

Ordinance No. 1431

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARYSVILLE IMPOSING A BAN ON THE ESTABLISHMENT AND OPERATION OF NEEDLE EXCHANGE PROGRAMS WITHIN THE CITY AND IN THE ALTERNATIVE ESTABLISHING CONDITIONS OF OPERATION FOR SUCH PROGRAMS

WHEREAS, the California Department of Public Health (“CDPH”) may authorize a Needle Exchange Program (“NEP”) in local communities pursuant to Health and Safety Code Section 21349, *et seq.*; and

WHEREAS, CDPH has recently certified the Yuba Sutter Harm Reduction and Community Outreach (“YSHRCO”) to provide needle exchange services in the County of Yuba, including the City of Marysville; and

WHEREAS, improper collection and disposal of used hypodermic needles and syringes is inimical to, and presents an imminent threat to the health, property, safety and welfare of the public; and

WHEREAS, a collection of needles and syringes near the levees and river bottoms presents a threat to the health, property, waterways, safety and welfare of the public in the event of high-water levels; and

WHEREAS, pursuant to the City’s police power, as granted broadly under Article XI, Section 7 of the California Constitution, as well as pursuant to the City Charter and powers granted to Charter Cities, the City Council of the City of Marysville has the authority to enact and enforce ordinances and regulations for the public peace, health and welfare of the City and its residents; and

WHEREAS, absent a local regulation, a needle Exchange program may be operated in virtually any location in the City; and

WHEREAS, the operation of a needle exchange program carries the risk of negatively impacting the goals of the City’s general plan; and

WHEREAS, the City Council now desires to impose a ban on the establishment of needle exchange programs within the City of Marysville; and

NOW, THEREFORE, the City Council of the City of Marysville does ordain as follows:

SECTION ONE. Title 9 of the Marysville Municipal Code is Amended to Add Chapter 9.67 (Ban on the Establishment of Needle Exchange Programs) to read in its entirety as follows:

Chapter 9.67: BAN ON THE ESTABLISHMENT OF NEEDLE EXCHANGE PROGRAMS

SECTIONS

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| 9.67.010 | PURPOSE AND INTENT |
| 9.67.020 | PROHIBITION |
| 9.67.030 | VIOLATIONS AND PENALTIES |
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| 9.67.050 | EFFECTIVE DATE |
| 9.67.060 | SEVERABILITY |

9.67.010 PURPOSE AND INTENT

The Council recognizes that the establishment of a needle exchange program will increase improperly disposed needles, which pose a serious risk to public health, safety and welfare, given the potential for personal bodily injury, property damage, and contaminated waterways in the event of high-water levels. It is the purpose and intent of this Chapter to ban the establishment, operation, engagement, use, and/or participation in a needle exchange program within the City to protect the public health, safety, and general welfare of its residents.

This Chapter authorizes the imposition of administrative fines on any person who violates any provision of this Ordinance to encourage and obtain compliance with the provisions of this Ordinance for the benefit and protection of the entire community.

9.67.020 PROHIBITION

It shall be unlawful and a public nuisance for any person to create, establish, operate, conduct, or participate in a needle exchange program, as defined by Health and Safety Code Section 121349, *et seq.* or any similar program within the City.

9.67.030 VIOLATIONS AND PENALTIES

Administrative Citation. Each needle or syringe distributed in a needle exchange program shall be an independent and separate violation of this Chapter. Every violation of this Chapter shall be determined to be an infraction punishable by the following:

