

AN ORDINANCE AMENDING ARTICLE XI, OFFENSES CONCERNING DRUGS, OF CHAPTER 230 TO CONFORM WITH ARTICLE XIV OF THE MISSOURI CONSTITUTION.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Excelsior Springs, Missouri, as follows:

Section 1. Section 230.555 is hereby amended to read as follows (additions shown in underline, deletions shown in ~~striketrough~~):

Section 230.555. **Definitions.**

CONTROLLED SUBSTANCE

A drug, substance, or immediate precursor in Schedules I through V listed in Sections 195.005 to 195.425, RSMo., as amended.

DELIVER or DELIVERY

The actual, constructive, or attempted transfer from one person to another of drug paraphernalia or of a controlled substance, or an imitation controlled substance, whether or not there is an agency relationship, and includes a sale.

DRUG PARAPHERNALIA

Shall mean 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 or an 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 an 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. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, 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, 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, ~~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.
13. Substances used, intended for use, or designed for use in the manufacture of a controlled substance.

In determining whether an object is drug paraphernalia, the 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 any 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 Section;
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 whom 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 anyone in control of the object, as to direct violation of this Section shall not prevent a finding that the object is intended for use, or designed 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 or 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;
14. Expert testimony concerning its use; and
15. The quantity, form or packaging of the product, substance or material in relation to the quantity, form or packaging associated with any legitimate use for the product, substance or material.

IMITATION CONTROLLED SUBSTANCE

A substance that is not a controlled substance, which by dosage unit appearance (including color, shape, size and markings), or by representations made, would lead a reasonable

person to believe that the substance is a controlled substance. In determining whether the substance is an imitation controlled substance the court or authority concerned should consider, in addition to all other logically relevant factors, the following:

1. Whether the substance was approved by the Federal Food and Drug Administration for over-the-counter (non-prescription or non-legend) sales and was sold in the Federal Food and Drug Administration approved package, with the Federal Food and Drug Administration approved labeling information;
2. Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;
3. Whether the substance is packaged in a manner normally used for illicit controlled substances;
4. Prior convictions, if any, of an owner, or anyone in control of the object, under State or Federal law related to controlled substances or fraud;
5. The proximity of the substance to controlled substances;
6. Whether the consideration tendered in exchange for the non-controlled substance substantially exceeds the reasonable value of the substance considering the actual chemical composition of the substance and, where applicable, the price at which over-the-counter substances of like chemical composition sell. An imitation controlled substance does not include a placebo or registered investigational drug either of which was manufactured, distributed, possessed or delivered in the ordinary course of professional practice or research.

Section 2. Section 230.560 is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikethrough~~):

Section 230.560. Drugs – Possession.

Except as authorized by Chapter 579, RSMo., Chapter 195, RSMo., or Article XIV of the Missouri Constitution, ~~n~~No person other than a manufacturer of, or a wholesale dealer in drugs, a licensed druggist, a duly registered practicing physician, a licensed veterinarian, or a licensed dentist shall possess any drug or substance included in Schedules I through V of the Uniform Controlled Substances Act found in Chapter 195 of the Missouri Revised Statutes within the City, including, but not limited to: cocaine, opium or any of its salts, alkaloids or derivatives, choral, barbiturates, synthetic cannabinoid, any analogue or homologue of a Schedule I controlled substance, or any compound or preparation of any of them, or any amphetamine, desoxyephedrine, methylphenidate, or any salt mixture or optical isomer thereof also having a stimulating effect on the central nervous system.

Section 3. Section 230.561 is hereby added to read as follows:

Section 230.561. Marijuana — Public Consumption; Smoking

- A. No person shall consume marijuana in a public place.
- B. No person shall smoke marijuana in a public place. A violation of Section 230.561(B) shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).
- C. No person shall smoke marijuana in any place the smoking of tobacco is prohibited.
- D. 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.
 - 1. "Public place" shall not include:
 - a. 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
 - b. Any area licensed for such activity by the City.

