



LEGAL DIVISION
400 S. Vine St., Urbana, IL 61801
P.O. Box 219, Urbana, IL 61803-0219
(217) 384-2464
Fax: (217) 384-2460

DATE: May 3, 2016
TO: City Council
CC: Mayor Prussing, Chief Connolly, HRO Bautista, Chief of Staff Monson
FROM: James Simon, City Attorney

RE: Drug Paraphernalia Ordinance.

At the April 25, 2016 Committee of the Whole meeting, the Committee requested the Legal Division to draft an ordinance which reduces the fine for violating the City's drug paraphernalia ordinance (Urbana City Code Sec. 15-67).

The City Attorney provided the City Council/Committee of the Whole with a memorandum dated March 29, 2016 which addresses the complex issues of amending the City's drug paraphernalia ordinance since that ordinance deals with paraphernalia which may be used to personally consume cannabis and/or a controlled substance. As discussed in that memorandum, the issue is complex because (i) drug paraphernalia is just about anything which facilitates the consumption of cannabis and/or a controlled substance; (ii) possession of cannabis for personal consumption in excess of 30 grams constitutes a felony; (iii) possession of controlled substances constitutes a felony; and (iv) possession of drug paraphernalia which may be used to facilitate the sale or delivery of cannabis and/or controlled substances which, in most cases, constitutes a felony.

The attached draft ordinance, if adopted, would allow for a reduction of the City's fine for violating the paraphernalia ordinance where paraphernalia is used for the personal human consumption of cannabis alone while leaving in place the fine for possession of drug paraphernalia used in the personal consumption of controlled substances. The draft ordinance does not address possession of drug paraphernalia which could be used to facilitate the sale or delivery of cannabis in quantities in excess of 10 grams or any controlled substance since such conduct and possessions constitute felonies over which the City has no lawful to define or regulate. The draft ordinance also incorporates language from the Drug Paraphernalia Control Act (720 ILCS 600/1 *et seq.*) which attempts to clarify the types of paraphernalia which are typically associated with the personal inhaling, ingesting and introducing of cannabis in the human body. Finally, the draft ordinance contains a fine of \$50.00 for possession of cannabis drug paraphernalia. The \$50.00 fine is consistent with what the City Council previously approved for violation of the City's cannabis possession ordinance (UCC Sec. 15-66).

Attached are statistics which concern the issuance of tickets for violating the City's drug paraphernalia ordinance. The statistics are broken down by race. The Legal Division draws no conclusions from the statistics and did not consider these statistics when drafting the attached ordinance.

ORDINANCE NO. 2016-05-036

**AN ORDINANCE AMENDING URBANA CITY CODE SECTIONS 15-67
AND 1-18 - POSSESSION OF CANNABIS PARAPHERNALIA AND PENALTY**

(Reduction of Fine for Cannabis Paraphernalia Possession from \$300 to \$50)

WHEREAS, the City of Urbana ("City") is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, including the power to regulate for the protection of the public health, safety, and welfare; and

WHEREAS, the Illinois Constitution of 1970 bars home rule units of local government from defining and providing for the punishment of a felony (ILCS Const. Art. VII, Section 6(d)(2)); and

WHEREAS, the Cannabis Control Act (720 ILCS 550/1 *et seq.*) provides that it is unlawful for any person to knowingly possess cannabis and that possession of more than 30 grams of cannabis constitutes a felony (720 ILCS 550/4); and

WHEREAS, the Illinois Controlled Substances Act (720 ILCS 570/1) provides that, unless otherwise authorized by the said Act, it is unlawful for any person to knowingly possess a controlled or counterfeit substance and that such violation (other than an anabolic steroid) will constitute a felony (720 ILCS 570/402); and

WHEREAS, the Drug Paraphernalia Control Act (720 ILCS 600/1 *et seq.*) declares that the knowing possession of an item of drug paraphernalia with the intent to use it in order to ingest, inhale, or otherwise introduce cannabis or a controlled substance into the human body or for preparing cannabis or a controlled substance for such use constitutes a misdemeanor; and

WHEREAS, the City Council has adopted an ordinance (Ord. No. 2008-09-103) (UCC 15-67) which prohibits the possession of drug paraphernalia with intent to use it in ingesting, inhaling, or otherwise introducing cannabis or a controlled substance into the human body or in preparing cannabis or a controlled substance for that use; and

WHEREAS, currently the fine for violating the City's drug paraphernalia ordinance, whether such paraphernalia is used to introduce cannabis or a controlled substance into the human body, is \$300.00; and

