMC 9.32.020(6) does not penalize the public opening or consumption of these products despite the fact that such conduct is penalized under state law (See RCW 69.50.445).



Chapter 9.32 – Drugs and Drug Paraphernalia

9.32.020 – Prohibited Acts

- The text of KMC 9.32.020(1) and (6), with proposed additions underlined, appears below:
- It is unlawful for a person under the age of 21 to possess marijuana, marijuana-infused products, or marijuana concentrates, regardless of THC concentration, 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.
- It is unlawful to open a package containing marijuana, useable marijuana, marijuana-infused products, or marijuana concentrates, or consume marijuana, useable marijuana, marijuana-infused products, or marijuana concentrates in view of the general public or in a public place. 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.



Chapter 9.32 – Drugs and Drug Paraphernalia

9.32.010 - Definitions

- If the amendments proposed to KMC 9.32.020(1) and (6) are adopted, KMC 9.32.010 will need to be amended to add definitions of the terms “Marijuana Concentrates,” “Marijuana Products”, and “Marijuana-Infused Products”.
- Whether or not those amendments are adopted, KMC 9.32.010 should be amended to add a definition of the term “Marijuana-Infused Products” because this term is referred to in KMC 9.32.020(6) and (7).



Chapter 9.32 – Drugs and Drug Paraphernalia

9.32.010 - Definitions

- The proposed definitions of “Marijuana Concentrates,” “Marijuana Products,” and “Marijuana-Infused Products” will mirror those in state statutes, the text of which is as follows:
 - “Marijuana Concentrates” are products consisting of the resin extracted from any part of the plant Cannabis with a THC concentration greater than ten percent.
 - “Marijuana Products” are useable marijuana, marijuana concentrates, and marijuana-infused products.
 - “Marijuana-Infused Products” are products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana, and have a THC concentration no greater than ten percent, excluding marijuana and marijuana concentrates.





Chapter 9.32 – Drugs and Drug Paraphernalia

9.32.020 – Prohibited Acts

- KMC 9.32.020(2) currently prohibits the inhalation of various substances for the purpose of intoxication.
 - Recent trends in drug usage have expanded to include substances not currently covered by the existing KMC.
- State law, RCW 9.47A.020, prohibits the same general conduct as the KMC but the state definition of “substance” in RCW 9.47A.020 covers a broader and more up to date list of commonly abused substances than that currently included in the KMC.
 - Examples are Hexane, Chloroform, and Xylol or Xylene.
- Adopting the RCW language from RCW 9.47A.010 into KMC 9.32.020(2) should enable proper enforcement of these violations.



Chapter 9.52 - Noise

9.52.030(2)(e) – Unnecessary Noises

- KMC 9.52.030(2) gives examples of noise that is unnecessary or unusual under the code.
- Recently, a District Court Judge interpreted KMC 9.52.030(2)(e), relating to the amplified human voice, to mean mechanically amplified and held that it did not apply to a person screaming in a residential neighborhood.
 - This interpretation has and will continue to prevent prosecution under the necessary noise ordinance for deliberate screaming, shouting, yelling, and other deliberate attempts to elevate volume, unless mechanical amplification was used.
- Proposed Amendment:
 - Amend KMC 9.53.030(2)(e) to read: “Loud Raucous, and frequent, repetitive, or continuous sounds made by the naturally or mechanically amplified human voice.”





Chapter 10.09 – Proceedings to Keep the Peace

- KMC Chapter 10.09, codified in 1980, currently establishes provisions for ordering “Peace Bonds,” which require citizens to post money if the court believes they have committed a breach of the peace or certain crimes.
- The apparent intent was to dissuade further violent behavior, which is now accomplished by the imposition of conditions of release, bail, and/or probation as a result of criminal charges or conviction.
- The corresponding RCW Chapter was repealed in 1992, by SSB 6138, in which the State Legislature found that peace bonds “were almost certainly unconstitutional.”
- No similar provisions exist in the Pasco, Richland, Seattle, Spokane, Vancouver, Wenatchee, or Yakima Municipal Codes.
- It is recommended that this chapter be repealed. The City Attorney’s Office has not utilized this chapter in over twenty-five years and KPD has no objection to its removal.



Questions?



