

COUNCIL BILL NO. O-15-60 ENACTMENT NO. _____

ORDINANCE

AMENDING THE CRIMINAL CODE OF ALBUQUERQUE TO REMOVE MARIJUANA OFFENSES AND RELATED PENALTIES; AMENDING CHAPTER ELEVEN OF THE CODE OF ORDINANCES TO ESTABLISH CIVIL PENALTIES FOR POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA OR MARIJUANA PARAPHERNALIA.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

1 (E) Any person who violates § 12-4-10 is guilty of a crime and upon
2 conviction shall be subject to the penalty provisions set forth in § 1-1-99 of
3 this code of ordinances.

4 (F) Any money seized as a result of a violation of § 12-4-12 shall be
5 retained by the Mayor until such property is disposed of by order of the Court,
6 which may include forfeiture of any such money to the city.

7 (G) Any fireworks, gambling devices, or other equipment of any kind
8 used in gambling and any money seized in connection with any gambling or
9 gambling equipment shall be retained by the Mayor until such property is
10 disposed of by order of the Court, which may include forfeiture of any such
11 equipment to the city.

12 (H) The court may sentence any corporation, club, organization or
13 unincorporated association which has been convicted of a violation of this
14 code to pay a fine authorized by said code.

15 ~~[(I) A person who violates a provision of § 12-5-9 is guilty of a separate~~
16 ~~offense for each day or part of a day during which the violation is committed,~~
17 ~~continued or permitted. Each offense, upon conviction, is punishable by a~~
18 ~~fine of not more than \$500, or by imprisonment for not more than 90 days, or~~
19 ~~by both such fine and imprisonment.]”~~

20 Section 2. SECTION 12-4-9 OF THE CRIMINAL CODE OF ALBUQUERQUE
21 TITLED “UNLAWFUL POSSESSION OF MARIJUANA” IS HEREBY REPEALED
22 AND DELETED:

23 ~~“[§ 12-4-9 UNLAWFUL POSSESSION OF MARIJUANA.~~

24 ~~—(A) Definition. MARIJUANA means all parts of the plant Cannabis sativa~~
25 ~~L., whether growing or not, the seeds thereof, and every compound,~~
26 ~~manufacture, salt, derivative, mixture or preparation of the plant or its seeds.~~
27 ~~It does not include the mature stalks of the plant, hashish,~~
28 ~~tetrahydrocannabinol extracted or isolated from marijuana, fiber produced~~
29 ~~from the stalks, oil or cake made from the seeds of the plant, any other~~
30 ~~compound, manufacture, salt, derivative, mixture or preparation of the mature~~
31 ~~stalks, fiber, oil or cake, or the sterilized seed of the plant which is incapable~~
32 ~~of germination.~~

~~(B) Unlawful Possession of Marijuana. Unlawful possession of marijuana consists of the possession of one ounce or less of marijuana which was not obtained directly from, or pursuant to, a valid prescription, or order of a doctor of medicine while acting in the course of his professional practice, or as otherwise authorized by law.]”~~

Section 3. Section 12-4-10 is hereby amended as follows:

“§ 12-4-10 UNLAWFUL ADVERTISEMENT, MANUFACTURE, AND DELIVERY OF DRUG PARAPHERNALIA.

(A) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DESIGNED FOR USE. Designed, made, or modified with the specific intent that the item so designed, made, or modified is to be used in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this code and the State Controlled Substances Act, Sections 30-31-1 et seq. NMSA 1978 as it may be amended from time to time.

DRUG PARAPHERNALIA. All equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this code and the State Controlled Substances Act, Sections 30-31-1 et seq. NMSA 1978 as it may be amended from time to time. It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

- 1 (2) Kits used, intended for use, or designed for use in manufacturing,
2 compounding, converting, producing, processing, or preparing controlled
3 substances;
- 4 (3) Isomerization devices used, intended for use, or designed for use
5 in increasing the potency of any species of plant which is a controlled
6 substance;
- 7 (4) Testing equipment used, intended for use, or designed for use in
8 identifying, or in analyzing the strength, effectiveness or purity of controlled
9 substances;
- 10 (5) Scales and balances used, intended for use, or designed for use in
11 weighing or measuring controlled substances;
- 12 (6) Diluents and adulterants, such as quinine hydrochloride, mannitol,
13 mannite, dextrose and lactose, used, intended for use, or designed for use in
14 cutting controlled substances;
- 15 (7) Separation gins and sifters used, intended for use, or designed for
16 use in removing twigs, seeds from, or in otherwise cleaning or refining
17 marijuana;
- 18 (8) Blenders, bowls, containers, spoons, mixing devices and screens
19 or sifting devices used, intended for use, or designed for use in compounding
20 controlled substances;
- 21 (9) Capsules, balloons, envelopes, plastic bags, and other containers
22 used, intended for use, or designed for use in packaging small quantities of
23 controlled substances;
- 24 (10) Containers and other objects used, intended for use, or designed
25 for use in storing or concealing controlled substances;
- 26 (11) Hypodermic syringes, needles and other objects used, intended
27 for use, or designed for use in parenterally injecting controlled substances
28 into the human body;
- 29 (12) Objects used, intended for use, or designed for use in ingesting,
30 inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, or
31 other controlled substances into the human body, such as:

1 (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes
2 with or without screens, permanent screens, hashish heads, or punctured
3 metal bowls;

4 (b) Water pipes;

5 (c) Carburetion tubes and devices;

6 (d) Smoking and carburetion masks;

7 (e) Roach clips: meaning objects used to hold burning material,
8 such as a marijuana cigarette, that has become too small or too short to be
9 held in the hand;

10 (f) Miniature cocaine spoons, and cocaine vials;

11 (g) Chamber pipes;

12 (h) Carburetor pipes;

13 (i) Electric pipes;

14 (j) Air-driven pipes;

15 (k) Chilams;

16 (l) Bongs;

17 (m) Ice pipes or chillers.

