

ORDINANCE NO. 1037

AN ORDINANCE ESTABLISHING A NEW CHAPTER 165 OF THE CITY CODE NAD AMENDING CHAPTER 166 OF THE CITY CODE TO ACCOMMODATE THE ADULT USE OF RECREATIONAL CANNABIS PURSUANT TO STATE LAW

WHEREAS, The Cannabis Regulation and Tax Act (410 ILCS 705/1 *et seq.*) (the “Act”), became effective on January 1, 2020, and permits the lawful possession and use of recreational cannabis for persons 21 years of age and older; and

WHEREAS, the Act provides immunity from arrest, prosecution, or civil penalty for persons 21 years of age or older lawfully possessing and using cannabis in accordance with the Act, even within home rule municipalities; and

WHEREAS, the City Council of the City of El Paso finds that it is necessary and prudent to amend the provisions of the City Code as provided herein to allow the lawful possession and use of cannabis in accordance with the Act; and

WHEREAS, the City Council further finds that it is in the interest of the City and the health, safety, and welfare of its citizens to revise the Code as provided herein to prohibit the possession and use of cannabis that is not otherwise in accordance with the Act;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, WOODFORD COUNTY, ILLINOIS, THAT:

Section 1. The findings and recitations set forth above are adopted and found to be true and correct.

Section 2. Part II of the City of El Paso, Illinois, Municipal Code is hereby amended by establishing a new Chapter 165 entitled Drugs/Cannabis and it shall read as follows:

Article I: POSSESSION OF CANNABIS

§ 165-1 Definitions

“Act” means the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 *et seq.*).

“Cannabis” includes marijuana, hashish and other substances which are identified as including any parts of the plant Cannabis Sativa, whether growing or not, the seeds thereof, the resin extracted from any part of such plant and any compound, manufacture, sale, derivative, mixture, or preparation of such plant, its seeds or resin including tetrahydrocannabinol (THC) and all other cannabinol derivatives, including its naturally occurring or synthetically produced ingredients, whether produced directly or indirectly by extraction, or independently by means of chemical synthesis; but shall not include the mature stalks of such plant, fiber produced from stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination. “Cannabis” does not include industrial hemp as defined and authorized under the Illinois Industrial Hemp Act (505 ILCS 89/5).

“Cannabis paraphernalia” includes equipment, products, or materials intended to be used for planting, propagating, cultivating, growing, harvesting, manufacturing, producing, processing, preparing, testing, analyzing, packaging, repackaging storing, containing, concealing, ingesting, or otherwise introducing cannabis into the human body.

“CRTA” means the Cannabis Regulation and Tax Act (410 ILCS 705/1 et seq.).

“Public place” means any place where a person could reasonably be expected to be observed by others. “Public place” includes all parts of buildings owned in whole or in part, or leased, by the State of Illinois, the City of El Paso, or any other unit of local government. “Public place” also includes all areas in a park, recreation area, wildlife area or playground owned in whole or in part, leased, or managed by the State, the City of El Paso, or any other unit of local government. “Public place” does not include a private residence unless the private residence is used to provide licensed child care, foster care, or other similar social service care on the premises.

§ 165-2 Prohibition

A. In General. It is unlawful for any person who is 21 years of age or older to possess cannabis in excess of the following limits:

- (1) For residents of the State of Illinois:
 - (a) 30 grams of cannabis flower;
 - (b) 500 milligrams of THC contained in a cannabis-infused product;
 - (c) 5 grams of cannabis concentrate.
- (2) For individuals who are not residents of the State of Illinois:
 - (a) 15 grams of cannabis flower;
 - (b) 250 milligrams of THC contained in a cannabis-infused product;
 - (c) 2.5 grams of cannabis concentrate.

B. Persons under 21.

(1) Possession. It is unlawful for any person under the age of 21 to possess or consume cannabis.

