

Ordinance No. 3374

An ordinance amending Chapter 16, Offenses, Article I, In General, Section 16-28.1. – Prohibiting possession, delivery or manufacture of drug paraphernalia; specifically expanding the definition of drug paraphernalia to include matters considered in determining what constitutes drug paraphernalia, and further clarifying the punishment that may be imposed for violating the ordinance; exception; penalty; repealing all ordinances to the contrary; and declaring an emergency.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROKEN ARROW:

SECTION I. That Chapter 16, Offenses, Article I, In General, Section 16-28.1. – Prohibiting possession, delivery or manufacture of drug paraphernalia, of the Broken Arrow Code, is amended to read as follows:

Sec. 16-28.1. - Prohibiting possession, delivery or manufacture of drug paraphernalia; exception; penalty.

- (a) No person shall use or possess 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 dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, 63 O.S. § 2-101 et seq.
- (b) No person shall deliver, sell, possess or manufacture drug paraphernalia knowing, or under circumstances where one reasonably should know, 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 dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, 63 O.S. § 2-101 et seq.
- (c) Subsections (a) and (b) shall not be applicable to medical or veterinary practitioners to the extent such paraphernalia is used as a part of their lawful practice of the profession. For the purposes of this section, practitioner means:
 - (1) A physician, dentist, podiatrist, veterinarian, scientific investigator, or other person who is authorized by state or federal law to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state; or
 - (2) A pharmacy, hospital, laboratory, or other institution authorized by state or federal law to distribute, dispense, or conduct research with respect to use for scientific purposes or administer marijuana or a controlled dangerous substance in the course of a registered professional practice or research in this state.
- (d) Subsection (a) shall not be applicable to the possession of paraphernalia by persons involved in the medical or veterinary equipment supply business, where such possession is a necessary and appropriate part of servicing lawful medical or veterinary practitioners.
- (e) May be fined up to \$750.00 or by imprisonment of not more than 60 days or both such fines and imprisonment.

(f) “Drug paraphernalia” defined

The term “drug paraphernalia” means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this subchapter. It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, methamphetamine, or amphetamines into the human body, such as:

- (1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (2) water pipes;
- (3) carburetion tubes and devices;
- (4) smoking and carburetion masks;
- (5) 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;
- (6) miniature spoons with level capacities of one-tenth cubic centimeter or less;
- (7) chamber pipes;
- (8) carburetor pipes;
- (9) electric pipes;
- (10) air-driven pipes;
- (11) chillums;
- (12) bongs;
- (13) ice pipes or chillers;
- (14) wired cigarette papers; or
- (15) cocaine freebase kits.

(g) Matters considered in determination of what constitutes drug paraphernalia

In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

- (1) instructions, oral or written, provided with the item concerning its use;
- (2) descriptive materials accompanying the item which explain or depict its use;
- (3) national and local advertising concerning its use;
- (4) the manner in which the item is displayed for sale;
- (5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;
- (7) the existence and scope of legitimate uses of the item in the community; and
- (8) expert testimony concerning its use.

SECTION II. Any ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

SECTION III. An emergency exists for the preservation of the public health, peace and safety, and therefore this ordinance shall become effective from and after the time of its passage and approval.

PASSED AND APPROVED and the emergency clause ruled upon separately this 1st day of December, 2015.

ATTEST:

MAYOR

(Seal) CITY CLERK

APPROVED:

ASSISTANT CITY ATTORNEY