Council Workshop Coversheet



Agenda Item Number	2.	Meeting Date	01/12/2021
Agenda Item Type	Presentation		
Subject	State versus Local Authority		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	City Attorney		

Info Only	☐
Policy Review	☒
Policy DevMnt	☐
Other	☐

Summary

On January 5, 2021 Governor Jay Inslee announced his "Healthy Washington - Roadmap to Recovery" a COVID-19 phased recovery plan. Beginning January 11th, the state will follow a regional recovery approach with every region beginning in Phase 1. Per the announcement, Benton and Franklin County are in the South Central Region combined with Yakima, Kittitas, Walla Walla, and Columbia Counties. The Phase 1 restrictions will remain in place for our Region until the Region as a whole meets all four of the metrics described in the plan. If the metrics are met, the Department of Health will "move" the Region to Phase 2. To remain in Phase 2 the Region will need to meet three of the four metrics. The metrics will be determined and reported by the Department of Health each Friday. Per the announcement, "Dependent on the region's metrics, DOH will move into a new phase - forward or backward - the following Monday." The Phase 1 restrictions continue the prohibition on dine-in service for all eating and drinking establishments, and continues the 25% indoor maximum capacity for retail, and continues the prohibition of general admission to indoor entertainment establishments. The "recovery" plan results in a higher level of uncertainty for the above noted businesses most impacted by the Phase 1 restrictions. The proposed plan has raised a number of questions and concerns on the part of city council as well as the community. The purpose of this workshop item is to discuss local authority versus state authority.

Through

Lisa Beaton
Jan 06, 13:52:44 GMT-0800 2021

Attachments:

Dept Head Approval

Lisa Beaton
Jan 06, 13:52:39 GMT-0800 2021

City Mgr Approval

Marie Mosley
Jan 07, 09:59:10 GMT-0800 2021

City Authority

Emergency Proclamations and Business Closures

City Council Workshop

January 12, 2021

City Authority

- **§ 11. Police and Sanitary Regulations**
- Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.
- Wash. Const. art. XI, § 11

City Authority

- This section delegates police power to **cities** and counties equally as extensive within their particular area as is police power possessed by legislature on statewide basis; however subject matter must be local and any regulation must be reasonable and not conflict with general laws. *Petstel, Inc. v. King County* (1969) 77 Wash.2d 144, 459 P.2d 937.

City Authority

- A statute preempts a municipal regulation of the same subject if the statute occupies the field. *Chan v. City of Seattle* (2011) 164 Wash.App. 549, 265 P.3d 169, review denied 173 Wash.2d 1025, 272 P.3d 851.

City Authority

- **City** ordinance must yield to statute on same subject matter if either statute preempts field leaving no room for concurrent jurisdiction or if conflict exists between two that cannot be harmonized. *City of Tacoma v. Luvene* (1992) 118 Wash.2d 826, 827 P.2d 1374.

Examples of Preemption Decisions

- The Shorelines Management Act was found to preempt local building codes in conflict with the Act; *State Dept. of Ecology v. Pacesetter Const. Co. Inc.* 89 Wash. 2d 203 (1977).
- State notice provisions for a SEPA appeal was found to preempt different local provisions; *Nolan v. Snohomish County*, 59 Wash.App. 876 (1990).
- Surface Mining Act was not found to preempt local regulation of surface mining; *Baker v. Snohomish County Dept. of Planning*, 68 Wash.App. 581 (1992).

“Emergency or Disaster” Definition

RCW 38.52.010(9)(a)

- “Emergency or disaster” as used in all sections of this chapter except RCW 38.52.430 means an event or set of circumstances which: (i) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences; or (ii) reaches such a dimension or degree of destructiveness as to warrant the governor proclaiming a state of emergency pursuant to RCW 43.06.010.

Wash. Rev. Code Ann. § 38.52.010 (West)

Governor's Emergency Authority

- Generally speaking the governor has the authority to issue and extend emergency proclamations under [RCW 43.06.220](#)(1), which includes “[s]uch other activities as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace.” For instance, the “Stay Home, Stay Healthy” order ([Proclamation 20-25](#)) and its subsequent extensions and amendments were issued under RCW 43.06.220(1).

State Agency Enforcement and City Preemption

- Washington State Dept. of Labor & Industries Emergency Rule
- NEW SECTION
- **WAC 296-800-14035 2019 Novel coronavirus prohibited business activities and compliance with conditions for operations.** (1) Where a business activity is prohibited by an emergency proclamation an employer shall not allow employees to perform work.
- Employers must comply with all conditions for operation required by emergency proclamation issued under RCW 43.06.220, including Safe Start phased reopening requirements for all business and any industry specific requirements.
- An "emergency proclamation" means a proclamation that is in effect, including proclamation amendments and conditions, and issued under RCW 43.06.220 and is in effect at the time the emergency rule was adopted.

State Agency Enforcement and City Preemption

- **Liquor and Cannabis Board RCW 66.08.120. Preemption of field by state-- Exception**
- No municipality or county shall have power to license the sale of, or impose an excise tax upon, liquor as defined in this title, or to license the sale or distribution thereof in any manner; and any power now conferred by law on any municipality or county to license premises which may be licensed under this section, or to impose an excise tax upon liquor, or to license the sale and distribution thereof, as defined in this title, shall be suspended and shall be of no further effect: PROVIDED, That municipalities and counties shall have power to adopt police ordinances and regulations not in conflict with this title or with the regulations made by the board.