18 (B) Relevant Factors. In determining whether an object is drug
19 paraphernalia, a court or other authority should consider, in addition to all
20 other logically relevant factors, the following:

21 (1) Statements by an owner or by anyone in control of the object
22 concerning its use;

23 (2) Prior convictions, if any, of an owner, or of anyone in control of
24 the object, under any state or federal law relating to any controlled substance;

25 (3) The proximity of the object, in time and space, to a direct violation
26 of ~~§ 12-4-9 or~~ the State Controlled Substances Act, Sections 30-31-1 et seq.
27 NMSA 1978;

28 (4) The proximity of the object to controlled substances;

29 (5) The existence of any residue of controlled substance on the
30 object;

31 (6) Direct or circumstantial evidence of the intent of an owner, or of
32 anyone in control of the object, to deliver it to persons who he knows, or
33 should reasonably know, intend to use the object to facilitate a violation of [§

~~12-4-9 or~~] the State Controlled Substances Act, Sections 30-31-1 et seq. NMSA 1978; the innocence of an owner, or of any-one in control of the object, as to a direct violation of ~~[§ 12-4-9 or]~~ the State Controlled Substances Act, Sections 30-31-1 et seq. NMSA 1978 should not prevent a finding that the object is intended for use, or designed for use as a drug paraphernalia;

(7) Instructions, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(13) The existence and scope of legitimate uses for the object in the community;

(14) Expert testimony concerning its use.

(B) Violations.

(1) **Manufacture or Delivery of Drug Paraphernalia.** 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 in violation of ~~[§ 12-4-9 of this code or]~~ the State Controlled Substances Act, Sections 30-31-1 et seq. NMSA 1978.

(2) **Advertisement of Drug Paraphernalia.** 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

1 promote the sale of objects designed or intended for use as drug
2 paraphernalia. This provision shall not be construed to apply to any
3 advertisement which advertises the sale of drug paraphernalia outside the
4 city; nor shall it be construed to apply to any printed matter criticizing the
5 drug laws, glorifying the drug culture, glamorizing the use of drugs, providing
6 information on how to use illegal drugs, or similar noncommercial speech.

7 [(3) Exclusion for Marijuana Paraphernalia. Nothing in this section
8 shall be construed to establish a criminal penalty for mere possession of
9 paraphernalia for the exclusive purpose of personal use of marijuana in
10 amounts of less than one ounce, including by ingesting, inhaling, or otherwise
11 introducing it into the human body.]”

12 Section 4. ARTICLE 14 OF CHAPTER 11, RELATING TO “MORALS AND
13 CONDUCT”, OF THE ALBUQUERQUE CODE OF ORDINANCES IS HEREBY
14 ENACTED AS FOLLOWS:

15 “[ARTICLE 14: POSSESSION OF MARIJUANA OR MARIJUANA
16 PARAPHERNALIA

17 11-14-1 SHORT TITLE

18 This ordinance may be cited as the “Marijuana Possession Ordinance.”

19 11-14-2 DEFINITIONS

20 For the purpose of this part, the following definitions shall apply unless
21 the context clearly indicates or requires a different meaning.

22 “MARIJUANA” means all parts of the plant of the genus cannabis whether
23 growing or not, the seeds thereof, the resin extracted from any part of the
24 plant, and ever compound, manufacture, salt, derivative, mixture, or
25 preparation of the plant, its seeds, or its resin.

26 11-14-3 POSSESSIONS OF MARIJUANA OR MARIJUANA PARAPHERNALIA

27 (A) Any person in possession of one ounce or less of marijuana is guilty
28 of a civil infraction punishable by a fine of \$25, except that it is not a violation
29 of this section for a person to possess marijuana obtained pursuant to a valid
30 prescription or order of a practitioner while acting in the course of his
31 professional practices or as authorized by the Controlled Substance Act,
32 NMSA 1978 Section 30-31-1

1 **(B) Any person in possession of paraphernalia intended or designed for**
2 **the use or ingestion, inhaling or otherwise introducing marijuana into the**
3 **human body is guilty of a civil infraction punishable by a fine of \$25, except**
4 **that it is not a violation of this section for a person to possess marijuana**
5 **paraphernalia where such person has a valid prescription or order of a**
6 **practitioner while acting in the course of his professional practices or as**
7 **authorized by the Controlled Substance Act, NMSA 1978 Section 30-31-1.]”**

8 **Section 5. SEVERABILITY CLAUSE.** If any section, paragraph, sentence,
9 clause, word or phrase of this ordinance is for any reason held to be invalid or
10 unenforceable by any court of competent jurisdiction, such decision shall not
11 affect the validity of the remaining provisions of this ordinance. The Council
12 hereby declares that it would have passed this ordinance and each section,
13 paragraph, sentence, clause, word or phrase thereof irrespective of any
14 provisions being declared unconstitutional or otherwise invalid.

15 **Section 6. COMPILATION.** The ordinance and amendments set forth in
16 Sections 1 through 4 above shall amend, be incorporated in and made part of
17 the Revised Ordinances of Albuquerque, New Mexico, 1994.

18 **Section 7. EFFECTIVE DATE.** This ordinance shall take effect five days
19 after publication by title and general summary.