

CITY OF CARBONDALE, ILLINOIS

ORDINANCE NO. 2019- ____

**AN ORDINANCE AMENDING TITLE FOURTEEN OF THE CARBONDALE REVISED
CODE AS IT RELATES TO THE POSSESSION OF CANNABIS AND DRUG
PARAPHERNALIA**

ADOPTED BY THE CITY COUNCIL

OF THE CITY OF CARBONDALE, ILLINOIS

THE 8TH DAY OF OCTOBER, 2019

**Published in pamphlet form by authority of the City Council of the City of Carbondale,
Jackson County, Illinois, this 9th day of October, 2019.**

CERTIFICATE OF PUBLICATION

**I, Jennifer R. Sorrell, the duly qualified City Clerk of the City of Carbondale, Illinois,
and the official custodian of the records of said City, do hereby certify that this ordinance
was published in pamphlet form by authority of the City Council on the 9th day of October,
2019.**

Jennifer R. Sorrell, City Clerk

ORDINANCE NO. 2019-____

AN ORDINANCE AMENDING TITLE FOURTEEN OF THE CARBONDALE REVISED CODE AS IT RELATES TO THE POSSESSION OF CANNABIS AND DRUG PARAPHERNALIA

WHEREAS, the City of Carbondale, Illinois, is a home rule unit of local government under the Illinois Constitution, 1970, Article VII, Section 6; and

WHEREAS, pursuant to Article VII, Section 6(a), of the Illinois Constitution, 1970, the City of Carbondale may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; and

WHEREAS, Title Fourteen (14), Chapter Seven (7), of the City Code regulates offenses involving drugs; and

WHEREAS, on June 25, 2019, Governor JB Pritzker signed Public Act 101-0027, Cannabis Regulation and Tax Act, which legalized the possession and consumption of recreational cannabis; and

WHEREAS, the City of Carbondale seeks to enforce violations of the Cannabis Regulation and Tax Act, in accordance with the Act; and

WHEREAS, the Act prohibits minors from consuming or possessing cannabis or products containing THC unless they possess a medical marijuana permit; and

WHEREAS, the Act prohibits the public consumption of cannabis or products containing THC; and

WHEREAS, the Carbondale City Council finds that it in the best interest of the City of Carbondale to amend Title Fourteen (14), Chapter Seven (7), of the Carbondale Revised Code as it appears in Exhibit "A" attached hereto and incorporated herein, for the benefit of the citizens of the City of Carbondale.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CARBONDALE AS FOLLOWS:

SECTION 1. That Title Fourteen (14), Chapter Seven (7), of the Carbondale Revised Code is hereby amended as shown in Exhibit “A”, attached hereto and incorporated herein.

SECTION 2. All of the remaining sections of Title 14 of the Carbondale Revised Code shall remain in full force and effect.

SECTION 3. That all ordinances and parts thereof in conflict herewith are expressly repealed and are of no other force and effect.

SECTION 4. That repeal of any ordinance by this Ordinance shall not affect any rights accrued or liability incurred under said repealed ordinance to the effective date hereof. The provisions of this Ordinance insofar as they are the same or substantially the same as those of any prior ordinance, shall be construed as a continuation of said prior ordinances.

SECTION 5. That it is the intention of the City Council of the City of Carbondale that this Ordinance and every provision thereof shall be considered separable, and the invalidity of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

SECTION 6. That the City Council of the City of Carbondale finds that the subject matter of this Ordinance pertains to the government and affairs of the City of Carbondale and is passed pursuant to authorities granted it by State statutes and the Home Rule powers of the City of Carbondale pursuant to the provisions of Article VII, Section 6(a) of the Illinois Constitution.

SECTION 7. That this Ordinance shall take effect upon its passage, approval, recording, and publication in pamphlet form in accordance with law.

APPROVED: _____
John M. Henry, Mayor

ATTEST: _____
Jennifer R. Sorrell, City Clerk

Exhibit A

14-7-1: DEFINITIONS:

The following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

CANNABIS: Includes marijuana, hashish or 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, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other synthetically produced ingredients, whether produced directly or indirectly by extraction, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis; but shall not include the mature stalks of such plant, fiber produced from such 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 seeds of such plant. Cannabis shall also include any substance defined as cannabis in section 3 of the Illinois cannabis control act, 720 Illinois Compiled Statutes 550/3 et seq., and as hereafter amended.

CONTROLLED SUBSTANCE: Any substance as defined in article II of the Illinois controlled substances act, 720 Illinois Compiled Statutes 570/201 et seq.

DELIVER OR DELIVERY: Actual, constructive or attempted transfer of possession of cannabis, with or without consideration, whether or not there is an agency relationship.