Constitutionality of Emergency Powers

- Emergency response laws were written in response to actual events – involved emergencies with known causes and end points (fire, flood, volcanic eruption)
- “[T]he Governor's emergency powers are premised on the inability to secure legislative approval given the nature of the emergency. For example, if a forest fire breaks out, there is no time for debate. Action is needed. The Governor could declare an emergency and respond accordingly. But in the case of a pandemic, which lasts month after month, the Governor cannot rely on emergency powers indefinitely.”
- *Wisconsin Legislature v. Palm*, 391 Wis. 2d 97, 525, 942 N.W.2d 900, 914 (2020)

Constitutionality of Emergency Powers

- *Calvary Chapel Dayton Valley v. Sisolak*, 982 F.3d 1228 (December 15, 2020) Ninth Circuit overturned Nevada Governor emergency directive which limited indoor church services to 50 people or less as violating free exercise clause of First Amendment as it was not narrowly tailored to compelling interest of slowing spread of COVID-19; allowed bars, casinos etc. 50% fire code capacity.
- *Colvin v. Inslee*, 195 Wash.2d 879 (2020) separation of powers doctrine prevented court from issuing writ requiring Governor Inslee to release thousands of inmates.
- *In the Matter of the Recall of Jason White*, 474 P.3d 1032 (2020) held recall petition alleging actions of city council member undermined public response to Covid-19 pandemic was legally and factually insufficient.
- *Bob's Welding et al. v. Inslee*, Complaint for Declaratory and Injunctive Relief, Skamania County Superior Court (2020) attacks "Deny Service Order" on grounds that it exceeds authority under statute, legislature delegated authority with no guidelines, asserts due process violation Art. 1 Sec. 3 of State Constitution, asserts free speech violation, violation of privacy rights, etc. "RCW 43.06.010(12) gives the governor the power to declare a state of emergency in response to a 'public disorder, disaster, energy emergency, or riot.' COVID-19 is neither a public disorder, energy emergency, or riot. Nor is COVID-19 a disaster."

City Authority

- Limited to local codes
- Aside from Ninth Circuit case, no reported case law limiting the Emergency Powers of the Washington State Governor under RCW 43.06.220
- Legislative fix is a viable option

Council Workshop Coversheet



Agenda Item Number	3.	Meeting Date	01/12/2021
Agenda Item Type	Presentation		
Subject	Fire Station 1 Relocation & Bond Reimbursement		
Ordinance/Reso #	21-01	Contract #	
Project #		Permit #	
Department	Fire Department		

Info Only	☒
Policy Review	☐
Policy DevMnt	☐
Other	☐

Summary

Over the past five months, the Kennewick Fire Department has been working to purchase property for the purpose of relocating Fire Station 1. We have developed a purchase and sale agreement that meets the needs and interests of both parties. On Tuesday, January 19th, the purchase and sale agreement along with a bond reimbursement resolution, will be brought to Council for approval. We will provide Council with information on both of these items. Additionally, we will also provide information on a few other things related to our capital facilities including:

- How our fire stations are located throughout the City
- The needs of modern fire stations
- The status of the Fire Station 3 project
- What we see as the future for proposed Fire Station 6
- Things that need to be considered as we move forward into the future

Through

Dept Head Approval

City Mgr Approval

Chad Michael
Jan 07, 06:31:51 GMT-0800 2021

Marie Mosley
Jan 07, 10:01:55 GMT-0800 2021

Attachments:

Proposed Location
Presentation





KFD Capital Improvement Update

Our Fire Stations



- Five Stations
- Quick Response Times
- Good Access





Fire Station Needs

- Meet current best practices.
- Well suited for a diverse work force.
- Adequate bay space.
- Sufficient storage space.
- Performance forward design.



New Fire Station 3



Currently Operating Fire Station #3 - 7400 W. Quinault



NEW Fire Station #3 – (Under Construction) on Grandridge Blvd.



Future Fire Station 6



- Land purchased.
- Monitor demand.
- Design and construction.



Relocation of Fire Station 1



- Status of land purchase
- Reimbursement resolution
- Next steps





The Path Forward

- Plan for the future
- Measure and report out on achievement of established performance standard
- Monitor demand for service
- Modify/Enhance service deployment as necessary





Questions

Any questions





City Council Meeting Schedule February 2021

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February 2, 2021

Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

February 9, 2021

Tuesday, 6:30 p.m.

WORKSHOP MEETING (the workshop meeting will be done via Zoom and broadcast on the City's website <https://www.go2kennewick.com/CouncilMeetingBroadcasts>)

1. KFD Peak Hours Schedule Pilot Program
2. Fire Arms Code Amendment

February 16, 2021

Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

February 23, 2021

Tuesday, 6:30 p.m.

WORKSHOP MEETING (the workshop meeting will be done via Zoom and broadcast on the City's website <https://www.go2kennewick.com/CouncilMeetingBroadcasts>)

1. Committee Update

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February 2021
Updated 01/05/20