

ORDINANCE

An Ordinance to amend Section 14.300 of the Manitowoc Municipal Code regulating Drug Paraphernalia.

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

Section 1. Section 14.300 is amended to read as follows:

14.300 Drug Paraphernalia.

~~(1) Possession of Drug Paraphernalia. Drug paraphernalia as used in this section shall be defined as stated under Wis. Stat. § 961.571, as revised or amended from time to time.~~

~~(2) No person may use, or possess with the primary 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 introduce into the human body a controlled substance or controlled substance analog in violation of Wis. Stat. Ch. 961.~~

~~(3) This section applies only to persons who do not have a previous conviction for possession of drug paraphernalia or for any other drug-related offense.~~

~~(4) All provisions of Wis. Stat. §§ 961.573(1) and (2), 961.50 and 938.344(2c), as revised or amended from time to time, are hereby incorporated by reference.~~

~~(5) Penalty. A person who violates any provision of this section is subject to a forfeiture of not less than \$50.00 nor more than \$500.00, and shall have their operating privileges suspended for not less than six months nor more than five years.~~

(1) **Definitions:** In this section, "drug paraphernalia" means 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, 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, as defined in Wis. Stat. Ch. 961, in violation of this chapter. It includes but is not limited to:

- a. 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.
- b. Kits used, intended for use or designed for use in manufacturing, selling, distributing, delivering, compounding, converting, producing, processing or preparing controlled substances.
- c. Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance.
- d. Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.
- e. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances.
- 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.
- 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 packaging small quantities of controlled substances.
- i. Capsules, balloons, envelopes or other containers used, intended for use or designed for use in packaging small quantities of controlled substances.
- j. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances.
- k. Hypodermic syringes, needles or other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body.
- l. 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:
 - i. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls.
 - ii. Water pipes.
 - iii. Carburetion tubes and devices.
 - iv. Smoking and carburetion masks.
 - v. 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.
 - vi. Miniature cocaine spoons and cocaine vials.
 - vii. Chamber pipes.
 - viii. Carburetor pipes.
 - ix. Electric pipes.
 - x. Air-driven pipes.
 - xi. Chillums.
 - xii. Bongs.
 - xiii. Ice pipes or chillers.

(2) **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:

- a. Statements by an owner or by anyone in control of the object concerning its use.
- b. 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.
- c. The proximity of the object in time and space to a direct violation of this chapter.
- d. The proximity of the object to controlled substances.
- e. The existence of any residue of controlled substance on the object.
- 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 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.

- g. Oral or written instructions 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 to the total sale of the business enterprise.
- m. The existence and scope of legitimate uses for the object in the community.
- n. 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 in violation of this chapter. Possession of drug paraphernalia shall give rise to a rebuttable presumption of prohibited use.
- 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, 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.
- c. Delivery of drug paraphernalia to a minor. Any adult, as defined by Wis. Stat. § 938.02(1), who violates Subsection (3)b. by delivering drug paraphernalia to a person 17 years of age or under shall be subject to the maximum penalty authorized hereunder.
- d. 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.

- (4) **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.

Section 2. This ordinance shall take effect the day after publication.

Introduced _____

Adopted _____

Approved _____

Justin M. Nickels, Mayor

Fiscal Impact: \$???
Funding Source: ???
Finance Director Approval:
Approved as to form:

Drafted by EMM