

GENERAL GOVERNMENT & PUBLIC SAFETY COMMITTEE

JUNE 22, 2021

9:30 A.M. – 10:40 A.M.

REMOTE ONLY

COUNCIL PRESENT: DEPUTY MAYOR PRATT (CHAIR), MAYOR RYDER, COUNCILMEMBER GREENSTEIN

STAFF PRESENT: SCOTT SPENCE, ROBERT ALMADA, MATT SHARP, BRANDON CARTER, PERI EDMONDS

ACTION: APPROVE THE GENERAL GOVERNMENT & PUBLIC SAFETY COMMITTEE AGENDA

MOTION: MOTION MADE, SECONDED, AND CARRIED BY COUNCILMEMBER GREENSTEIN AND MAYOR RYDER

MOBILE OUTREACH TEAM

STAFF: ROBERT ALMADA, INTERIM POLICE CHIEF

ACTION: FORWARD THE MOBILE OUTREACH TEAM PROPOSAL AND HOUSING

MOTION: ELEMENT TO THE FULL CITY COUNCIL FOR CONSIDERATION.

MOTION MADE AND SECONDED BY MAYOR RYDER AND COUNCILMEMBER GREENSTEIN. MOTION CARRIED.

The City of Lacey is in need of outreach services to address the increase in homelessness, public display of behavioral health issues, and people in crisis.

The Lacey Police Department (LPD) will partner with Olympic Health and Recovery Services to establish a pilot program which allows the City of Lacey and Lacey police officers rapid access to a Mobile Outreach Team (MOT). The MOT will be comprised of two crisis clinicians and two peer specialists. One crisis clinician and one peer specialist will be paired as a MOT to deliver mobile crisis services to clients, with two full-time CRU officers working with the MOT, providing daily police support. Patrol officers will also identify, inform, and collaborate with the MOT for clients who are in need of services.

The MOT will assess clients at the request of a Lacey police officer, identifying and providing the necessary resources, focusing on the well-being of clients who are experiencing challenges related to community living, homelessness, mental health issues, and those who have an extensive history of utilizing health services, police services, and other community resources.

The MOT and LPD will utilize a creative and collaborative approach to improve the quality of life for the community, and ensure that proper services are rendered during a time of crisis, developing a sense of trust and create a non-law enforcement relationship with the client, creating positive results utilizing the appropriate resources to address a client's needs. The goal is to reduce incidents of mental health crisis, homelessness, criminal behavior, violence, and self-harm.

This pilot program will allow the City to be proactive in the delivery of social services to people who are homeless or in crisis.

Chief Almada outlined the MOT expectations, performance measures, and what success looks like.

The Committee directed staff to find a complimentary set of housing resources to go along with the MOT.

NEW LAW ENFORCEMENT LEGISLATION

STAFF: ROBERT ALMADA, INTERIM POLICE CHIEF
ACTION: INFORMATION ONLY

Chief Almada reviewed with the Committee new legislation from the 2021 Legislative Session that impacts Law Enforcement Policy.

HB 1054 – Police Tactics
HB 1088 – Impeachment Disclosures/Brady Criteria
HB 1089 – Audit of Investigations
HB 1140 – Juvenile Access to Attorneys
HB 1186 – Juvenile Rehabilitation
HB 1223 – Recordation of Custodial Interviews
HB 1267 – Office of Independent Investigations
HB 1310 – Use of Force
HB 1320 – Protection Orders
HB 1477 – National 988 System
SB 5051 – Decertification
SB 5055 – Grievance Arbitration Panels
SB 5066 – Duty to Intervene
SB 5121 – Graduated Re-Entry Program
SB 5135 – Unlawfully Summoning of Police
SB 5259 – Law Enforcement Data Collection
SB 5476 – State v. Blake

Staff identified 22 policies to be drafted to comply with the newest legislation, in cooperation with WASPC, LPD trainers, supervisors, and Human Resources. Additional changes are anticipated in the future due to upcoming case decisions and additional legislation in future sessions.

THE BLAKE DECISION – POSSESSION OF CONTROLLED SUBSTANCE

STAFF: MATT SHARP, ASSISTANT CITY ATTORNEY
ACTION: FORWARD AN ORDINANCE AMENDING SECTIONS OF THE LACEY MUNICIPAL CODE RELATING TO CRIMES OF POSSESSION AND ADDING A SECTION DECLARING POSSESSION OF A CONTROLLED SUBSTANCE A MISDEMEANOR CRIME TO THE FULL CITY COUNCIL FOR APPROVAL.
MOTION: MOTION MADE AND SECONDED BY COUNCILMEMBER GREENSTEIN AND MAYOR RYDER. MOTION CARRIED.

