

ORDINANCE 2295

AN ORDINANCE AMENDING CHAPTER 132 OF THE HERMISTON CODE OF ORDINANCES, ENTITLED “DRUG PARAPHERNALIA.”

Whereas, the staff of the City of Hermiston is conducting a major review of the City’s Code of Ordinances, now, therefore,

The City of Hermiston ordains as follows:

(New language is in red and underlined and repealed language has a ~~line through it~~.)

Section 1. Section 132.01 of Chapter 132 of the Hermiston Code of Ordinances is amended to read:

132.01 DEFINITION.

For the purpose of this ~~chapter~~ Chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

CONTROLLED SUBSTANCE. A drug or its immediate precursor classified in Schedules I through V under the federal Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS 475.035. The use of the term “precursor” in this paragraph does not control and is not controlled by the use of the term “precursor” in ORS 475.752 to 475.980. For purposes of this Chapter only, “controlled substance” does not include: the plant Cannabis family Cannabaceae, any part of such plant whether growing or not, resin extracted from any part of such plant, the seeds of such plant, or any compound, manufacture, salt derivative, mixture or preparation of such plant, resin or seed of such plant.

DRUG PARAPHERNALIA. 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 in violation of this ~~chapter~~ Chapter. It includes, but is not limited to:

- (1) Kits ~~used, intended for use, or designed~~ marketed for use or designed for use in unlawfully 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;
- (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, marihuana;~~ Lighting equipment specifically designed for growing controlled substances;

(8) ~~Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances~~ Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(9) ~~Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances~~ Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing a controlled substance into the human body, 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 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.

~~(10) — Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;~~

~~(11) — 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, 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 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. (Ord. 1408, passed 4-12-82; Am. Ord. 2202, passed 7-8-13)~~

For purposes of this Chapter, “drug paraphernalia does not include hypodermic syringes or needles.

MARIJUANA PARAPHERNALIA. An object that is marketed to be used for, or that is designed for, 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 marijuana item. “Marijuana paraphernalia” does not include hypodermic syringes or needles.

Section 2. Section 132.02 of Chapter 132 of the Hermiston Code of Ordinances is amended to read:

132.02 DETERMINATIONS OF ~~OBJECTS~~ DRUG OR MARIJUANA 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:

- (A) ~~Statements by an owner or by anyone in control of the object concerning its use~~ Any oral or written instruction provided with the object related to the object's use;
- (B) ~~Prior convictions, if any, of an owner, or of anyone in control of the object, under any city, state, or federal law relating to any controlled substance~~ Any descriptive material packaged with the object that explains or depicts the object's use;
- (C) ~~The proximity of the object, in time and space, to a direct violation of this chapter~~ Any national or local advertising related to the object's use;
- (D) ~~The proximity of the object to controlled substances~~ Any proffered expert testimony related to the object's use;
- (E) ~~The existence of any residue of controlled substances on the object~~ The manner in which the object is displayed for sale, if applicable; and
- (F) ~~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 Chapter; the innocence of an 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~~ Any other proffered evidence substantiating the object's intended use.
- (G) ~~Instructions, oral or written, provided with the object concerning its use;~~
- (H) ~~Descriptive materials accompanying the object which explain or depict its use;~~
- (I) ~~National and local advertising concerning its use;~~
- (J) ~~The manner in which the object is displayed for sale;~~
- (K) ~~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;~~
- (L) ~~Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;~~
- (M) ~~The existence and scope of legitimate uses for the object in the community;~~

~~(N) Expert testimony concerning its use. (Ord. 1408, passed 4-12-82)~~

Section 3. Section 132.03 of Chapter 132 of the Hermiston Code of Ordinances is amended to read:

132.03 POSSESSION, MANUFACTURE AND SALE.

(A) It is unlawful for any person to ~~use~~ sell or deliver, or to possess with intent to ~~use, drug paraphernalia~~ sell or deliver or manufacture with the intent to sell or deliver drug paraphernalia knowing that it will be used to unlawfully 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) It is unlawful for any person to ~~deliver, sell, possess, with intent to deliver or sell, or manufacture with intent to deliver or sell, drug paraphernalia, knowing 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.~~

It is unlawful for any person to sell or deliver, to possess with intent to sell or deliver or to manufacture with intent to sell or deliver marijuana paraphernalia to a person who is under 21 years of age, knowing that the marijuana paraphernalia will be used for the purpose for which it was marketed or designed.

(C) 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.~~

It is unlawful for any business selling marijuana paraphernalia to locate within 1,000 feet of any public or private elementary, junior high or high school or in a location other than permitted under the zoning code;

(D) It is unlawful for any business selling drug paraphernalia to ~~locate within 1,000 feet of any public or private elementary, junior high or high school;~~

Paragraph (A) of this section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies or other persons licensed, registered or otherwise permitted by state or law to dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research.

(E) ~~This section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct was in accordance with appropriate statutes;~~

Drug or marijuana paraphernalia made unlawful under this Chapter may be seized if:

(1) the paraphernalia is subject to an adverse court judgment under state law;

(2) the seizure is in the course of a constitutionally valid arrest or search;

(3) the owner or person in possession of the paraphernalia consents or

(4) the seizure is pursuant to an order of a court.

~~(F) Any drug paraphernalia used in violation of this section shall be seized and forfeited to the city.~~

If at trial or a hearing, a court finds any item received into evidence to be drug paraphernalia, the court may order the item forfeited to the City upon motion of the City attorney or prosecutor.

The drug paraphernalia may be destroyed, or if not contraband, sold, at the discretion of the City. (Ord. 1408, passed 4-12-82; Am. Ord. 2202, passed 7-8-13) Penalty, see § 132.99

Section 4. Section 132.99 of Chapter 132 of the Hermiston Code of Ordinances is amended to read:

132.99 PENALTY.

Any person who violates any of the provisions of this ~~chapter~~ **Chapter** commits a Class A violation. For each day that a violation shall continue, ~~every~~ such person shall be deemed guilty of a separate offense. Nothing in this Chapter limits the authority of the City to bring an action for injunctive or other relief. (Ord. 1408, passed 4-12-82)

Section 5. Effective date. This ordinance shall take effect on the 30th day after its adoption.

ADOPTED by the Common Council this 10th day of February 2020.

SIGNED by the Mayor this 10th day of February 2020.

Dr. David Drotzmann, Mayor

ATTEST:

Lilly Alarcon-Strong, CMC City Recorder