

Ordinance No. 971

An ordinance amending Chapter 12 Public Offenses, Article 4. Drugs and Drug Paraphernalia of the Code of the City of Lansing, Kansas as adopted by Ordinance No. 953.

BE IT ORDAINED by the Governing Body of the City of Lansing, Kansas:

SECTION 1: Chapter 12 Public Offenses, Article 4. Drugs and Drug Paraphernalia, Section 12-401 through 12-404 are amended as follows:

ARTICLE 4. DRUGS AND DRUG PARAPHERNALIA

12-401 DEFINITIONS

For the purposes of this Article, the following words and phrases shall be defined as follows:

- A. Board means the Kansas Board of Pharmacy.
- B. Controlled Substance means any drug, substance, or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113 and subsequent amendments and modifications to these sections.
- C. Controlled substance analog means a substance that is intended for human consumption and:

The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;

Which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or

With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on

the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

Controlled substance analog does not include:

A controlled substance;

A substance for which there is an approved new drug application; or

A substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act (21 U.S.C. Sec 355) to the extent conduct with respect to the substance is permitted by the exemption.

- D. Distribute means the actual, constructive or attempted transfer from one person to another of some item, whether or not there is an agency relationship. Distribute shall include, but is not limited to, sale, offer for sale, or any act that causes some item to be transferred from one person to another. It does not include acts of administering, dispensing, or prescribing a controlled substance as authorized by the Pharmacy Act of the state of Kansas, the Uniform Controlled Substances Act, or otherwise authorized by law.
- E. Drug Paraphernalia means all equipment and materials of any kind which are used, or primarily intended 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 K.S.A. 21-5701 Crimes Involving Controlled Substances, *et. seq.*, and amendments thereto. Drug paraphernalia shall include, but not be limited to, the items listed in K.S.A. 21-5701 and its subsections, and amendments thereto. “Drug paraphernalia” shall include, but is not limited to:
1. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;

2. Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;
3. Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;
4. Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;
5. Scales and balances used or intended for use in weighing or measuring controlled substances;
6. Diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;
7. Separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;
8. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;
9. Capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;
10. Containers and other objects used or intended for use in storing or concealing controlled substances;
11. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;
12. Objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), methamphetamine or amphetamine 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, bongos or smoking pipes designed to draw smoke through water or another cooling device;
- c) Carburetion pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for inhalation;
- d) Smoking and carburetion masks;
- e) Roach clips, 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 smoking pipes;
- h) Carburetor smoking pipes;
- i) Electric smoking pipes;
- j) Air-driven smoking pipes;
- k) Chillums;
- l) Bongos;
- m) Ice pipes or chillers;
- n) Any smoking pipe manufactured to disguise its intended purpose;
- o) Wired cigarette papers; or
- p) Cocaine freebase kits.

“Drug paraphernalia” shall not include any products, chemicals, or materials described in subsection (a) of K.S.A. 2012 Supp. 21-5709, and amendments thereto.

- F. Immediate precursor means a substance which the board has found to be and by rule and regulation designates as being the principle compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.
- G. Isomer means all enantiomers and diastereomers.
- H. Marijuana means all parts of all varieties of the plant *Cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, or preparation of the plant, its seeds, or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt or derivative mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake of the sterilized seed of the plant which is incapable of germination. Marijuana shall be interpreted to mean any alternate spellings including, but not limited to, Marihuana.
- I. Person means individual, corporation, government, or government subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.
- J. Possession means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.
- K. Simulated Controlled Substance means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.
- L. Tetrahydrocannabinol means any material, compound, mixture, or preparation which contains any quantity of the synthetic equivalent of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers, Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers, Delta 3,4 cis or trans tetrahydrocannabinol, and their optical isomers. Compounds of these structures are covered, regardless of numerical designations of atomic positions, as are their salts, isomers, and salts of isomers.

12-402 POSSESSION OF MARIJUANA AND THC, UNLAWFUL

Except as otherwise authorized by Kansas Law, it shall be unlawful for any person to possess any of the following controlled substance or controlled substance analogs there of: (1) any hallucinogenic drug designated in K.S.A. 65-4105(d) to include marijuana or tetrahydrocannabinol.(See K.S.A 21-5706(b)(3))

12-403 POSSESSION OF DRUG PARAPHERNALIA AND SIMULATED CONTROLLED SUBSTANCES

- A. Except as otherwise authorized by Kansas Law, it shall be unlawful for any person to use or possess with the intent to use:
 - 1. Any simulated controlled substance. (See K.S.A. 21-5713)
 - 2. Any drug paraphernalia to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance. (See K.S.A. 21-5709)
- B. No person shall deliver, possess with intent to deliver or cause to be delivered any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance.
- C. In determining whether an object is drug paraphernalia, the finder of fact shall consider, in addition to all other logically relevant factors, the following: Statements of the owner or person in control of an object concerning its use;
 - 1. Prior convictions, if any, of an owner or person in control of the object under any state or federal law relating to any controlled substance;
 - 2. The proximity of the object, in time and space, to a direct violation of K.S.A.21-5701 through 21-5717 and amendments thereto;

3. The proximity of the object to controlled substances;
4. The existence of any residue of controlled substances on the object;
5. Direct or circumstantial evidence of the intent of an owner or person in control of an object, to deliver it to a person the owner or person in control of an object knows, or should reasonably know, intends to use the object to facilitate a violation of K.S.A.21-5701 through 21-5717, and amendments thereto. The innocence of an owner or person in control of the object as to a direct violation of K.S.A.21-5701 through 21-5717 shall not prevent a finding that the object is intended for use as drug paraphernalia;
6. Oral or written instructions provided with the object concerning its use;
7. Descriptive materials accompanying the object which explain or depict its use;
8. National and local advertising concerning the object's use;
9. The manner in which the object is displayed for sale;
10. Whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community, such as a distributor or dealer of tobacco products;
11. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
12. The existence and scope of legitimate uses for the object in the community;
13. Expert testimony concerning the object's use;
14. Any evidence that alleged paraphernalia can or has been used to store a controlled substance or to introduce a controlled substance into the human body as opposed to any legitimate use for the alleged paraphernalia; or

15. Advertising of the item in magazines or other means which specifically glorify, encourage or espouse the illegal use, manufacture, distribution or cultivation of controlled substances.