Section 4. Section 230.562 is hereby added to read as follows:

Section 230.562. Marijuana — Sale of Accessories to Persons Under Twenty-One

- A. No person shall deliver to, transfer to, or sell to persons under twenty-one years of age marijuana or marijuana accessories.
- B. 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.

Section 5. Section 230.563 is hereby struck in its entirety, and replaced with a new Section 230.563, to read as follows:

~~Section 230.563 Drugs — Possession Of Marijuana.~~

~~A. No person shall possess marijuana within the City, except:~~

- ~~1. A Qualifying Patient for the patient's own personal use, in an amount no larger than allowed by Missouri law.~~
- ~~2. A Primary Caregiver of a Qualifying Patient in an amount no larger than allowed by Missouri law.~~
- ~~3. An owner or employee of a Medical Marijuana Facility within the enclosed building licensed as such or when delivering directly to another Medical Marijuana Facility.~~

~~B. Any person in possession of medical marijuana shall, immediately upon request of any Law Enforcement Officer produce a valid Qualifying Patient identification card, a Primary Caregiver Identification Card, or a Facility Agent Identification Card issued by the State of Missouri.~~

~~C. Any person lawfully authorized to possess medical marijuana shall maintain such marijuana in the original packaging or, if personally cultivated as allowed by law, in a sealed container clearly marked with the patient's name.~~

~~D. No person shall consume marijuana for medical use in a public place, unless provided by law.~~

Section 230.563. Marijuana — Possession by Persons Under Twenty-One, Three Ounces or Less.

- A. 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.
- B. 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.

Section 6. Section 230.564 is hereby added to read as follows:

Section 230.564. Marijuana Possession; Less than Twice the Legal Limit

- A. 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:
 - 1. For a first violation, is subject to a fine not exceeding two hundred and fifty dollars and forfeiture of the marijuana.
 - 2. For a second and subsequent violations, is subject to a fine not exceeding five hundred dollars and forfeiture of the marijuana.
 - 3. 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.
 - 4. 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.

Section 7. Section 230.566 is hereby added to read as follows:

Section 230.566. 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 correctional facility.

Section 8. Section 230.570 is hereby amended to read as follows (additions shown in underline, deletions shown in ~~striketrough~~):

Section 230.570. Unlawful Possession of Drug Paraphernalia.

- A. A person commits the offense of unlawful possession of drug paraphernalia if he or she knowingly uses, or possesses with 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 an imitation controlled substance in violation of Chapter 579, RSMo., or Chapter 195, RSMo., except as authorized by Article XIV of the Missouri Constitution.
- B. A person who violates this Section is guilty of an ordinance violation.

Section 9. Section 230.573 is hereby amended to read as follows (additions shown in underline, deletions shown in ~~striketrough~~):

Section 230.573. Unlawful Delivery or Manufacture of Drug Paraphernalia.

- A. 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 or an imitation controlled substance., except as authorized by Article XIV of the Missouri Constitution.
- B. A person who violates this Section is guilty of an ordinance violation.

Section 10. Section 230.575 is hereby amended to read as follows (additions shown in underline, deletions shown in ~~striketrough~~):

Section 230.575. Advertisement of Drug Paraphernalia or Imitation Controlled Substances.

- A. Except as authorized by Article XIV of the Missouri Constitution, ~~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.
- B. Except as authorized by Article XIV of the Missouri Constitution, ~~it is~~ unlawful for any person to place in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation with reasonable knowledge

that the purpose of the advertisement or solicitation is to promote the distribution of imitation controlled substances.

C. Any person who violates this Section is guilty of an ordinance violation.

Section 11. This Ordinance shall be in full force and effect from and after the date of its passage.

INTRODUCED IN WRITING, read by title two times, passed and approved this _____ day of _____, 2023.

Mark D. Spohn, Mayor

ATTEST:

Shannon Stroud, City Clerk

REVIEWED BY:

Molly McGovern, City Manager