



Legislation Text

File #: 051409, Version: 3

051409 Substitute 3

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A substitute ordinance relating to drug paraphernalia.

106-36 rc

Recent legislation, 2005 Wisconsin Act 116, authorizes cities, villages and towns to enact and enforce ordinances prohibiting the possession, manufacture or delivery of drug paraphernalia by persons 17 years of age and older. Prior legislation authorized the enactment and enforcement of municipal ordinances prohibiting the possession, manufacture, or delivery of drug paraphernalia by a person under 17 years of age. Such ordinances must prohibit conduct that is the same as that prohibited by Wisconsin statutes. The current code provisions closely parallel the new state legislation but do not reflect technical revisions to the state statutes over the past 15 years (1991 Wisconsin Act 140; 1995 Wisconsin Act 448). This ordinance repeals and recreates the definition of drug paraphernalia, the description of factors that shall be considered in making determinations relating to drug paraphernalia, and the description of prohibited conduct so that the City may enforce its provisions relative to drug paraphernalia. Further, this ordinance provides penalties up to the maximum permitted under state law for possession or use of drug paraphernalia (\$500 and 30 days imprisonment for nonpayment), for manufacture, delivery or possession with intent to deliver drug paraphernalia (\$1,000 and 90 days imprisonment for nonpayment), and for delivery of drug paraphernalia by a person 17 years of age or over to a person 17 or under who is at least 3 years younger than the violator (\$10,000 and 90 days imprisonment for nonpayment).

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 106-36 of the code is repealed and recreated to read:

106-36. Drug Paraphernalia. 1. DEFINITION. 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, 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 ch. 961, Wis. Stats., in violation of this section. It includes, but is not limited to:

- 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 or controlled substance analog can be derived.
- Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs.
- Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance.
- Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs.

- e. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances or controlled substance analogs.
- f. 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 controlled substance analogs.
- g. 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.
- h. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs.
- i. Capsules, balloons, envelopes or other containers used, intended for use or designed for use in packaging small quantities of controlled substances or controlled substance analogs.
- j. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or controlled substance analogs.
- k. 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:
 - k-1. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.
 - k-2. Water pipes.
 - k-3. Carburetion tubes and devices.
 - k-4. Smoking and carburetion masks.
 - k-5. 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.
 - k-6. Miniature cocaine spoons and cocaine vials.
 - k-7. Chamber pipes.
 - k-8. Carburetor pipes.
 - k-9. Electric pipes.
 - k-10. Air-driven pipes.
 - k-11. Chillums.
 - k-12. Bongs.
 - k-13. Ice pipes or chillers.

2. DETERMINATION OF DRUG PARAPHERNALIA. In determining whether an object is drug paraphernalia, the following shall be considered:

- a. Statements by an owner or by anyone in control of the object concerning its use.
- b. The proximity of the object in time and space to a direct violation of this section.
- c. The proximity of the object to controlled substances or controlled substance analogs.
- d. The existence of any residue of controlled substances or controlled substance analogs on the object.
- e. 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 section. The innocence of an owner or of anyone in control of the object as to a direct violation of this section shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia.
- f. Oral or written instructions provided with the object concerning its use.
- g. Descriptive materials accompanying the object which explain or depict its use.
- h. Local advertising concerning its use.
- i. The manner in which the object is displayed for sale.
- j. 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.

k. The existence and scope of legitimate uses for the object in the community.

L. Expert testimony concerning its use.

3. PROHIBITED ACTIVITIES. a. **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 or controlled substance analog in violation of this section.

b. **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 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 controlled substance analog in violation of this section.

c. **Delivery of Drug Paraphernalia to a Minor.** Any person 17 years of age or over who violates par. b by delivering drug paraphernalia to a person under 17 years of age who is at least 3 years younger than the violator is guilty of a special offense.

d. **Advertisement of Drug Paraphernalia.** No person may place in any newspaper, magazine, handbill or other publication, or upon any outdoor billboard or sign, any advertisement, knowing 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.

e. **Exemptions.**

e-1. This subsection does not apply to hypodermic syringes, needles and other objects used or intended for use in parenterally injecting substances into the human body in accordance with ch. 961, Wis. Stats.

e-2. This subsection does not apply to any items, including pipes, papers and accessories, which are designed for use or primarily intended for use with tobacco products.

4. PENALTIES. a. Any drug paraphernalia used in violation of this section shall be seized and forfeited to the city.

b. Any person who violates sub. 3- a or d shall, upon conviction, be subject to a forfeiture of not more than \$500, together with the costs of prosecution, and upon default of payment be imprisoned in the county jail or house of correction until the costs are paid, but not to exceed 30 days.

c. Any person who violates sub 3-b shall, upon conviction, be subject to a forfeiture of not more than \$1000, together with the costs of prosecution, and upon default of payment be imprisoned in the county jail or house of correction until the costs are paid, but not to exceed 90 days.

d. Any person who violates sub 3-c shall, upon conviction, be subject to a forfeiture of not more than \$10,000, together with the costs of prosecution, and upon default of payment be imprisoned in the county jail or house of correction until the costs are paid, but not to exceed 90 days.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney
Date: _____

LRB06057-5
RLW
3/31/2006