

AN ORDINANCE amending Chapter 82 – Offenses and Miscellaneous Provisions, Article V – Offenses Against Health and Safety, by changing offenses related to marijuana as a result of November 8, 2022 general election ballot measure Amendment 3.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That Chapter 82 – Offenses and Miscellaneous Provisions, Article V – Offenses Against Health and Safety, Section 82-196 – Possession of marijuana, is hereby repealed, and a new Section 82-196 – Possession and use of marijuana, is enacted in lieu thereof as follows:

“Section 82-196 – Possession and use of marijuana.

(a) Public Consumption; Smoking.

- (1) No person shall consume marijuana in a public place.
- (2) No person shall smoke marijuana in a public place.
- (3) No person shall smoke marijuana in any place the smoking of tobacco is prohibited.
- (4) For purposes of this section, a public place means any public or private property, or portion thereof, that is open to the general public, including but not limited to, sidewalks, streets, bridges, parks, schools, and businesses.

a. “Public place” shall not include:

1. The residence of the person smoking or consuming marijuana or the residence of another person when the person in control of the property has consented to the smoking or consumption of marijuana; or
 2. Any area licensed for such activity by the City.
- (5) Violation of Section 82-196(a)(2) shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

(b) Sale to Persons Under Twenty-One

- (1) No person shall deliver to, transfer to, or sell to persons under twenty-one years of age marijuana or marijuana accessories.
- (2) For purposes of this Chapter, "Marijuana accessories" means any equipment, product, material, or combination of equipment, products, or materials, which is specifically

designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marijuana into the human body.

(c) Possession by Persons Under Twenty-One, Three Ounces or Less.

- (1) Except as provided by Article XIV of the Missouri Constitution, no person under twenty-one years of age may possess, use, ingest, inhale, transport, deliver, or distribute marijuana or marijuana accessories.
- (2) For offenses involving three ounces or less of marijuana, and no monetary consideration, violation of this Section shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00). Any such person shall be provided the option of attending up to four hours of drug education or counseling in lieu of the fine.

(d) Possession; Less than Twice the Legal Limit.

- (1) A person who possesses not more than twice the amount of marijuana allowed pursuant to Mo. Const., Article XIV, produces not more than twice the amount of marijuana allowed pursuant to Mo. Const., Article XIV, delivers without receiving any consideration or remuneration to a person who is at least twenty-one years of age not more than twice the amount of marijuana allowed by Mo. Const., Article XIV, or possesses with intent to deliver not more than twice the amount of marijuana allowed by Mo. Const., Article XIV:
 - a. For a first violation, is subject to a fine not exceeding two hundred and fifty dollars and forfeiture of the marijuana.
 - b. For a second and subsequent violations, is subject to a fine not exceeding five hundred dollars and forfeiture of the marijuana.
 - c. A person under twenty-one years of age is subject to a civil penalty not to exceed two hundred and fifty dollars. Any such person shall be provided the option of attending up to eight hours of drug education or counseling in lieu of the fine.
 - d. In lieu of payment, penalties under this subsection may be satisfied by the performance of community service. The rate of pay-down associated with said service option will be the greater of \$15 or the minimum wage in effect at the time of judgment.

(e) Motor Vehicle Offenses.

- (1) It shall be unlawful for any person to:

- a. Operate or be in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence of marijuana. Notwithstanding the foregoing, a conviction of a person who is at least twenty-one years of age for any applicable offenses shall require evidence that the person was in fact under the influence of marijuana at the time the person was in physical control of the motorized form of transport and not solely on the presence of tetrahydrocannabinol (THC) or THC metabolites, or a combination thereof, in the person's system.
- b. Consume marijuana while operating or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while it is being operated.
- c. Smoke marijuana within a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while it is being operated.

(f) Possession or consumption on Certain Property; Prohibited.

No person shall possess or consume marijuana or possess marijuana accessories on the grounds of a public or private preschool, elementary or secondary school, institution of higher education, in a school bus, or on the grounds of any correction facility.

(g) Illegal Growing.

