

CITY of ALBUQUERQUE

TWENTY-FIRST COUNCIL

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

SPONSORED BY: Rey Garduño and Isaac Benton

1 **ORDINANCE**

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

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

9 **Section 1. SECTION 12-1-99 OF THE CRIMINAL CODE OF ALBUQUERQUE**
10 **TITLE “PENALTY” IS AMENDED AS FOLLOWS:**

11 **“§12-1-99 PENALTY**

12 **(A) It shall be unlawful to commit any of the acts set forth in Articles 2, 3, 4**
13 **and 5 of this chapter.**

14 **(B) Any person convicted of a violation of this code for which no other**
15 **penalty is set forth shall be subject to the penalty provisions set forth in § 1-1-**
16 **99 of this code of ordinances, unless a different specific penalty is provided.**

17 **(C) Upon conviction of a violation of §§ 12-2-8, 12-2-9, or 12-2-10, in**
18 **addition to any other penalties, the weapon or weapons shall be forfeited to**
19 **the city upon order of the Court.**

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

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

1 (F) Any fireworks, gambling devices, or other equipment of any kind
2 used in gambling and any money seized in connection with any gambling or
3 gambling equipment shall be retained by the Mayor until such property is
4 disposed of by order of the Court, which may include forfeiture of any such
5 equipment to the city.

6 (G) The court may sentence any corporation, club, organization or
7 unincorporated association which has been convicted of a violation of this
8 code to pay a fine authorized by said code.”

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10 TITLED “UNLAWFUL POSSESSION OF MARIJUANA” IS HEREBY REPEALED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

12 Section 3. SECTION 12-4-10 IS HEREBY AMENDED AS FOLLOWS:

13 “§ 12-4-10 UNLAWFUL ADVERTISEMENT, MANUFACTURE, AND
14 DELIVERY OF DRUG PARAPHERNALIA.

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

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

26 DRUG PARAPHERNALIA. All equipment, products and materials of any
27 kind which are used, intended for use, or designed for use, in planting,
28 propagating, cultivating, growing, harvesting, manufacturing, compounding,
29 converting, producing, processing, preparing, testing, analyzing, packaging,
30 repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or
31 otherwise introducing into the human body a controlled substance in violation
32 of this code and the State Controlled Substances Act, Sections 30-31-1 et seq.

1 NMSA 1978 as it may be amended from time to time. It includes, but is not
2 limited to:

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

7 (2) Kits used, intended for use, or designed for use in manufacturing,
8 compounding, converting, producing, processing, or preparing controlled
9 substances;

10 (3) Isomerization devices used, intended for use, or designed for use
11 in increasing the potency of any species of plant which is a controlled
12 substance;

13 (4) Testing equipment used, intended for use, or designed for use in
14 identifying, or in analyzing the strength, effectiveness or purity of controlled
15 substances;

16 (5) Scales and balances used, intended for use, or designed for use in
17 weighing or measuring controlled substances;

18 (6) Diluents and adulterants, such as quinine hydrochloride, mannitol,
19 mannite, dextrose and lactose, used, intended for use, or designed for use in
20 cutting controlled substances;

21 (7) Separation gins and sifters used, intended for use, or designed for
22 use in removing twigs, seeds from, or in otherwise cleaning or refining
23 marijuana;

24 (8) Blenders, bowls, containers, spoons, mixing devices and screens
25 or sifting devices used, intended for use, or designed for use in compounding
26 controlled substances;

27 (9) Capsules, balloons, envelopes, plastic bags, and other containers
28 used, intended for use, or designed for use in packaging small quantities of
29 controlled substances;

30 (10) Containers and other objects used, intended for use, or designed
31 for use in storing or concealing controlled substances;

1 (11) Hypodermic syringes, needles and other objects used, intended
2 for use, or designed for use in parenterally injecting controlled substances
3 into the human body;

4 (12) Objects used, intended for use, or designed for use in ingesting,
5 inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, or
6 other controlled substances into the human body, such as:

7 (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes
8 with or without screens, permanent screens, hashish heads, or punctured
9 metal bowls;

10 (b) Water pipes;

11 (c) Carburetion tubes and devices;

12 (d) Smoking and carburetion masks;

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

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

17 (g) Chamber pipes;

18 (h) Carburetor pipes;

19 (i) Electric pipes;

20 (j) Air-driven pipes;

21 (k) Chilams;

22 (l) Bongs;

23 (m) Ice pipes or chillers.

