

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 5/24/21

AGENDA ITEM:	
Ordinance Amending Chapter 6.27 MMC and Adopting State Law on Possession of a Controlled Substance Without a Prescription and Amending Municipal Code in Regard to Drug Paraphernalia	
PREPARED BY:	DIRECTOR APPROVAL:
Jon Walker	
DEPARTMENT:	
Legal	
ATTACHMENTS:	
BUDGET CODE:	AMOUNT:
SUMMARY:	

The City Council approved Ordinance No. 3179 in response to a decision by the Washington State Supreme Court striking down the state law prohibiting possession of a controlled substance without a prescription because the lack of criminal penalties for the possession of controlled substances without a prescription would immediately result in an increase in the negative health and safety consequences associated with the use of controlled substances without a prescription, interfere with the City's initiatives to address addiction and criminal activity associated with the use of controlled substances, and have an immediate, direct, and negative impact on the health, safety, and welfare of the City's inhabitants.

The State of Washington subsequently adopted and the Governor signed ESB 5476 making changes to the Revised Code of Washington in regard to controlled substances and drug paraphernalia. The major changes were to reduce possession from a felony to a misdemeanor and to require that before arresting or charging an individual found with a controlled substance, police must offer a referral to treatment services on the first two contacts.

RCW 69.50.608 limits the city to enacting penalties that are the same as those set forth in chapter 69.50 RCW, thus staff recommends aligning the penalties in the City's ordinances regarding possession of controlled substances with newly enacted state law. The state also altered the crime of use of drug paraphernalia eliminating when paraphernalia is used to store and ingest controlled substances. This eliminates state law penalties for items such as pipes and needles used to ingest heroin and methamphetamine. Maintaining criminal penalties that have been in place for many years for the use and intended use of drug paraphernalia to store and ingest controlled substances furthers the City's goals of reducing addiction and other negative consequences of using controlled substances. The ordinance makes the penalties for use of drug paraphernalia the same as those for possession of a controlled substance (i.e. treatment must be offered the first two contacts).

RECOMMENDED ACTION: Staff recommends the City Council consider adopting an ordinance amending chapter 6.27 MMC.

RECOMMENDED MOTION: I move to adopt Ordinance No. _____.

CITY OF MARYSVILLE
Marysville, Washington

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, AMENDING CHAPTER 6.27 OF THE MUNICIPAL CODE, DEFINING AND SETTING PENALTIES FOR CRIMES INVOLVING CONTROLLED SUBSTANCES AND DRUG PARAPHERNALIA.

WHEREAS, the use of controlled substances without a prescription and the supervision of a medical professional can result in physical injury or death; and

WHEREAS, the use of controlled substances without a prescription and the supervision of a medical professional often exacerbates mental health conditions; and

WHEREAS, using controlled substances can alter a person's brain or brain chemistry with negative health consequences; and

WHEREAS, persons using controlled substances can become addicted to such substances resulting in negative physical and mental health consequences and damage to family and personal relationships; and

WHEREAS, the use of controlled substances without a prescription or medical supervision is more likely to result in addiction; and

WHEREAS, the use of controlled substances without a prescription is positively correlated with criminal behavior; and

WHEREAS, the City has taken steps to address these problems through teaming police officers with social workers and mental health professionals and the municipal court's Mental Health Alternatives Program; and

WHEREAS, the City Council approved Ordinance No. 3179 in response to a decision by the Washington State Supreme Court striking down the state law prohibiting possession of a controlled substance without a prescription because the lack of criminal penalties for the possession of controlled substances without a prescription would immediately result in an increase in the negative health and safety consequences associated with the use of controlled substances without a prescription, interfere with the City's initiatives to address addiction and criminal activity associated with the use of controlled substances, and have an immediate, direct, and negative impact on the health, safety, and welfare of the City's inhabitants; and

WHEREAS, the State of Washington subsequently adopted and the Governor signed ESB 5476 making changes to the Revised Code of Washington in regard to controlled substances and drug paraphernalia; and

WHEREAS, RCW 69.50.608 limits the city to enacting penalties that are the same as those set forth in chapter 69.50 RCW; and

WHEREAS, the City Council wishes to align the City's ordinances regarding possession of controlled substances with newly enacted state law; and

WHEREAS, the courts in decisions such as *City of Tacoma v. Luvene*, 118 Wn.2d 826, 827 P.2d 1374 (1992), and *State v. Fisher*, 132 Wn. App. 26, 130 P.3d 382 (2006), have recognized the concurrent jurisdiction of local governments to criminalize drug-related activity; and

WHEREAS, the use of drug paraphernalia to store and ingest controlled substances without a prescription is directly related to the negative physical and mental effects of using controlled substances and to developing addictions to controlled substances; and

WHEREAS, criminalizing the use and intended use of drug paraphernalia to store and ingest controlled substances furthers the City's goals of reducing addiction and other negative consequences of using controlled substances without a prescription; and

WHEREAS, the penalties for using or intending to use drug paraphernalia should be the same as those for possessing a controlled substance without a prescription; and

WHEREAS, adopting local ordinances for possession of a controlled substance and use or intended use of drug paraphernalia empowers the City to better combat the negative effects of those acts by directing City resources such as city police, prosecutors, mental health and substance abuse services, and the municipal court toward that goal; and

WHEREAS, this is a public emergency ordinance necessary for the protection of public health and public safety, and should be effective upon adoption.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. The Recitals set forth above are adopted as findings of fact in support of this emergency ordinance.

