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**Sent:** Thursday, May 25, 2023 3:05 PM

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**Subject:** Blake Fix Update for CM Weekly

### **Blake Fix Update**

[SB 5536](#), the so-called “Blake Fix,” passed the Washington State Legislature (Legislature) and was signed by Governor Jay Inslee on May 16, 2023, with the provisions relating to use and possession of drugs taking effect on July 1, 2023. The bill makes it a gross misdemeanor to:

1. Knowingly possess counterfeit substances and controlled substances (hereafter “prohibited substances”); or
2. Knowingly use prohibited substances in a public place.

This bill covers possession and use of prohibited substances, or “hard” drugs such as fentanyl and other opioids, methamphetamine, heroin, and cocaine. Also prohibited is the knowing possession of non-prescribed [legend drugs](#), as well as their knowing use in a public place, both classified as misdemeanors. The bill also creates a pre-trial diversion program and almost completely preempts local regulation of drug paraphernalia.

City staff met recently to address several issues related to implementation of the *Blake Fix*, which is outlined here:

- **Local Ordinance No Longer Needed:** Shoreline no longer needs to pass an ordinance regulating drug possession and use. The state legislation is permanent and preempts the entire field of setting penalties for violations of the controlled substances act. The City does need to do some short term and long term criminal code updates to align violations and penalties up with the *Blake Fix*, which the City Attorney’s Office will take the lead on and bring to Council for discussion in the next 3-6 months.
- **Local Governments are Preempted from Regulating Drug Paraphernalia:** The state has adopted clear preemption language that overrides local regulation of drug paraphernalia. Local governments may enact local laws related to the establishment and regulation of needle exchange programs and related harm reduction services. The definition of drug paraphernalia does not include cannabis-related paraphernalia or drug testing and analyzing equipment, and prohibitions on drug paraphernalia do not apply to distribution or use of public health supplies through pharmacies, public health programs, or other authorized community programs. Staff is not recommending regulation of harm reduction services at this time.
- **Drug Possession and Use are now Gross Misdemeanors:** Previously these same offences were felony crimes prosecuted by the King County Prosecutor’s Office in Superior Court. The costs related to the cases were all borne by the County, whereas they will now be borne by

the City. Additionally judges have judicial discretion related to the a defendants sentence as long as it is within the limits of the law. The City anticipates the largest costs related to the *Blake* Fix will jail and court costs, which are currently paid based on usage.

- **Referral or diversion is no longer required:** While not required, law enforcement and prosecutors are encouraged to refer or divert such cases for assessment, treatment, or related services. That said, there is a lack of available assessment, treatment, or related services and available funding. Cities are required to pay for indigent defendants seeking treatment options.

Staff will be putting together a discussion for Council to occur in the fall regarding the broader implications of the *Blake* fix, along with other policy items for Council consideration.

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Pronouns she/they



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