

BILL NO. 49

ORDINANCE NO. _____

AN ORDINANCE AMENDING VARIOUS SECTIONS OF CHAPTER 16, MISCELLANEOUS OFFENSES AND PROVISIONS, OF THE CODE OF ORDINANCES IN COMPLIANCE WITH AMENDMENT 3 TO THE MISSOURI CONSTITUTION.

WHEREAS, on November 6, 2018, the voters of the State of Missouri approved Amendment 2 adding a new Article XIV, Section 1 to the Missouri Constitution entitled, “Right to Access Medical Marijuana”; and

WHEREAS, on November 8, 2022, the voters of the State of Missouri approved Amendment 3 to the Missouri Constitution revising Article XIV, Section 1 and adding a new Section 2 entitled, “Marijuana Legalization, Regulation, and Taxation” (“Amendment 3”); and

WHEREAS, Amendment 3 makes it legal under state law for persons at least twenty-one years old to cultivate, possess, and use marijuana in accordance with Amendment 3, the rules and regulations promulgated by the Department of Human Health and Senior Services of the State of Missouri (the “Department”), and local ordinance; and

WHEREAS, Amendment 3 also establishes specific penalties for use, possession, and cultivation of marijuana in violation of Amendment 3, the rules and regulations promulgated by the Department, and local ordinance; and

WHEREAS, despite Amendment 3, marijuana remains a “Schedule 1 Controlled Substance” pursuant to the Controlled Substances Act of the United States and remains illegal under federal law; and

WHEREAS, the City desires to amend its offenses and penalty regulations in accordance with Amendment 3 and any rules and regulations promulgated by the Department; and

WHEREAS, nothing in this Ordinance shall be interpreted as authorization for any illegal activity; and

WHEREAS, nothing in this Ordinance allows a person to possess, cultivate, grow, infuse, process, use, or distribute marijuana for any purpose other than to the extent authorized and limited by Amendment 3, the rules and regulations regarding marijuana issued by the Department, and local ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SUNSET HILLS, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. Chapter 16, Art. I. – “In General,” is hereby amended by repealing in its entirety Section 16-35, “First possession of marijuana or hashish.”

Section 2. Chapter 16, Art. I. – “In General,” Sec. 16-35.1. “Use, possession, sale or delivery of drug paraphernalia prohibits,” is hereby amended by adding [text] and deleting [text] the following text:

Sec. 16-35.1. - Use, possession, sale or delivery of drug paraphernalia prohibited.

(a) *Definition.* As used in this section, the term "drug paraphernalia" means 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 dangerous substance in violation of this section. 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 dangerous substance or from which a controlled dangerous substance can be derived;
- (2) Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled dangerous 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 dangerous substance;
- (4) Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled dangerous substances;
- (5) Scales and balances used, intended for use or designed for use in weighing or measuring controlled dangerous 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 dangerous substances;
- (7) Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (8) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled dangerous substances;
- (9) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled dangerous substances;
- (10) Containers and other objects used, intended for use or designed for use in storing or concealing controlled dangerous substances;

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

(12) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil 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. Air-driven pipes;

j. Chillums;

k. Bongs; or

l. Ice pipes or chillers.

(b) *Factors used in determination.* In determining whether objects are drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant facts, the following:

(1) Statements by an owner or by any person in control of the object concerning its use;

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

(3) The proximity of the object, in time and space, to a direct violation of this section or to a controlled dangerous substance;

(4) The existence of any residue of controlled dangerous substances on the object;

- (5) Direct or circumstantial evidence of the intent of an owner, or of any person 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 this section; the innocence of an owner, or of any person in control of the object, as to a direct violation of this section shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia;
- (6) Instructions, oral or written, provided with the object concerning its use;
- (7) Descriptive materials accompanying the object which explain or depict its use;
- (8) National and local advertising concerning its use;
- (9) The manner in which the object is displayed for sale;
- (10) Whether the owner, or any person 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;
- (11) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
- (12) The existence and scope of legitimate uses for the object in the community;
- (13) Expert testimony concerning its use.

(c) *Use; possession.* It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia or to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain or conceal a controlled dangerous substance in violation of this subsection except and only to the extent as authorized by Article XIV of the Missouri Constitution and any and all rules and regulations promulgated by the Missouri Department of Health and Senior Services relating to legalized marijuana. ~~Notwithstanding the foregoing, a person who meets the limitations and requirements of Article XIV, Section 1, subsection 5(1) shall not be subject to arrest, liability or sanction, provided that they produce on demand by a police officer a valid qualifying patient identification card, a valid qualifying patient cultivation identification card, a valid physician certification while making application for an identification card, a valid primary caregiver identification card, or other proof of valid authorization including as issued by another state or political subdivision thereof.~~

(d) *Sale; delivery.* It is unlawful for any person to deliver or sell, possess with intent to deliver or sell or manufacture with intent to deliver or sell drug paraphernalia, knowing, or under circumstances where one reasonably should know, that they 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 dangerous substance in violation of this subsection except and only to the extent as authorized by Article XIV of the Missouri Constitution and any and all rules

~~and regulations promulgated by the Missouri Department of Health and Senior Services relating to legalized marijuana. Notwithstanding the foregoing, a person who meets the limitations and requirements of Article XIV, Section 1, subsection 5(1) shall not be subject to arrest, liability or sanction, provided that they produce on demand by a police officer a valid qualifying patient identification card, a valid qualifying patient cultivation identification card, a valid physician certification while making application for an identification card, a valid primary caregiver identification card, or other proof of valid authorization including as issued by another state or political subdivision thereof.~~

Section 3. Chapter 16, Art. XI. – “Offenses Concerning Drugs,” Sec. 16-142. “Possession of a controlled substance,” is hereby amended by adding [text] and deleting [text] the following text:

Sec. 16-142. - Possession of a controlled substance.