SECTION 2. Chapter 6.27 of the municipal code is amended as set forth in Exhibit A.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

SECTION 4. Upon approval by the city attorney, the city clerk or the code reviser are authorized to make necessary corrections to this ordinance, including scrivener's errors or

clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or numbering or referencing of ordinances or their sections and subsections.

SECTION 5. Effective Date. This ordinance is necessary for the protection of public health and public safety, and is effective upon its passage by the City Council and approval by the Mayor.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2021.

CITY OF MARYSVILLE

By _____
JON NEHRING, MAYOR

Attest:

By _____
_____, DEPUTY CITY CLERK

Approved as to form:

By _____
JON WALKER, CITY ATTORNEY

EXHIBIT A

Chapter 6.27 CONTROLLED SUBSTANCES AND DRUG PARAPHERNALIA

Sections:

- 6.27.010 Statutes incorporated by reference.**
- 6.27.020 Possession of drug paraphernalia.**
- 6.27.030 Possession of controlled substances.**

6.27.010 Statutes incorporated by reference.

The following statutes regarding controlled substances and drug paraphernalia are incorporated by reference:

RCW

- 9.47A.010 Definition.
- 9.47A.020 Unlawful inhalation – Exception.
- 9.47A.030 Possession of certain substances prohibited, when.
- 9.47A.040 Sale of certain substances prohibited, when.
- 9.47A.050 Penalty.
- 69.41.010 Definitions of legend drugs.
- 69.41.030 Possession of a legend drug unlawful.
- 69.41.060 Search and seizure.
- 69.50.101 Definitions.
- 69.50.102 Definitions.
- 69.50.201 Authority to control.
- 69.50.202 Nomenclature.
- 69.50.204 Schedule I.
- 69.50.206 Schedule II.

69.50.208 Schedule III.

69.50.210 Schedule IV.

69.50.212 Schedule V.

69.50.4011 Counterfeit substances—Penalties.

69.50.4013 Possession of a Controlled Substance

~~69.50.412 Prohibited acts and penalties regarding drug paraphernalia.~~

~~69.50.425 Minimum imprisonment.~~

69.50.445 Opening package or consuming marijuana in view of general public or public place

69.50.505 Seizure and Forfeiture of controlled substances and drug paraphernalia, and equipment and vehicles associated therewith.

6.27.020 Possession of drug paraphernalia.

(1) It is unlawful for any person to use, or possess with intent 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 introduce into the human body a controlled substance, as defined by Chapter 69.50 RCW, as now or hereafter amended. Any person who violates this section is guilty of a misdemeanor other than marijuana. Any person who violates this subsection is guilty of a misdemeanor.

(2) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with 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 other than marijuana. Any person who violates this subsection is guilty of a misdemeanor.

(3) Any person eighteen years of age or over who violates subsection (2) of this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his or her junior is guilty of a gross misdemeanor.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.

(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.

6.27.021 Possession of forty grams or less of marijuana— Penalty.

Except as provided in RCW 69.50.401(3) or as otherwise authorized by chapter 69.50 RCW, any person knowingly possessing forty grams or less of marijuana is guilty of a misdemeanor.

6.27.025 Offer of Referral

When a police officer has probable cause that a person has committed a misdemeanor crime as set forth in this chapter, the officer will offer a referral in the manner provided by section 13 and section 6 of ESB 5476 as passed by the Washington State Legislature.

6.27.030 Possession of controlled substances.

~~(1) It is unlawful for any person to knowingly possess a controlled substance or to possess a controlled substance with intent to use it, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by Chapter 69.50 RCW.~~

~~(2) Any person who violates this section is guilty of a gross misdemeanor punishable by up to 364 days in jail and a \$5,000 fine.~~

~~(3)(a) The possession, by a person 21 years of age or older, of usable marijuana, marijuana concentrates, or marijuana-infused products in amounts that do not exceed those set forth in RCW 69.50.360(3) is not a violation of this section or this chapter.~~

~~(b) The possession of marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products being physically transported or delivered within the state, in amounts not exceeding those that may be established under RCW 69.50.385(3), by a licensed employee of a common carrier when performing the duties authorized in accordance with RCW 69.50.382 and 69.50.385, is not a violation of this section or this chapter.~~

~~(c) The possession by a qualifying patient or designated provider of marijuana concentrates, usable marijuana, marijuana-infused products, or plants in accordance with Chapter 69.51A RCW is not a violation of this section or this chapter.~~

~~(d) It is unlawful for a person under 21 years of age to knowingly possess or possess with intent to use marijuana, marijuana-infused products, or marijuana concentrates, regardless of THC concentration. This does not include qualifying patients with a valid authorization. Violation of this subsection is a misdemeanor punishable by up to 90 days in jail and a \$1,000 fine.~~