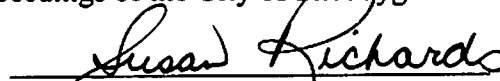


OFFICE OF THE CITY CLERK
Sheboygan, Wisconsin
CITY HALL

I hereby certify that this is a true copy of a
document from the Common Council
proceedings of the City of Sheboygan.


City Clerk

Gen. Ord. No. 24 - 16 - 17. By Alderperson Belanger. October 17, 2016.

AN ORDINANCE repealing and recreating Article IV of Chapter 30 of the Municipal Code relating to Sales of Drug Paraphernalia, and repealing and recreating Section 70-8 of the Municipal Code, entitled "Adoption of State Law Regarding Controlled Substances."

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Article IV of Chapter 30 of the Municipal Code is hereby repealed and recreated to read as follows:

"ARTICLE IV. - SALES OF DRUG PARAPHERNALIA

Sec. 30-161. Sales of Drug Paraphernalia Prohibited.

(a) *Manufacture, sale or delivery of drug paraphernalia.* No person may sell, deliver, possess with intent to deliver or manufacture with intent to deliver drug paraphernalia, as defined in §70-8(a) of this Code, 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 in violation of this chapter.

(b) *Advertisement of drug paraphernalia.* No person may place in any newspaper, magazine, internet advertisement, handbill or other publication or upon any outdoor billboard or sign 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.

(c) *Exemption.* This section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with that permitted under the provisions of Wis. Stat. Ch. 961. This section does not prohibit the possession, manufacture or use of hypodermics in accordance with that permitted under Wis. Stat. Ch. 961.

(d) *Penalty.* Any person violating any provision of this article shall be fined not less than \$250.00 nor more than \$1,000.00 for the first offense and succeeding offenses during the calendar year. Each day that such violation continues shall be deemed a separate and distinct offense and, in default of payment thereof, imprisonment in the county jail for a period not to exceed 90 days.

Sec. 30-162. Sale or gift to minors of paraphernalia for use with illegal drugs or controlled substances.

Delivery of drug paraphernalia to a minor. Any adult, as defined by Wis. Stat. §938.02(1), who violates any provision of this Article by delivering drug paraphernalia, or who sells, gives or delivers any item, effect, accessory or thing which is designed or marketed for use with illegal cannabis, drugs, controlled substances, or controlled substance analogs as defined by the state statutes to a person 17 years of age or under shall be subject to the maximum penalty authorized hereunder."

Section 2. Section 70-8 of the Municipal Code, entitled "Adoption of State Law Regarding Controlled Substances," is hereby repealed and recreated to read as follows:

"Sec. 70-8. Possession of Drug Paraphernalia and Adoption of State Law Regarding Controlled Substances.

(a) *Definitions.* In this section, "drug paraphernalia" means all equipment, products and materials of any kind which are used, designed for use, or primarily intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, selling, distributing, delivering, 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 controlled substance analog, as defined in Wis. Stat. Ch. 961. 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, selling, distributing, delivering, compounding, converting, producing, processing or preparing 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;
- (4) Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;
- (5) Scales and balances used, intended for use or designed for use in weighing or measuring 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;

- (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 packaging small quantities of controlled substances;
- (9) Capsules, balloons, envelopes or other containers used, intended for use or designed for use in packaging small quantities of controlled substances;
- (10) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;
- (11) Hypodermic syringes, needles or other objects used, intended for use or designed for use in parenterally injecting 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, including but not limited to:
 - 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. Chilams;
 - l. Bongs;
 - m. Ice pipes or chillers.

(b) *Determination of drug paraphernalia.* In determining whether an object is drug paraphernalia, the following shall be considered, without limitation of other considerations a court shall deem relevant:

- (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 village, municipal, state or federal law relating to any controlled substances;
- (3) The proximity of the object in time and space to a direct violation of this chapter;

- (4) The proximity of the object to controlled substances or controlled substance analogs;
- (5) The existence of any residue of controlled substances or controlled substance analogs 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 the person knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter. The innocence of the owner or of anyone in control of the object as to a direct violation of this chapter shall not prevent a finding that the object is intended for use or designed for use as drug paraphernalia;
- (7) Oral or written instructions 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 sale of the business enterprise;
- (13) The existence and scope of legitimate uses for the object in the community;
- (14) Expert testimony concerning its use.

(c) *Prohibited Activities.*

- (1) *Possession of drug paraphernalia.* No person may use, or possess 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 in violation of this chapter. Possession of drug paraphernalia shall give rise to a rebuttable presumption of prohibited use.
- (2) *Manufacture, sale or delivery of drug paraphernalia.* No person may sell, 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 in violation of this chapter.
- (3) *Delivery of drug paraphernalia to a minor.* Any adult, as defined by Wis. Stat. §938.02(1), who violates subsection (c)(1) above

by delivering drug paraphernalia to a person 17 years of age or under shall be subject to the maximum penalty authorized hereunder.

- (4) *Advertisement of drug paraphernalia.* No person may place in any newspaper, magazine, internet advertisement, handbill or other publication or upon any outdoor billboard or sign 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.
- (d) *Exemption.* This section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with that permitted under the provisions of Wis. Stat. Ch. 961. This section does not prohibit the possession, manufacture or use of hypodermics in accordance with that permitted under Wis. Stat. Ch. 961.
- (e) *Penalty.* Any person violating any provision of this article shall be fined not less than \$250.00 nor more than \$1,000.00 for the first offense and succeeding offenses during the calendar year. Each day that such violation continues shall be deemed a separate and distinct offense and, in default of payment thereof, imprisonment in the county jail for a period not to exceed 90 days.
- (f) *Effect of changes to State Statutes.* Pursuant to §961.577, Wis. Stats., any amendments that shall be made from time to time after the date of this ordinance to the following statutes regarding possession of drug paraphernalia, exclusive of penalties, are hereby adopted by reference and made offenses punishable as a violation of this Code: §961.573(1) and (2), §961.574(1) and (2), and §961.575(1) and (2), Wis. Stats."

Section 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

John B. J.

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the 21st day of November, 2016.

Dated November 29 2016. Shawn Richards, City Clerk

Approved November 29 2016. Michael Hancock, Mayor
Proceedings Published November 28, 2016.
Ordinances Published November 28, 2016.

Certified November 29, 2016 to - Atty.; Muni Code; Ord. Book; Police Dept.; Municipal Court