~~A person commits the offense of possession of a controlled substance if he or she knowingly possesses or delivers a controlled substance, except and only to the extent as authorized by Article XIV, ~~Section 1~~ of the Missouri Constitution, RSMo. ch. 195 or RSMo. ch. 579, and any rules and regulations promulgated by the Missouri Department of Health and Senior Services relating to legalized marijuana. In any complaint, information, action or proceeding brought for the enforcement of this section, it shall not be necessary to include any exception, excuse, proviso or exemption contained in this Code or Article XIV, Section 1 of the Missouri Constitution, RSMo. ch. 195 or RSMo. ch. 579, and the burden of proof of any such exception, excuse, proviso or exemption shall be upon the defendant. Notwithstanding the foregoing, a person who meets the limitations and requirements of Article XIV, Section 1, subsection 5(1) shall not be subject to arrest, liability or sanction, provided that they produce on demand by a police officer a valid qualifying patient identification card, a valid qualifying patient cultivation identification card, a valid physician certification while making application for an identification card, a valid primary caregiver identification card, or other proof of valid authorization including as issued by another state or political subdivision thereof.~~

Section 4. Chapter 16, Art. XI. – “Offenses Concerning Drugs,” Sec. 16-144. “Prohibited acts; controlled or imitation controlled substances,” is hereby amended by adding [text] and deleting [text] the following text:

Sec. 16-144. - Prohibited acts; controlled or imitation controlled substances.

~~It is an offense for any person to distribute, deliver, or sell, or possess or manufacture with intent to distribute, deliver or sell, 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 or imitation controlled substance in violation of RSMo. ch. 195 or RSMo. ch. 579 except and only to the extent as authorized by Article XIV of the Missouri Constitution and any and all rules and regulations promulgated by the Missouri Department of Health and Senior Services relating to legalized Marijuana. Notwithstanding the foregoing, a person who meets~~

~~the limitations and requirements of Article XIV, Section 1, subsection 5(1) shall not be subject to arrest, liability or sanction, provided that they produce on demand by a police officer a valid qualifying patient identification card, a valid qualifying patient cultivation identification card, a valid physician certification while making application for an identification card, a valid primary caregiver identification card, or other proof of valid authorization including as issued by another state or political subdivision thereof.~~

Section 5. Chapter 16, Article XI, Offenses Concerning Drugs, is hereby amended by enacting a new Section to read as follows:

Section 216-148. - Public Use of Marijuana Prohibited; Marijuana Penalties.

- (a) Definition. For the purposes of this Section, Marijuana shall mean: *Cannabis indica*, *Cannabis sativa*, and *Cannabis ruderalis*, hybrids of such species, and any other strains commonly understood within the scientific community to constitute marijuana, as well as resin extracted from the marijuana plant and marijuana-infused products. "Marijuana" does not include industrial hemp as defined by Missouri statute, or commodities or products manufactured from industrial hemp.
- (b) Use in Public Place Prohibited. It shall be unlawful to use Marijuana in a public place.
- (c) Unlawful Visibility or Keeping of Marijuana. Notwithstanding Section 1-8 of this Code, a person who cultivates Marijuana plants that are visible by normal, unaided vision from a public place or cultivates Marijuana plants not kept in a locked space is subject to a civil penalty of up to Two Hundred and Fifty Dollars (\$250.00) and forfeiture of the Marijuana.
- (d) Unlawful Use Penalty. Notwithstanding Section 1-8 of this Code, a person who uses Marijuana in a public place shall be subject to a civil penalty of up to One Hundred Dollars (\$100.00).
- (e) Unlawful use by a Person under Twenty-One. Notwithstanding Section 1-8 of this Code, a person under Twenty-One (21) who possess, uses, ingests, inhales, transports, delivers without consideration, or distributes without consideration three (3) ounces or less of Marijuana, or possesses, delivers without consideration, or distributes without consideration Marijuana accessories, as defined by Article XIV of the Missouri Constitution, is subject to a civil penalty of up to One Hundred Dollars (\$100.00) and forfeiture of the Marijuana. Any such person shall be provided the option of attending up to four (4) hours of drug education or counseling in lieu of the fine.
- (f) Unlawful Amount Penalty. Notwithstanding Section 1-8 of this Code, a person who possesses, produces, delivers without receiving any consideration or remuneration to a person who is at least twenty-one (21) years or age, or possess with the intent to deliver an amount of Marijuana that is not more than twice the amount of Marijuana that person is authorized to possess by Article XIV of the Missouri Constitution shall be subject to:

- (1) a civil penalty of up to Two Hundred and Fifty Dollars (\$250.00) for the first violation, (2) a civil penalty of up to Five Hundred Dollars (\$500.00) for the second violation, and
- (3) a civil penalty of up to a One Thousand Dollars (\$1,000.00) for the third and subsequent violations.

Provided a person under twenty-one (21) of age is subject to a civil penalty not to exceed Two Hundred and Fifty Dollars (\$250.00) with an option of attending up to eight (8) hours of drug education or counseling in lieu of the fine. In addition, the municipal judge may order that in lieu of payment, penalties under this Subsection may be satisfied by the performance of community service with the rate of pay-down associated with said service option the greater of \$15 or the minimum wage in effect.

Section 6. The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds that the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the Board of Aldermen would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 7. This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and its approval by the Mayor.

PASSED this _____ day of _____, 2023.

MAYOR

APPROVED this _____ day of _____, 2023.

MAYOR

ATTEST:

CITY CLERK/CITY ADMINISTRATOR