



Legislation Text

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CITY of ALBUQUERQUE
TWENTY FOURTH COUNCIL

COUNCIL BILL NO. O-21-82 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton

ORDINANCE

Amending Chapter 12, Article 4, Section 10, Of The Revised Ordinances Of Albuquerque (Unlawful Advertisement, Manufacture, And Delivery Of Drug Paraphernalia) To Conform To The New Mexico Cannabis Regulation Act, NMSA 1978, Section 26-2C-1 Et Seq (Benton)

WHEREAS, The Cannabis Regulation Act, NMSA 1978, § 26-2C-1 et seq., ("CRA") was signed into law by the New Mexico Legislature on April 12, 2021; and

WHEREAS, The CRA contains provisions authorizing the possession, consumption, purchase, processing, manufacturing, and transport of cannabis and cannabis-related products by an individual who is at least twenty-one (21) years of age; and

WHEREAS, The CRA provides the regulatory framework for the licensing and operation of cannabis establishments which are authorized to engage in the retail sale, cultivation, processing, manufacture, and transport of cannabis and cannabis-related products; and

WHEREAS, The State Controlled Substances Act, NMSA 1978, § 30-31-1 et seq. was updated to exclude from its definition of "drug paraphernalia" equipment, products, and materials used in accordance with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act; and

WHEREAS, The Albuquerque Criminal Code, Section 12-4-10 declares unlawful the advertisement, manufacture, and delivery of drug paraphernalia, and includes language that classifies as "drug paraphernalia" equipment, products and materials utilized in the consumption of cannabis and cannabis-related products, including "hashish" and "hashish oil" which are

concentrated cannabis products; and

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

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

SECTION 1. § 12-4-10 OF THE CRIMINAL CODE 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)(7)]~~ Blenders, bowls, containers, spoons, mixing devices and screens or sifting devices used, intended for use, or designed for use in compounding controlled substances;

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

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

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

~~[(12)(11)]~~ 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) Bongs;
- (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 Cannabis] Paraphernalia. Nothing in this section shall be construed to establish a criminal penalty for ~~[mere]~~ possession of paraphernalia for the exclusive purpose of [cannabis use, or for any activities associated with cannabis use or commerce, in accordance with the Cannabis Regulation Act (NMSA 1978, § 26-2C-1 et. seq.) or the Lynn and Erin Compassionate Use Act (NMSA 1978, § 26-2B-1 et. seq.)] ~~[personal use of marijuana in amounts of less than one ounce, including by ingesting, inhaling, or otherwise introducing it into the human body].~~”

SECTION 2. SEVERABILITY.

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 and each section, paragraph, sentence, clause, word, or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 3. COMPILATION.

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

SECTION 4. EFFECTIVE DATE.

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