



Legislation Text

File #: O-18-12, Version: 2

CITY of ALBUQUERQUE
TWENTY THIRD COUNCIL

COUNCIL BILL NO. O-18-12 ENACTMENT NO. _____

SPONSORED BY: Patrick Davis and Isaac Benton

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 (Davis, Benton)

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:

Section 1. SECTION 12-1-99 OF THE CRIMINAL CODE OF ALBUQUERQUE TITLE "PENALTY" IS AMENDED FOLLOWS:

"§12-1-99 PENALTY

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

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

(C) Upon conviction of a violation of §§ 12-2-8, 12-2-9, or 12-2-10, in addition to

any other penalties, the weapon or weapons shall be forfeited to the city upon order of the Court.

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

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

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

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

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 SECTION 12-4-9 OF THE CRIMINAL CODE OF ALBUQUERQUE TITLED “UNLAWFUL POSSESSION OF MARIJUANA” IS HEREBY REPEALED AND DELETED.

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

inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, or other controlled substances into the human body, such as:

- (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (b) Water pipes;
- (c) Carburetion tubes and devices;
- (d) Smoking and carburetion masks;
- (e) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
- (f) Miniature cocaine spoons, and cocaine vials;
- (g) Chamber pipes;
- (h) Carburetor pipes;
- (i) Electric pipes;
- (j) Air-driven pipes;
- (k) Chilams;
- (l) Bonges;
- (m) Ice pipes or chillers.

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

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
- (3) The proximity of the object, in time and space, to a direct violation of the State Controlled Substances Act, Sections 30-31-1 et seq. NMSA 1978;
- (4) The proximity of the object to controlled substances;
- (5) The existence of any residue of controlled substance on the object;
- (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of the State Controlled

Substances Act, Sections 30-31-1 et seq. NMSA 1978; the innocence of an owner, or of anyone in control of the object, as to a direct violation of 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.**

(C) 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 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 promote the sale of objects designed or intended for use as drug paraphernalia. This provision shall not be construed to apply to any advertisement which advertises the sale of drug paraphernalia outside the city; nor

shall it be construed to apply to any printed matter criticizing the drug laws, glorifying the drug culture, glamorizing the use of drugs, providing information on how to use illegal drugs, or similar noncommercial speech.

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

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

“ARTICLE 14: POSSESSION OF MARIJUANA OR MARIJUANA PARAPHERNALIA.

11-14-1 SHORT TITLE.

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

11-14-2 DEFINITIONS.

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

“MARIJUANA” means all parts of the plant of the genus cannabis containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and ever compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin.

11-14-3 POSSESSIONS OF MARIJUANA OR MARIJUANA PARAPHERNALIA

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

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

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

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

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

X:\CITY COUNCIL\SHARE\CL-Staff_Legislative Staff\Legislation\23 Council\O-12final.docx