- (a) A fine not exceeding \$100.00 for a first violation;
- (b) A fine not exceeding \$200.00 for a second violation of this Chapter occurring within one (1) year;
- (c) A fine not exceeding \$500.00 for each additional violation of this Chapter within one (1) year. An administrative citation may be issued by any peace officer or any person responsible for enforcement of provisions of the City's Municipal Code to any person or responsible party who violates any provisions of this Chapter. A citation issued pursuant to this Chapter may be appealed by filing an appeal in writing with the City Clerk no later than ten (10) calendar days after the issuance of the citation. An appeal hearing shall be conducted in accordance with the procedures set forth in Section 9.050.180 of this Code. If a timely appeal is not filed, the citation and penalty

associated therewith shall be final. Upon the finality of a citation (or if appealed, the establishment of the validity and amount thereof) the citation shall be immediately due and payable. If the citation is not paid the City may take such other actions as may be allowed by law, including the filing of a civil action. If a civil action is commenced, the City shall be entitled to recover reasonable attorney's fees and costs associated with collection of the penalty. Costs include, but are not limited to, staff time incurred in the collection of the penalty.

9.67.040 PENALTIES NOT EXCLUSIVE

Nothing in this Section shall be intended to limit any of the penalties provided for under the California Health and Safety Code or Penal Code with regard to the establishment, operation, engagement, use, and/or participation in a needle exchange program. The penalties set forth herein are intended to be nonexclusive and are intended to be in addition to any other remedies provided in the Marysville Municipal Code or any other law, statute, ordinance or regulation.

9.67.050 EFFECTIVE DATE

This Chapter shall become effective thirty (30) days after its adoption by the Marysville City Council.

9.67.060 SEVERABILITY

If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The City Council hereby declares that it would have passed this Chapter and each section, subsection, sentence, clause, portion, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional.

SECTION TWO. Title 9 of the Marysville Municipal Code is Amended to Add Chapter 9.68 (Operation of a Needle Exchange Program) to read in its entirety as follows:

SECTION

- 9.68.010 PURPOSE AND INTENT
- 9.68.020 PROHIBITION
- 9.68.030 CONDITIONS FOR OPERATION OF A NEEDLE EXCHANGE PROGRAM
- 9.68.040 VIOLATIONS AND PENALTIES
- 9.68.040 PENALTIES NOT EXCLUSIVE
- 9.68.050 EFFECTIVE DATE
- 9.68.060 SEVERABILITY

Chapter 68 REQUIREMENTS FOR THE OPERATION OF NEEDLE EXCHANGE PROGRAMS

9.68.010 PURPOSE AND INTENT

The purpose of this Chapter is to establish the conditions required for operation of a needle exchange program. This Chapter does not authorize, expressly or impliedly, the operation of a needle exchange program. The City has enacted Chapter 9.67 (Ban on the Establishment of Needle Exchange Programs) concomitantly with the enactment of this Chapter 9.68. This Chapter 9.68 is intended to be applicable in the event that Chapter 9.67 is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction. In such event, the operation of a needle exchange program shall be conducted in compliance with this Chapter.

9.68.020 PROHIBITION

(a) It shall be unlawful and a public nuisance for any person to create, establish, operate, conduct, or participate in a needle exchange program as defined by Health and Safety Code Section 121349, *et seq.* (or any similar program) within the City of Marysville except in compliance with this Chapter.

(b) Any needle exchange program operated within the City of Marysville shall comply with the provisions of Section 9.68.030 below.

9.68.030 CONDITIONS FOR OPERATION OF A NEEDLE EXCHANGE PROGRAM

Any person, firm or entity operating a needle exchange program within the City of Marysville shall comply with all of the following:

(a) A needle exchange shall mean a “1-for-1 Exchange”. Any patient or client of a needle exchange program may receive only one (1) needle in exchange for each used needle surrendered by the patient/client of the needle exchange program. For example, a patient/client who surrenders three (3) used needles may receive in exchange no more than three (3) new needles. The exchange of needles shall be contemporaneous. There shall be no “starter kit” or issuance of clean needles except with a 1-for-1 Exchange of a used needle in exchange for a new needle.

