

ORDINANCE NO. 3539

AN ORDINANCE AMENDING CHAPTER 16 OFFENSES-MISCELLANEOUS, ARTICLE I, IN GENERAL, SECTION 28, POSSESSION OF MARIJUANA AND CONTROLLED DANGEROUS SUBSTANCES; SECTION 28.1, PROHIBITING POSSESSION, DELIVERY OR MANUFACTURE OF DRUG PARAPHERNALIA; EXCEPTION; PENALTY; OF THE BROKEN ARROW CODE; 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-Miscellaneous, Article I, In General, Section 16-28, Possession of marijuana and controlled dangerous substances is hereby amended to read as follows:

Sec. 16-28. - Possession of controlled dangerous substances.

(a) It shall be unlawful and a class A offense for any person to knowingly or intentionally possess any controlled substance other than marijuana unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice.

(b) For the purpose of this section, the following definitions shall apply:

(1) *Controlled dangerous substance* means any drug, substance, or immediate precursor other than marijuana included in Schedule I, II, III, IV or V of the Uniform Controlled Dangerous Substances Act (Title 63 O.S. § 2-101 et seq.); including, but not limited to:

a. Hallucinogenic substances including mescaline, psilocybin, and various types of methoxyamphetamines.

b. Stimulants such as amphetamines and methamphetamines.

c. Barbiturates and other depressants such as amobarbital, secobarbital, pentobarbital, phenobarbital, methoqualone, phencyclidine, and diazepam.

d. *Simulated controlled dangerous substances* means any substance which is not a controlled substance nor marijuana, but which identifies itself by using a common name or slang term associated with marijuana or with the substances identified in a. through c. of this paragraph, or which indicates on its label or accompanying promotional material or concerning which it is represented that the product simulates the effect of a substance, or which by appearance, making or packaging would lead a reasonable person to believe the substance was marijuana or a controlled substance.

(2) *Marijuana* means all parts of the plant *Cannabis Sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin. This definition shall not include the mature stalks of such plant; fiber produced from such stalks; oil, cake made from the seeds of such plant, any other compound, manufacture, sale, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

(3) *Practitioner* means:

- a. A medical doctor or osteopathic physician,
- b. A dentist,
- c. A podiatrist,
- d. An optometrist,
- e. A veterinarian,
- f. A physician assistant under the supervision of a licensed medical doctor or osteopathic physician,
- g. A scientific investigator,
- h. Any other person, licensed, registered or otherwise permitted to prescribe, 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
- i. A pharmacy, hospital, laboratory or other institution licensed, registered or otherwise permitted 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.

(c) Possession of marijuana:

1. It is unlawful and a Class A offense for any person to knowingly or intentionally possess marijuana without an Oklahoma state issued medical marijuana license.
2. Possession of up to one and one-half (1.5) ounces of marijuana by persons who can state a medical condition, but not in possession of a state issued medical marijuana license, shall constitute a misdemeanor offense with a fine not to exceed Four Hundred Dollars (\$400.00) plus costs.

SECTION II. That Chapter 16-Miscellaneous, Article I, In General, Section 16-28.1, prohibiting possession, delivery or manufacture of drug paraphernalia is hereby 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, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled dangerous substance, other than medical marijuana, 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, other than medical marijuana, 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 purpose 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 cocaine, 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;
- (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, in 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.

(h) Marijuana: shall be as defined in Article I, Chapter 16, Section 16-28(b) (2).

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

SECTION IV. 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.

SECTION V. Nothing in this Ordinance is intended to permit or assist in the violation of either the Federal Controlled Substances Act or Oklahoma's Uniform Controlled Dangerous Substances Act. Furthermore, nothing in this Ordinance is intended to prevent or frustrate Federal and State enforcement of any laws or regulations applicable to the possession, use or distribution of marijuana or act as a defense to the commission of any act prohibited by Federal or State law.

PASSED AND APPROVED and the emergency clause ruled upon separately this 21st day of August, 2018.

ATTEST:

MAYOR

(Seal) CITY CLERK

APPROVED:

ACTING CITY ATTORNEY