In 2012, the State Legislature took its first step in decriminalizing possession of marijuana less than 40 grams by allowing possession of under 40 grams or less if you were 21 or over. On February 25, 2021, in *State v. Blake*, the Washington Supreme Court held that RCW 69.50.4013(1) was unconstitutional because it violated the due process clauses of both the United States Constitution and the Washington State Constitution. The Court reasoned that the due process clause was violated because the statute created a crime of possession without requiring the State to prove any particular mental element, like intent or knowledge. This ruling affects the validity of sections of the Lacey Municipal Code that criminalize possession of marijuana, alcohol, and prescription drugs, without requiring the prosecution to prove a mental element.

Later in the 2021 Legislative Session, the Washington State Legislature addressed the *Blake* issue in ESB 5476 by adding the “knowledge” element to possession of a controlled substance crimes. It allows personal amounts of controlled substances and lowers the classification of possession crimes from a felony to a misdemeanor. Further, the Legislature encourages the prosecutor to divert for treatment. Additional changes to the statute are expected in the future.

The *Blake* ruling places two decisions before Council.

1. Should the Council modify existing crimes of possession within the Lacey Municipal Code to avoid potential invalidation under the reasoning applied in *Blake*?

The Lacey Municipal Code declares several crimes of possession without requiring the prosecution to prove a mental element. These include Possession of Marijuana (LMC 9.44.030), Possession of Legend Drug Without Prescription (LMC 9.44.060), and Minors Purchasing and Possessing Liquor (LMC 9.40.040).

Because these crimes of possession do not include a mental element, there is potential for these laws to be invalidated under *Blake*. This flaw can be addressed by the addition of a knowledge element to each crime.

In addition, Council should consider amending the section declaring use of drug paraphernalia a crime (LMC 9.44.040). State law was changed in ESB 5476, narrowing the set of actions that constitute use of drug paraphernalia.

2. Should the Council declare possession of a controlled substance a misdemeanor crime under the Lacey Municipal Code?

Because possession of a controlled substance is now classified as a misdemeanor in the State of Washington, municipalities have the option of passing analogous ordinances and enforce possession of controlled substances at the local level.

Council should decide whether to add a section to the LMC that is analogous to RCW 69.50.4013(1), declaring possession of a controlled substance a misdemeanor (LMC 9.44.045). Should Council decline to act, prosecution would be left to the State of Washington. Unlawful Possession of a Controlled Substance will be unlawful within the City of Lacey whether or not City Council adopts a new section declaring the crime under the Lacey Municipal Code. The Council should decide whether it wants to enforce and prosecute directly by the City Attorney's Office (LCA) or refer such cases to the Thurston County Prosecutor's Office (TCPAO) for prosecution.

Drug laws in the City of Lacey will continue to be enforced by the Lacey Police Department. The Police Department, with other area Law Enforcement Agencies, has a mechanism in place to monitor contacts and referrals to diversion. This includes a system under the new state statute for keeping a tally on the number of violators they contact as well as the number of contacts per individual they refer for treatment.

Staff presented the following options to Unlawful Possession of a Controlled Substance:

1. Status quo. If council declines to adopt a new section of the LMC, LPD will refer all misdemeanor drug possession cases to the TCPAO for misdemeanor prosecution. These referrals would be in addition to the TCPAO's existing caseload.
2. Declare possession of a controlled substance a misdemeanor. If Council adopts a new section of the LMC, LPD would refer these cases directly to LCA for charging, filing, and diversion. LCA has a mechanism for diverting charged cases under a Stipulated Order

of Continuance (SOC) that has been in place for years. These are diversion agreements entered into by the defendant in a charged case and enforced by the court. A person entering an SOC is placed on probation, and the court's probation department supervises their progress in treatment and compliance with the terms of the SOC. The addition of 10 cases per year would not significantly increase the filing fee costs as well as the costs of prosecution and defense for this type of diversion in District Court.

The City Attorney's Office made the following recommendation:

1. Amend LMC 9.44.030 (Possession of Marijuana), LMC 9.44.060 (Possession of Legend Drug Without Prescription), and LMC 9.40.040 (Minors Purchasing and Possessing Liquor) to be consistent with the *Blake* decision.
2. Add a new section 9.44.045 to the Lacey Municipal Code declaring possession of a controlled substance a misdemeanor crime.

This action would set a uniform policy throughout the city for drug enforcement. There would be continuity of investigation and enforcement by the police department and prosecution and probation of these cases. The anticipated case load is minimal and would not increase prosecution or defense costs to any appreciable degree.