(2) Sales to minors. No cannabis business, or any officer, associate, member, representative, agent, or employee thereof shall sell, give, or deliver cannabis to any person under the age of 21. No person, after purchasing or otherwise obtaining cannabis shall sell, give, or deliver such cannabis to any person under the age of 21.

(3) Furnishing or using false or fraudulent ID. Any person under the age of 21 who presents or offers to any cannabis business, or any officer, associate, member, representative, agent, or employee thereof, any evidence of age and identity which is false, fraudulent, modified, or not their own for the purpose of ordering, purchasing, procuring, or attempting to order, purchase, or procure cannabis, or who has in their possession any false, fraudulent, or modified evidence of age or identity is guilty of a violation of this Chapter.

C. Medical use of cannabis. Notwithstanding anything in this Chapter to the contrary, it shall not be unlawful for any individual who is a registered qualifying patient or a registered designated caregiver, as those terms are defined in the Act, to engage in the medical use of cannabis, or to possess cannabis for the purpose of engaging or assisting in the medical use of cannabis in accordance with the provisions of the Act. An individual is presumed to be acting lawfully and in compliance with this Chapter and the terms of the Act where such individual is in possession of (i)

a valid registry identification card issued pursuant to the Act, and (ii) no more than 2.5 ounces of cannabis (or such other amount as authorized by the Act or the CRTA).

D. Cultivation of cannabis. It shall be unlawful for any individual to cultivate cannabis for personal use; provided, however, that a registered qualifying patient under the Act may cultivate up to five (5) cannabis plants, with a cumulative limit of five (5) plants per household.

E. Possession and use prohibited. Notwithstanding the foregoing, it shall be unlawful for any person to engage in any of the following:

- (1) Possession or use of cannabis on a school bus, unless permitted for a qualifying patient or caregiver pursuant to the Act;
- (2) Possession or use of cannabis on the grounds of any preschool, primary school, or secondary school, unless permitted for a qualifying patient or caregiver pursuant to the Act;
- (3) Possession or use of cannabis in any correctional facility;
- (4) Possession of cannabis in a vehicle, unless the cannabis is in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving;
- (5) Use of cannabis in a motor vehicle;
- (6) Possession or use of cannabis in a private residence that is used at any time to provide licensed child care or similar social service care on the premises;
- (7) Use of cannabis in any public place within the City;
- (8) Use of cannabis knowingly in close physical proximity to anyone under 21 years of age who is not a registered medical cannabis patient under the Act;
- (9) Smoking cannabis in any place where smoking is prohibited under the Smoke Free Illinois Act (410 ILCS 82/1 et seq.);
- (10) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while using or under the influence of cannabis in violation of Section 11-501 or 11-502.1 of the Illinois Vehicle Code;
- (11) Facilitating the use of cannabis by any person who is not allowed to use cannabis under this Chapter.
- (12) Transferring cannabis to any person contrary to this Chapter, the Act or the CRTA;
- (13) The use of cannabis by a person who has a school bus permit or a commercial driver's license while on duty.

F. Penalty. Any person found to be in violation of any provision of this Chapter shall be subject to a fine of not less than two hundred dollars (\$200.00) and not more than seven hundred fifty dollars (\$750.00).

Section 3. Part II, Chapter 166 of the City of El Paso, Illinois, Municipal Code is hereby deleted in its entirety and shall be replaced with the following:

Article I. DRUG PARAPHERNALIA:

§ 166-1 Definitions

As used in this Chapter, "Drug paraphernalia" means all equipment, products and materials of any kind, including cannabis paraphernalia as defined in the CRTA (410 ILCS 705/1-10), which are peculiar to and marketed 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 the "Illinois Controlled Substance Act". It includes, but is not limited to:

