

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 3/8/21

AGENDA ITEM:	
Ordinance Amending Chapter 6.27 MMC and Criminalizing Possession of a Controlled Substance Without a Prescription	
PREPARED BY:	DIRECTOR APPROVAL:
Jon Walker	
DEPARTMENT:	
Legal	
ATTACHMENTS:	
BUDGET CODE:	AMOUNT:
SUMMARY:	

On February 25, 2021, the Washington State Supreme Court held in the case of *State v. Blake*, No. 96873-0, that RCW 69.50.4013(1) – the statute that criminalized the possession of a controlled substance without a prescription – exceeds the state’s police power and violates the due process clauses of the state and federal constitutions. The Court reasoned that the statute imposed strict liability for possession of a controlled substance and that this was not ameliorated by the ability of an “unwitting possession” defense because the “statute criminalize[s] innocent and passive possession, even by a defendant who does not know, and has no reason to know, that drugs lay hidden within something that they possess.” When a statute is declared by the courts to be unconstitutional, it is void and a nullity. Consequently, police cannot arrest for possession of a controlled substance without a prescription and such possession cannot be prosecuted.

The state uniform controlled substance act, chapter 69.50 RCW, preempts cities from adopting penalties that are inconsistent with the state UCSA. Previously, possession of a controlled substance without a prescription was a class C felony. However, because there is no state statute currently prohibiting the possession of a controlled substance in Washington, the City may choose to criminalize such conduct and set penalties. Article XI, section 11 of the state constitution authorizes a city to “make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.”

The use of controlled substances without a prescription is correlated with criminal activity, homelessness, and mental health issues. The absence of any criminal penalties for such possession will reduce the effectiveness of the City’s initiatives in teaming with social workers and mental health professionals and the Mental Health Alternatives Program (MAP Court), by eliminating incentives for individuals to enter treatment or obtain necessary social services.

RECOMMENDED ACTION: Staff recommends the City Council consider adopting an ordinance prohibiting possession of a controlled substance without a prescription.

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 AND CRIMINALIZING THE POSSESSION OF A CONTROLLED SUBSTANCE WITHOUT A PRESCRIPTION.

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, public health officials in Snohomish County have linked an increase in opioid deaths and the use of naloxone to prevent overdoses with the continuing COVID-19 pandemic; and

WHEREAS, on February 25, 2021, the Washington State Supreme Court held in the case of *State v. Blake*, No. 96873-0, that RCW 69.50.4013(1) – the statute that criminalized the possession of a controlled substance without a prescription – exceeds the state's police power and violates the due process clauses of the state and federal constitutions; and

WHEREAS, the Supreme Court's ruling has the effect of eliminating any criminal penalties for the possession of a controlled substance without a prescription; and

WHEREAS, the Supreme Court's ruling also eliminates the authority of police officers to arrest persons possessing a controlled substance without a prescription or obtaining search warrants to search for controlled substances possessed without a prescription; and

WHEREAS, the lack of criminal penalties for the possession of controlled substances without a prescription will immediately result in an increase in the negative health and safety consequences associated with the use of controlled substances without a prescription; and

WHEREAS, the lack of enforcement authority of the police will interfere with the City's initiatives to address addiction and criminal activity associated with the use of controlled substances without a prescription by eliminating incentives for individuals to enter treatment or obtain necessary social services; and

WHEREAS, the effect of eliminating criminal penalties and police authority in regard to the possession and use of controlled substances without a prescription will have an immediate, direct, and negative impact on the health, safety, and welfare of the City's inhabitants; 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 adoption.

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

Date of publication: _____

Effective Date: _____

EXHIBIT A

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. Marijuana defined as a controlled substance.
69.50.206	Schedule II.
69.50.208	Schedule III.
69.50.210	Schedule IV.
69.50.212	Schedule V.
69.50.214	Controlled substance analog.
69.50.401	(e) Possession of 40 grams or less of marijuana prohibited.
69.50.412	Prohibited acts and penalties regarding drug paraphernalia.
69.50.425	Minimum imprisonment.
69.50.505	Forfeiture of controlled substances and drug paraphernalia, and equipment and vehicles associated therewith.

NEW SECTION. 6.27.030

(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 twenty-one years of age or older, of useable 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, useable 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, useable 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 twenty-one 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.