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1 related products, including “hashish” and “hashish oil” which are
2 concentrated cannabis products; and

3 WHEREAS, The City Council finds that in order to integrate changes to
4 State law, conforming changes must be made to Section 12-4-10 of the
5 Albuquerque Criminal Code, to remove references to cannabis and cannabis-
6 related products, and clarify that it is not a crime to possess equipment,
7 products, and materials used in accordance with the CRA or the Lynn and Erin
8 Compassionate Use Act.

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

11 SECTION 1. § 12-4-10 OF THE CRIMINAL CODE IS HEREBY AMENDED AS
12 FOLLOWS:

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

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

27 ~~[(9)(8)]~~ Capsules, balloons, envelopes, plastic bags, and other
28 containers used, intended for use, or designed for use in packaging small
29 quantities of controlled substances;

30 ~~[(10)(9)]~~ Containers and other objects used, intended for use, or
31 designed for use in storing or concealing controlled substances;

1 ~~[(11)(10)]~~ Hypodermic syringes, needles and other objects used,
2 intended for use, or designed for use in parenterally injecting controlled
3 substances into the human body;

4 ~~[(12)(11)]~~ Objects used, intended for use, or designed for use in
5 ingesting, inhaling, or otherwise introducing ~~[marijuana,]~~ cocaine~~[-, hashish,~~
6 ~~hashish-oil,]~~ or 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 the
30 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 object;
- 2 (6) Direct or circumstantial evidence of the intent of an owner, or of
- 3 anyone in control of the object, to deliver it to persons who he knows, or
- 4 should reasonably know, intend to use the object to facilitate a violation of the
- 5 State Controlled Substances Act, Sections 30-31-1 et seq. NMSA 1978; the
- 6 innocence of an owner, or of anyone in control of the object, as to a direct
- 7 violation of the State Controlled Substances Act, Sections 30-31-1 et seq.
- 8 NMSA 1978 should not prevent a finding that the object is intended for use, or
- 9 designed for use as a drug paraphernalia;
- 10 (7) Instructions, oral or written, provided with the object concerning its
- 11 use;
- 12 (8) Descriptive materials accompanying the object which explain or
- 13 depict its use;
- 14 (9) National and local advertising concerning its use;
- 15 (10) The manner in which the object is displayed for sale;
- 16 (11) Whether the owner, or anyone in control of the object, is a
- 17 legitimate supplier of like or related items to the community, such as a
- 18 licensed distributor or dealer of tobacco products;
- 19 (12) Direct or circumstantial evidence of the ratio of sales of the
- 20 object(s) to the total sales of the business enterprise;
- 21 (13) The existence and scope of legitimate uses for the object in the
- 22 community;
- 23 (14) Expert testimony concerning its use.
- 24 (C) Violations.
- 25 (1) Manufacture or Delivery of Drug Paraphernalia. It is unlawful for
- 26 any person to deliver, possess with intent to deliver, or manufacture with
- 27 intent to deliver, drug paraphernalia, knowing, or under circumstances where
- 28 one reasonably should know, that it will be used to plant, propagate, cultivate,
- 29 grow, harvest, manufacture, compound, convert, produce, process, prepare,
- 30 test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or
- 31 otherwise introduce into the human body a controlled substance in violation
- 32 of the State Controlled Substances Act, Sections 30-31-1 et seq. NMSA 1978.

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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 Cannabis] Paraphernalia. Nothing in this
12 section shall be construed to establish a criminal penalty for ~~[mere]~~
13 possession of paraphernalia for the exclusive purpose of [cannabis use, or for
14 any activities associated with cannabis use or commerce, in accordance with
15 the Cannabis Regulation Act (NMSA 1978, § 26-2C-1 et. seq.) or the Lynn and
16 Erin Compassionate Use Act (NMSA 1978, § 26-2B-1 et. seq.)] ~~[personal use of~~
17 ~~marijuana in amounts of less than one ounce, including by ingesting, inhaling,~~
18 ~~or otherwise introducing it into the human body].”~~

19 SECTION 2. SEVERABILITY.

20 If any section, paragraph, sentence, clause, word, or phrase of this
21 ordinance is for any reason held to be invalid or unenforceable by any court of
22 competent jurisdiction, such decision shall not affect the validity of the
23 remaining provisions of this ordinance and each section, paragraph, sentence,
24 clause, word, or phrase thereof irrespective of any provision being declared
25 unconstitutional or otherwise invalid.

26 SECTION 3. COMPILATION.

27 The ordinance amendment prescribed by SECTION 1 shall amend, be
28 incorporated in, and be made part of the Revised Ordinances of Albuquerque,
29 New Mexico 1994.

30 SECTION 4. EFFECTIVE DATE.

31 This Ordinance shall take effect immediately after publication by title and
32 general summary.

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