D. The fact that an item has not yet been used or did not contain a controlled substance at the time of the seizure is not a defense to a charge that the item was possessed with the intention for use as drug paraphernalia. (See K.S.A. 21-5711)

12-404

PENALTIES

- A. Violation of 12 -402 is a class A nonperson misdemeanor. The sentence for which shall be a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed one year, and/or a fine not to exceed \$2,500, unless the substance involved is marijuana, as designated in K.S.A. 65-4105(d), and amendments thereto, then it is a:
1. Class B nonperson misdemeanor, except as provided in section A(2), the sentence for which shall be a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed six months, and/or a fine not to exceed \$1,000;
 2. Class A nonperson misdemeanor if that person has one prior conviction under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution or a substantially similar offense. The sentence for which shall be a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed one year, and/or a fine not to exceed \$2,500.

It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog. (see K.S.A. 21-5706)

B. Violation of 12-403 is a Class A nonperson misdemeanor. The sentence for which shall be a definite term of confinement in the

city or county jail which shall be fixed by the court and shall not exceed one year, and/or a fine not to exceed \$2,500.

- C. If the court finds substantial and compelling reasons to do so, the court may suspend all or part of the fine established by this section on such conditions as the court directs. In making the determination regarding whether suspension of all or part of the fine is within the interests of justice, the court shall consider, but is not limited to, the following factors.
1. The financial status of the defendant.
 2. The amount of controlled substance or contraband possessed.
 3. The lack of criminal history of the defendant.
 4. Any drug treatment program voluntarily completed by the defendant before sentencing but subsequent to being charged under this article.
 5. The defendant's level of cooperation with law enforcement including the truthful identification of the source of the controlled substance or contraband possessed by the defendant.
- D. Any person under the age of 21 who is convicted of a charge alleging a violation of Section 12-402 or 12-403 of this Article shall be required by the Court to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by the statute for such evaluation. If the judge finds the person is indigent, the fee may be waived. Any person convicted of a violation of any other provision of this Article may be required by the Court submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by the statute for such evaluation. If the judge finds the person is indigent, the fee may be waived. The Court may require the offender to attend and successfully complete a drug abuse education, counseling or treatment program. Any drug

abuse evaluation, counseling or treatment ordered under this section for a violation of Section 12-402 or 12-403 of this Article shall be substantially equivalent to the United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration's Brief Counseling for Marijuana Dependence.

- E. Any person who is diverted on a charge alleging a violation of Section 12-402 or 12-403 of this Article shall be required by the prosecutor to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by the statute for such evaluation. Any person diverted on a charge alleging a violation of any other provision of this Article may be required by the prosecutor to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by the statute for such evaluation. Based upon the results of such evaluation, the offender may be required to attend a drug abuse education, counseling or treatment program as a condition of such diversion agreement. Any drug evaluation, counseling or treatment ordered under this section for a violation of Section 12-402 or 12-403 of this Article shall be substantially equivalent to the United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration's Brief Counseling for Marijuana Dependence.
- F. The Municipal Judge shall order any person convicted of a charge alleging a violation of Section 12-402 or 12-403 of this Article to pay the laboratory analysis fees specified in K.S.A. 28-176, and amendments thereto, as additional costs in the case provided that forensic laboratory services are rendered or administered in conjunction with the case. Any diversion agreement for a charge alleging a violation of Section 12-402 or 12-403 shall also contain a provision requiring the defendant to pay such laboratory analysis fees provided that forensic laboratory services are rendered in conjunction with the case.

SECTION 2. AMEND. This ordinance shall amend Section 12-401 through 12-404 of the Lansing City Code, 2015 Edition as adopted by Ordinance No. 953.

SECTION 3. SEVERABILITY. If any section, clause, sentence, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by a court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.

SECTION 4. This ordinance shall take effect from and after its passage, approval and publication in the official City newspaper.

PASSED AND APPROVED by the governing body of the City of Lansing this 1st day of September, 2016.

{SEAL}

Gene Kirby, Mayor

Attest:

Sarah Bodensteiner, City Clerk

APPROVED AS TO FORM:

Catalina Thompson, City Prosecutor

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CITY OF LANSING
FORM OF SUMMARY FOR PUBLICATION OF ORDINANCE

Ordinance No. 971: An Ordinance Amending Chapter 12 Public Offenses, Article 4. Drugs and Drug Paraphernalia of the Code of the City of Lansing, Kansas as adopted by Ordinance No. 953.

Pursuant to the general laws of the State, a general summary of the subject matter contained in this ordinance shall be published in the official City newspaper in substantially the following form:

Ordinance No. 971 Summary:

On September 1, 2016, the City of Lansing, Kansas, adopted Ordinance No. 971, amending Chapter 12 Public Offenses, Article 4. Drugs and Drug Paraphernalia of the Code of the City of Lansing, Kansas adopted by Ordinance No. 953. A complete copy of this ordinance is available at www.lansing.ks.us or at City Hall, 800 First Terrace, Lansing, KS 66043. This summary certified by Catalina Thompson, City Prosecutor.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: September 1, 2016

Catalina Thompson, City Prosecutor