(b) Prior to exchanging any needles pursuant to a needle exchange program the person, firm or entity operating the program shall meet with the Marysville Chief of Police and shall demonstrate a system to indelibly and distinctly mark any syringes supplied pursuant to the needle exchange program such that such syringes may be readily identified as having been provided by the needle exchange program. The Chief of Police shall approve the system to indelibly and distinctively mark syringes supplied pursuant to the needle exchange program and all syringes distributed pursuant to said program shall be marked in the approved fashion. The person, firm or entity operating the needle exchange program shall also be required to keep records which anonymously yet distinctively identifies each patient/client of the program as well as the date and amount of all needles/syringes issued to such client/patient pursuant to the program. It shall be the duty and obligation of each client/patient to return all syringes and needles previously issued to

such person. Any patient/client of the needle exchange program who does not account for and return the used needles and syringes previously issued shall no longer be entitled to, nor shall be issued any additional new needles or syringes pursuant to the needle exchange program. The Chief of Police shall approve the system for maintaining records and the person, firm or entity who operates the needle exchange program shall keep such records and make them available for inspection to the Chief of Police or his designee upon request.

(c) Provision of Services. The person, firm or entity operating the needle exchange program shall use its best efforts to recommend and encourage its patient/client to utilize other services offered through the program and in particular those services described in Health and Safety Code Section 121349(d)(1)(A) through (D) inclusive. If the patient/client has not availed themselves of the above-described services after the issuance of one hundred (100) clean needles the person, firm or entity operating the needle exchange program shall discontinue an exchange of any further needles with such patient/client.

9.68.030 VIOLATIONS AND PENALTIES

Administrative Citation. Every violation of this Chapter shall be determined to be an infraction punishable by the following:

- (a) A fine not exceeding \$100.00 for a first violation;
- (b) A fine not exceeding \$200.00 for a second violation of this Chapter occurring within one (1) year;
- (c) A fine not exceeding \$500.00 for each additional violation of this Chapter within one (1) year. An administrative citation may be issued by any peace officer or any person responsible for enforcement of provisions of the City’s Municipal Code to any person or responsible party who violates any provisions of this Chapter. A citation issued pursuant to this Chapter may be appealed by filing an appeal in writing with the City Clerk no later than ten (10) calendar days after the issuance of the citation. An appeal hearing shall be conducted in accordance with the procedures set forth in Section 9.050.180 of this Code. If a timely appeal is not filed, the citation and penalty associated therewith shall be final. Upon the finality of a citation (or if appealed, the establishment of the validity and amount thereof) the citation shall be immediately due and payable. If the citation is not paid the City may take such other actions as may be allowed by law, including the filing of a civil action. If a civil action is commenced, the City shall be entitled to recover reasonable attorney’s fees and costs associated with collection of the penalty. Costs include, but are not limited to, staff time incurred in the collection of the penalty.

9.68.050 EFFECTIVE DATE

This Chapter shall become effective thirty (30) days after its adoption by the Marysville City Council.

9.68.060 SEVERABILITY

If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any

reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The City Council hereby declares that it would have passed this Chapter and each section, subsection, sentence, clause, portion, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional.

SECTION THREE. No Vested Rights Created or Implied.

This Ordinance does not create, directly or indirectly, or imply any right to claim any vested right.

SECTION FOUR. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City of Marysville hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

SECTION FIVE. Effective Date.

This Ordinance shall take effect 30 days after its adoption by the Marysville City Council.

The foregoing Ordinance was passed by the City Council of the City of Marysville on the 1st day of September 2020 by the following votes:

Ayes: Stephanie McKenzie, Brad Hudson, Bill Simmons, Bruce Buttacavoli and Ricky Samayoa

Noes: None

Absent: None

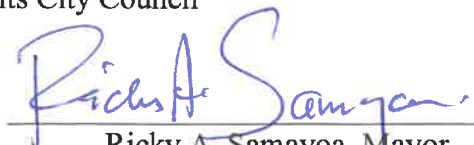
Abstain: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 1st day of September, 2020.

By: 

Nicole Moe, City Clerk

City of Marysville, California
By its City Council

By: 

Ricky A. Samayoa, Mayor