DRUG PARAPHERNALIA: All equipment, products, and materials of any kind 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 this title, the cannabis control act, 720 Illinois Compiled Statutes 500/ et seq.,~~ or the Illinois controlled substances act, 720 Illinois Compiled Statutes 570/ et seq. It includes, but is not limited to:

A. Kits intended to be used unlawfully in manufacturing, compounding, converting, producing, processing, or preparing cannabis or a controlled substance;

B. Isomerization devices intended to be used unlawfully in increasing the potency of any species of plant which is cannabis or a controlled substance;

~~C. Testing equipment intended to be used unlawfully in a private home for identifying or in analyzing the strength, effectiveness, or purity of cannabis or controlled substances;~~

~~D. Diluents and adulterants intended to be used unlawfully for cutting cannabis or a controlled substance by private persons;~~

~~E. Objects intended to be used unlawfully in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, or hashish oil into the human body including, where applicable, the following items:~~

~~1. Water pipes;~~

2. Carburetion tubes and devices;
3. Smoking and carburetion masks;
4. Miniature cocaine spoons and cocaine vials;
5. Carburetor pipes;
6. Electric pipes;
7. Air driven pipes;
8. Chillums;
9. Bonges;
10. Ice pipes or chillers;

FE. Any item whose purpose, as announced or described by the seller, is for use in violation of this act.

KNOWLEDGE: Knows, acts knowingly or with knowledge:

A. The nature or attendant circumstances of his/her conduct, described by the section defining the offense, when he/she is consciously aware that his/her conduct is of such nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists.

B. The result of his/her conduct, described by the section defining the offense, when he/she is consciously aware that such result is likely to be caused by his/her conduct.

C. Knowledge may be inferred from the surrounding circumstances.

MANUFACTURE: The production, preparation, propagation, compounding, conversion or processing of cannabis, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of cannabis or labeling of its container, except that this term does not include the preparation, compounding, packaging or labeling of cannabis as an incident to lawful research, teaching, ~~or~~ chemical analysis, or sold and possessed as provided in the Compassionate Use of Medical Cannabis Pilot Program Act, as amended, and the Cannabis Regulation and Tax Act, as amended and not for sale.

NITROUS OXIDE (N₂O): A colorless flammable gas used as an anesthetic and in aerosols.

NITROUS OXIDE CARTRIDGE: Any cartridge containing less than twenty (20) ounces of compressed nitrous oxide (N₂O).

PERSON: Any individual, corporation, business trust, estate, trust, partnership or association, or any other entity.

POSSESSION: Possession may be either actual or constructive.

A. Actual possession means exercising physical dominion.

B. Constructive possession may be inferred if the defendant has intent and capacity to maintain control and dominion over the cannabis or drug paraphernalia.

PRODUCE OR PRODUCTION: Planting, cultivating, tending or harvesting.

14-7-2: POSSESSION OF CANNABIS PROHIBITED:

A. Violation: No person shall possess ~~ten grams (10 g) or less of~~ more than thirty grams (30g) of raw cannabis, cannabis-infused products containing more than five hundred milligrams (500mg) of THC, or five grams (5g) of cannabis product in concentrated form. any substance containing cannabis.

B. Possession, Sale, or Providing to Minors Prohibited:

1. No person under the age of twenty-one (21) shall possess, consume, or use any substance containing cannabis or THC, except as allowed by the Compassionate Use of Medical Cannabis Pilot Program Act as amended.

2. No person, after purchasing or otherwise obtaining any substance containing cannabis or THC shall, sell, give, or deliver such substance to a person under the age of 21, except as allowed by the Compassionate Use of Medical Cannabis Pilot Program Act, as amended.

C. Unlawful Consumption of Cannabis: No person shall use cannabis or cannabis-infused products in public or within the presence of a person under the age of twenty-one (21), except as allowed by the Compassionate Use of Medical Cannabis Pilot Program Act, as amended and as otherwise provided by this Code. For purposes of this subsection, public does not include a residential property when the person is within their residential structure or is not visible from the public right-of-way.

D. Unlawful Possession of Cannabis Sativa Plant: It shall be unlawful for any person to possess a cannabis sativa plant, except as provided by the Cannabis Regulation and Tax Act, as hereby amended. Possession of five or fewer cannabis sativa plants may be prosecuted as an ordinance violation.

EB. Penalty: Any person who pleads guilty or is found guilty by a court of law of possession of ~~ten grams (10g) or less~~ for a violation of this Section shall be fined as follows:

1. Paragraph A shall be punished by a minimum fine of not less than one hundred dollars (\$100.00) and no more than ~~seven~~ two hundred fifty dollars (~~\$750.00~~ \$200.00), when the amount is 40 grams or less.

2. Paragraph B shall be fined not less than two hundred fifty dollars (\$250.00) and no more than seven hundred fifty dollars (\$750.00).