- (1) Kits peculiar to and marketed for use in manufacturing, compounding, converting, producing, processing or preparing a controlled substance;
- (2) Isomerization devices peculiar to and marketed for use in increasing the potency of any species of plant which is a controlled substance;
- (3) Testing equipment peculiar to and marketed for private home use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;
- (4) Diluents and adulterants peculiar to and marketed for cutting a controlled substance by private persons;
- (5) Objects peculiar to and marketed for use in ingesting, inhaling, or otherwise introducing, cocaine, or a synthetic drug product or misbranded drug in violation of the Illinois Food, Drug and Cosmetic Act into the human body including where applicable, the following items:
 - 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
- (6) any item whose purpose, as announced or described by the seller, is for use in violation of The Drug Paraphernalia Control Act (720 ILCS 600/1, et. seq).

§ 166-2 Violation and Penalty

- A. (1) It is unlawful for any person to knowingly possess 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 such use.
- (2) It is unlawful for any person or entity to keep for sale, offer for sale, sell, or deliver for any commercial consideration drug paraphernalia.

- (3) Any person who violates this Chapter shall be fined not less than One Hundred Dollars (\$100.00) nor more than Seven Hundred Fifty Dollars (\$750.00) for the first offense, not less than Two Hundred Fifty Dollars (\$250.00) nor for more than Seven Hundred Fifty Dollars (\$750.00) for a second offense, and not less than Five Hundred Dollars (\$500.00) nor more than Seven Hundred Fifty Dollars (\$750.00) for a third or subsequent offense.

B. 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 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 state or federal law relating to cannabis;
- C. The proximity of the object, in time and space, to a direct violation of this chapter;
- D. The proximity of the object to cannabis;
- E. The existence of any residue of cannabis 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 he or she knows 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;
- 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. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
- L. The existence and scope of legitimate uses for the object in the community; and
- M. Expert testimony concerning its use.

C. Exceptions: Section 166-2 shall not apply to:

- (1) Those items set forth in Section 4 of the Drug Paraphernalia Control Act (720 ILCS 600/4);

- (2) Possession of hypodermic syringes or needles as authorized under the Illinois Hypodermic Syringes and Needles Act (720 ILCS 635/0.01 et seq.); or
- (3) A person or entity who is authorized to possess, keep for sale, offer for sale, sell, or deliver for any commercial consideration cannabis paraphernalia, and a person in possession of any item of cannabis paraphernalia, used or reasonably intended for use in the lawful consumption of cannabis pursuant to the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.) or the Cannabis Regulation and Tax Act (410 ILCS 705/1-1 et seq.).

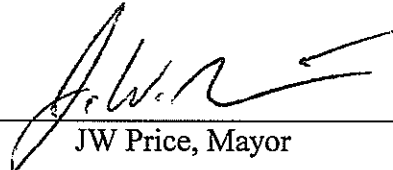
D. This provision is intended to be used solely for the suppression of the possession of items that are clearly and by a preponderance of evidence marketed for the illegal and unlawful use marketed or possessed for the illegal and unlawful use of cannabis or controlled substances. To this end all reasonable and common-sense inferences shall be drawn in favor of the legitimacy of any transaction or item.

Section 4. This Ordinance is hereby ordered to be published in pamphlet form by the City Clerk and said Clerk is ordered to keep at least three (3) copies hereof available for public inspection in the future and in accordance with the Illinois Municipal Code.

Section 5. This Ordinance is in addition to all other ordinances on the subject and shall be construed therewith excepting as to that part in direct conflict with any other ordinance, and in the event of such conflict, the provisions hereof shall govern.

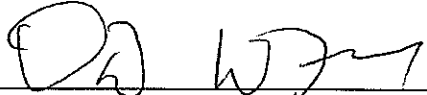
Section 6. This Ordinance shall be in full force and effect from and after its passage, approval and ten (10) day period of publication in the manner provided by law.

PASSED AND APPROVED at the regular meeting of the City Council of the City of El Paso, this 1st day of February, 2021.



JW Price, Mayor

ATTEST:



David W. Fever, City Clerk