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

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

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

31 (3) The proximity of the object, in time and space, to a direct violation
32 of the State Controlled Substances Act, Sections 30-31-1 et seq. NMSA 1978;

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

1 (5) The existence of any residue of controlled substance on the
2 object;

3 (6) Direct or circumstantial evidence of the intent of an owner, or of
4 anyone in control of the object, to deliver it to persons who he knows, or
5 should reasonably know, intend to use the object to facilitate a violation of the
6 State Controlled Substances Act, Sections 30-31-1 et seq. NMSA 1978; the
7 innocence of an owner, or of any-one in control of the object, as to a direct
8 violation of the State Controlled Substances Act, Sections 30-31-1 et seq.
9 NMSA 1978 should not prevent a finding that the object is intended for use, or
10 designed for use as a drug paraphernalia;

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

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

15 (9) National and local advertising concerning its use;

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

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

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

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

24 (14) Expert testimony concerning its use.

25 (C) Violations.

26 (1) Manufacture or Delivery of Drug Paraphernalia. It is unlawful for
27 any person to deliver, possess with intent to deliver, or manufacture with
28 intent to deliver, drug paraphernalia, knowing, or under circumstances where
29 one reasonably should know, that it will be used to plant, propagate, cultivate,
30 grow, harvest, manufacture, compound, convert, produce, process, prepare,
31 test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or
32 otherwise introduce into the human body a controlled substance in violation
33 of the State Controlled Substances Act, Sections 30-31-1 et seq. NMSA 1978.

1 (2) **Advertisement of Drug Paraphernalia.** It is unlawful for any person
2 to place in any newspaper, magazine, handbill, or other publication any
3 advertisement, knowing, or under circumstances where one reasonably
4 should know, that the purpose of the advertisement, in whole or in part, is to
5 promote the sale of objects designed or intended for use as drug
6 paraphernalia. This provision shall not be construed to apply to any
7 advertisement which advertises the sale of drug paraphernalia outside the
8 city; nor shall it be construed to apply to any printed matter criticizing the
9 drug laws, glorifying the drug culture, glamorizing the use of drugs, providing
10 information on how to use illegal drugs, or similar noncommercial speech.

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

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

19 **“ARTICLE 14: POSSESSION OF MARIJUANA OR MARIJUANA**
20 **PARAPHERNALIA**

21 **11-14-1 SHORT TITLE**

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

23 **11-14-2 DEFINITIONS**

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

26 **“MARIJUANA”** means all parts of the plant of the genus cannabis whether
27 growing or not, the seeds thereof, the resin extracted from any part of the
28 plant, and every compound, manufacture, salt, derivative, mixture, or
29 preparation of the plant, its seeds, or its resin.

30 **11-14-3 POSSESSIONS OF MARIJUANA OR MARIJUANA PARAPHERNALIA**

31 **(A)** Any person in possession of one ounce or less of marijuana is guilty
32 of a civil infraction punishable by a fine of \$25, except that it is not a violation
33 of this section for a person to possess marijuana obtained pursuant to a valid

1 prescription or order of a practitioner while acting in the course of his
2 professional practices or as authorized by the Controlled Substance Act,
3 NMSA 1978 Section 30-31-1.

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

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

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

21 Section 7. EFFECTIVE DATE. This ordinance shall take effect five days
22 after publication by title and general summary.