WHEREAS, the City Council finds that the public health, safety, and welfare will best be protected by distinguishing the use of cannabis drug paraphernalia from the use of controlled substance drug paraphernalia; and

WHEREAS, the City Council now deems it appropriate to amend the City's drug paraphernalia ordinance in order to distinguish the use of such paraphernalia to inhale, ingest, or otherwise introduce cannabis into the human body from inhaling, ingesting, or otherwise introducing a controlled substance into the human body and to create separate fines relative thereto.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

Urbana City Code Chapter 15, "Miscellaneous Offenses and Provisions", Article IV, "Offenses Affecting Public Health, Safety and Decency", Section 15-67, "Drug paraphernalia control" shall be and hereby is amended with strike-through indicating language to be deleted and underlining indicating language to be included as follows:

Sec. 15-67. - Drug paraphernalia control.

(a) Definitions.

- (1) Cannabis shall have the meaning ascribed to it in Section 15-66 of this article, as amended from time to time.
- (2) Controlled substance shall have the meaning ascribed to it in section 102 of the Illinois Controlled Substances Act, 720 ILCS 570/100 et seq., as amended from time to time, as if that definition were incorporated herein.
- (3) Drug paraphernalia shall mean all equipment, products and materials of any kind, other than methamphetamine manufacturing materials as defined in section 10 of the Methamphetamine Control and Community Protection Act, which are intended to be used unlawfully 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 cannabis or a controlled substance in violation of the Cannabis Control Act, the Illinois Controlled Substances Act, or the Methamphetamine Control and Community Protection Act, as these acts are amended from time to time.
Drug paraphernalia shall include but shall not be limited to:
 - a. water pipes;
 - b. carburetion tubes and devices;

- c. smoking and carburetion masks;
- d. miniature cocaine spoons and cocaine vials;
- e. carburetor pipes;
- f. electric pipes;
- g. air-driven pipes;
- h. chillums;
- i. bongs;
- j. ice pipes or chillers;
- k. any item whose purpose, as announced or described by the seller, is for use in violation of this Act;
- l. any item which is defined as drug paraphernalia in the Drug Paraphernalia Control Act.

- (b) *Possession of drug paraphernalia prohibited.* No person shall knowingly possess an item of drug paraphernalia with the intent to use it in ingesting, inhaling, or otherwise introducing cannabis or a controlled substance into the human body or in preparing cannabis or a controlled substance for that use.
- (c) *Exemptions.* This section shall not apply to the following:
 - (1) A person who is legally authorized to possess hypodermic syringes or needles under the Hypodermic Syringes and Needles Act, 720 ILCS 635/0.01 et seq., as amended from time to time.
 - (2) Items marked for use in the preparation, compounding, packaging, labeling, or other use of cannabis or a controlled substance as an incident to lawful research, teaching or chemical analysis and not for sale or personal use.

- (3) Items marketed for, or historically and customarily used in connection with the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, or inhaling of tobacco or any other lawful substance. Items exempt under this subsection include, but are not limited to, garden hoes, rakes, sickles, baggies, tobacco pipes, and cigarette-rolling papers.
 - (4) Items described in subsection (a) that are marketed for decorative purposes, where such items have been rendered completely inoperable or incapable of being used as drug paraphernalia.
 - (5) Items which are necessary for ingesting, inhaling, or otherwise introducing medical cannabis into the human body pursuant to a lawful prescription issued pursuant to the Compassionate Use of Medical Cannabis Pilot Program Act as amended from time to time.
 - (6) Items which are used in the operation of a medical cannabis cultivation center which is registered by the Illinois Department of Agriculture pursuant to the Compassionate Use of Medical Cannabis Pilot Program Act as amended from time to time.
 - (7) Items which are used in the operation of a medical cannabis dispensing organization which is registered by the Illinois Department of Financial and Professional Regulation to dispense medical cannabis pursuant to Compassionate Use of Medical Cannabis Pilot Program Act as amended from time to time.
- (d) *Considerations for trier of fact.* In determining whether or not a particular item is an item of drug paraphernalia, as defined in subsection (a)(3) or is an item exempt under subsection (c) of this section, the trier of fact ~~should~~may consider, in addition to all other logically relevant factors and facts, the

following:

- (1) The general, usual, customary, and historical use to which the item involved has been put;
- (2) Expert evidence concerning the ordinary or customary use of the item;
- (3) Descriptive materials accompanying the object that explain or depict its use;
- (4) National and local advertising concerning its use;
- (5) 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;
- (6) The manner, place, and circumstances in which the item is possessed;
- (7) Statements by an owner or by anyone in control of the object concerning its use;
- (8) Prior convictions, if any, of an owner or of anyone in control of the object, under any state or federal law relating to any controlled substance or cannabis;
- (9) The proximity of the object to cannabis or controlled substances;
- (10) The existence of any residue of cannabis or controlled substances on or in the object.