3. Paragraph C shall be fined not less than seventy-five dollars (\$75.00).

4. Paragraph D shall be fined not less than one hundred dollars (\$100.00) and no more than ~~seven~~ two hundred fifty dollars (\$200.00).

~~FC. Administrative Fee: In addition, any person who violates any provision of this section and is convicted, pleads guilty, receives court supervision or probation by a court of law shall be ordered to pay an administrative fee of one hundred dollars (\$100.00) to be paid to the law enforcement agency for testing of the substance(s) collected. Administrative Remedy: Any person found in violation possession of twenty grams (20g) or less of any substance containing cannabis of this Section may settle their matter administratively through the City's administrative pay by mail program instead of being prosecuted through the judicial city court system. Payments must be made within ten (10) business days from the date of issuance of the citation to the person accused of the violation; there shall be no limit on the number of times a person is eligible for pay by mail for a violation of this section.~~

1. Any person found to be in violation of paragraph A shall remit a pay by mail fee as follows:

- a. 31-40 grams \$100.00,
- b. 41-60 grams \$250.00,
- c. 61-80 grams \$500.00, or
- d. 81-100 grams \$750.00.

2. Any person found to be in violation of paragraph B shall pay a two hundred fifty dollars (\$250.00) pay by mail fee.

3. Any person found to be in violation of paragraph C shall pay a seventy-five dollars (\$75.00) pay by mail fee.

~~GD. Forfeiture: Any items which may be seized or forfeited pursuant to section 720 Illinois Compiled Statutes 550/12, may be forfeited in the same manner as described therein for a violation of this section.~~

~~HE. Exceptions:~~

- a. Any person who manufactures, distributes, dispenses, or is in possession of any controlled substance for research purposes, pursuant to 720 Illinois Compiled Statutes 550/11, as hereafter amended, shall be exempt from the provisions of this section.
- b. Any person in possession of a compassionate use of medical cannabis card, as provided by the Compassionate Use of Medical Cannabis Pilot Program Act, as amended, may grow up to 5 cannabis plants within a secured enclosed facility.

- c. Any person who is licensed by the State of Illinois to dispense, cultivate, infuse or deliver cannabis or substances containing THC.

IF. Expungement: The Carbondale Police Department shall expunge any violation of 14-7-2 of the Carbondale Revised Code that is six (6) months or older that has been settled through the City's administrative pay by mail program on or before January 1 and July 1 of each year, except for those offenses outlined in 20 ILCS 2630/5.2.

JG. Admissibility of cannabis: In a prosecution for a violation of Title 14-7-2, evidence of cannabis shall only be admitted into evidence based upon:

(1) a properly administered field test; or

(2) opinion testimony of a peace officer based on the officer's training and experience as qualified by the court.

14-7-3: POSSESSION OF DRUG PARAPHERNALIA PROHIBITED:

A. Violation: No person shall knowingly possess any item of drug paraphernalia with the intent to use it for the purpose of unlawfully 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 within the corporate limits of the city of Carbondale. In determining intent for purposes of this section, the trier of fact may take into consideration the proximity of the ~~cannabis~~ or controlled substances to the drug paraphernalia or the presence of ~~cannabis~~ or a controlled substance on the drug paraphernalia.

B. Penalty: Any person who pleads guilty or is found guilty by a court of law shall be punished by a minimum fine of not less than two hundred fifty dollars (\$250.00) and no more than seven hundred fifty dollars (\$750.00).

C. Forfeiture: "Drug paraphernalia" as defined herein, seized by police officers pursuant to an arrest or issuance of a notice to appear for a violation of this section, shall be forfeited to the city upon a plea of guilty, a finding of guilt and/or a disposition of court supervision or probation by a court of law or upon the individual utilizing any administrative remedy allowed by the city without further order of the court. Any other items which may be seized or forfeited pursuant to section 720 Illinois Compiled Statutes 600/5, may be forfeited in the same manner as described therein for a violation of this section.

D. Exemptions: This section does not apply to:

1. Items used in the preparation, compounding, packaging, labeling, or other use ~~of cannabis~~ or a controlled substance as an incident to lawful sale, use, research, teaching, or chemical analysis and not for sale.

2. Items 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 unless such item has the presence of ~~cannabis~~ or a controlled substance. Items exempt under this subsection include, but are not limited to, garden hoes, rakes, sickles, baggies, tobacco pipes, and cigarette rolling papers.

3. Items listed in the definition of "drug paraphernalia" in section [14-7-1](#) of this chapter if said items are used solely for decorative purposes, when such items have been rendered completely inoperable or incapable of being used for any illicit purposes prohibited by this chapter.

4. A person who is legally authorized to possess hypodermic syringes or needles under the hypodermic syringes and needles act, 720 Illinois Compiled Statutes 635/0.01 et seq. (Ord. 2004-15)