(1) The following acts by a person are unlawful:

- a. Illegal Growing. Possessing, transporting, planting, cultivating, harvesting, drying, processing, or manufacturing i) more than six (6) flowering marijuana plants, ii) more than six (6) nonflowering marijuana plants, iii) more than six (6) clones, or iv) any lesser number of such plants or clones if the person is not registered with the department of health and senior services for cultivation of marijuana plants pursuant to Article XIV, Section 2.4(24).
- b. Illegal Growing; Registered Cultivator. A person registered with the department of health and senior services pursuant to Article XIV, Section 2.4(24) for cultivation of marijuana plants within the limits of Article XIV, Section 2.10(1)(b) shall not keep the plants and any marijuana produced by the plants in excess of three ounces at more than one private residence, or in an unlocked space, or in a manner in which they are visible by normal, unaided vision from a public place; and further, shall not keep more than twice the number of allowable plants under Article XIV, Section 2.10(1)(b) in or on the grounds of a private residence at one time.
- c. Illegal Growing; Visibility; Unregistered Cultivator. A person who is not registered pursuant to Article XIV, Section 2.4(24) and who cultivates

marijuana plants that are visible by normal, unaided vision from a public place.
d. Illegal Growing; Unsecured; Unregistered Cultivator. A person who is not registered pursuant to Article XIV, Section 2.4(24) and who cultivates marijuana plants that are not kept in a locked space.

(2) Penalties.

- a. A person who cultivates marijuana plants that are visible by normal, unaided vision from a public place is subject to a civil penalty not exceeding two hundred and fifty dollars and forfeiture of the marijuana.
- b. A person who cultivates marijuana plants that are not kept in a locked space is subject to a civil penalty not exceeding two hundred and fifty dollars and forfeiture of the marijuana.

Section 2. That Chapter 82 – Offenses and Miscellaneous Provisions, Article V – Offenses Against Health and Safety, Section 82-197 – Possession of drug paraphernalia, is hereby amended to read as follows:

“Section 82-197 – Possession of drug paraphernalia

(a) Prohibited. It shall be unlawful for any person to use or to possess with the intent to use drug paraphernalia 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 [~~this section~~] **RSMo. Ch. 579 or RSMo. Ch. 195, except as authorized by Article XIV of the Missouri Constitution.**

(b) Definition. As used in this section, the term "drug paraphernalia" shall mean all equipment, products and materials of any kind which are used or intended 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 or imitation controlled 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 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 or imitation 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 or imitation 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 or imitation controlled substances.

(5) Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances or imitation controlled substances.

(6) Dilutants and adulterants, including but not limited to quinine hydrochloride, mannitol, mannite, inositol, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or imitation controlled 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 substances or imitation controlled substances.

(9) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances or imitation controlled substances.

(10) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or imitation controlled substances.

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

(12) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing [~~marijuana~~], cocaine, methamphetamine, hashish or hashish oil into the human body, **except those designed or intended for use with marijuana**, 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, **except those designed or intended for use with marijuana** [~~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. Chillums.
- l. Bongs.
- m. Ice pipes or chillers.

(c) Determination of whether object is drug paraphernalia. 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 or imitation controlled substance;
- (3) The proximity of the object, in time and space, to a direct violation of this article with relation to controlled substances;
- (4) The proximity of the object to controlled substances or imitation controlled substances;
- (5) The existence of any residue of controlled substances or imitation controlled substances 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 reasonably should know, intend to use the object to facilitate a violation of this article with relation to controlled substances. The innocence of the owner, or of anyone in control of the object, as to a direct violation of this article with relation to controlled substances shall not prevent a finding that the object is intended for use as 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 to the total sales of the business enterprise;
- (13) The existence and scope of legitimate uses for the object in the community; or
- (14) Expert testimony concerning its use.”

Note: language which is **bold, underlined** has been added; language which is [~~bracketed, stricken~~] has been removed.

Section 3. That this Ordinance shall be in full force and effect from and after its passage.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this ____ day of _____, 2023, by a vote of _____.

Douglas W. Lawson, Mayor

ATTEST:

Holly Nagy, City Clerk

APPROVED AS TO FORM:

Peter C. Edwards, City Attorney