(e) *Penalties.*

(1) Forfeiture. All drug paraphernalia as defined by subsection (a) shall be subject to forfeiture as provided in 720 ILCS 550/12 and 720 ILCS 570/505 as amended from time to time.

(2) Fines.

- a. Any person who is in possession, custody or control of drug paraphernalia which is used, has been used, or is intended for use to personally ingest, inhale or otherwise introduce cannabis into the human body shall be subject to a cannabis paraphernalia minimum fine as provided in the minimum fine schedule for certain violations (UCC Sec. 1-18) as amended from time to time by city council ordinance.

- b. Any person who is in possession, custody or control of drug paraphernalia which is used, has been used, or is intend 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 other than cannabis and which would otherwise be classified as a misdemeanor violation of the Illinois Controlled Substances Act or the Methamphetamine Control, as amended from time to time, shall be subject to a controlled substances paraphernalia fine as provided in the minimum fine schedule for certain violations (UCC 1-18) as amended from time to time by city council ordinance.

~~(f) Penalty. Any person who violates this section shall be subject to a fine as provided in the minimum fine schedule for certain violations adopted by the city council by ordinance.~~

Section 2.

Urbana City Code Chapter 1, "General Provisions", Section 1-18, "Minimum fine schedule for certain violations" shall be and hereby is amended with strike-through indicating language to be deleted and underlining indicating language to be included as follows:

Chapter 15 Miscellaneous Offenses and Provisions

<u>Section</u>	<u>Section Title</u>	<u>Minimum Fine</u>
15-36	Criminal trespass to land	300.00
15-43	Retail theft	300.00

15-67	Possession of drug paraphernalia prohibited	300.00
15-67	Possession of cannabis paraphernalia prohibited	50.00
15-67	Controlled substances paraphernalia prohibited	300.00
15-59	Loitering	100.00
15-60	Disorderly conduct	300.00

Section 3.

Those sections, paragraphs, and provisions of the Urbana City Code that are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to repeal or amend any portions of the Urbana City Code other than those expressly set forth as amended or repealed in this Ordinance. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

Section 4.

This Ordinance shall not be construed to affect any suit or proceeding pending in any court nor shall it apply retroactively to any cannabis and/or cannabis-related offense which was committed or charged prior to the effective date of this Ordinance. Further, this Ordinance shall not be construed to affect any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance. Nothing herein shall be deemed, construed or interpreted as providing any direction insofar as how the City enforces and charges offenses under the State of Illinois Cannabis Control Act (720 ILCS 550/1 *et seq.*).

Section 5.

This Ordinance shall become effective immediately upon its adoption.

Section 6.

The City Clerk is directed to take such steps as are reasonable and appropriate to incorporate or arrange for incorporation of the above-referenced change in fine for a violation of Urbana City Code Section 15-16 into the Urbana City Code as maintained by the City and as hosted by MuniCode.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

AYES:

NAYS:

ABSENT:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor

Possession Drug Paraphernalia – City Ordinance Violations (8622)

2011 – 17 Violations; 12 Notices to Appear (NTA) issued

Breakdown:	B/F	2	1 NTA issued
	W/F	5	4 NTAs issued
	A/M	1	1 NTA issued
	H/M	1	1 NTA issued
	W/M	8	5 NTAs issued

2012 – 13 Violations; 13 Notices to Appear (NTA) issued

Breakdown:	W/F	2
	B/M	2
	W/M	9

2013 – 18 Violations; 14 Notices to Appear (NTA) issued

Breakdown:	B/F	2	2 NTAs issued
	W/F	3	3 NTAs issued
	B/M	4	4 NTAs issued
	W/M	9	5 NTAs issued

2014 – 17 Violations; 14 Notices to Appear (NTA) issued

Breakdown:	B/F	1	1 NTA issued
	W/F	3	3 NTAs issued
	B/M	6	5 NTAs issued
	W/M	7	5 NTAs issued

2015 – 14 Violations; 12 Notices to Appear (NTA) issued

Breakdown:	B/F	1	1 NTA issued
	W/F	2	2 NTAs issued
	B/M	4	4 NTAs issued
	W/M	7	5 NTAs issued