

ORDINANCE NO. 19-_____

**AN ORDINANCE AMENDING TITLE 10 (POLICE REGULATIONS),
CHAPTER 2 (GENERAL OFFENSES), SECTION 3 (DRUG RELATED OFFENSES)
OF THE NAPERVILLE MUNICIPAL CODE**

RECITALS

1. **WHEREAS**, the Mayor and the City Council of the City of Naperville, Illinois, a home rule unit of local government as provided by Article VII, Section 6 of the Illinois Constitution of 1970, have the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety and welfare of its citizens; and
2. **WHEREAS**, the Illinois General Assembly has passed the Cannabis Regulation and Tax Act 410 ILCS 705/1 et seq., (hereinafter referred to as the "Cannabis Act"), approved June 25, 2019 and effective January 1, 2020; and
3. **WHEREAS**, the Cannabis Act legalized the possession and use of adult use cannabis with certain restrictions; and
4. **WHEREAS**, the City of Naperville desires to enact an ordinance to update its codes to comply with the Cannabis Act including its restrictions; and
5. **WHEREAS**, in exercise of its home-rule authority, the City, through its Mayor and City Council, has found and determined that amending the Naperville Municipal Code to make all regulations regarding adult use cannabis use and possession and the prohibition of use under certain circumstances and for the prohibition of possession of cannabis for minors within the City is in the best interest of the City's citizens.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule powers that:

SECTION 1: The Recitals set forth above are incorporated herein in their entirety by reference.

SECTION 2: Title 10 (POLICE REGULATIONS), Chapter 2 (GENERAL OFFENSES), Section 3 (DRUG RELATED OFFENSES) of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the stricken language as follows:

10-2-3: - DRUG RELATED OFFENSES

10-2-3-1: - POSSESSION OF CANNABIS AND DRUG CANNABIS PARAPHERNALIA:

1. Definitions:

1.1. Cannabis: ~~The term “cannabis” shall have the same meaning as ascribed to it in Section 3 of the Cannabis Control Act (720 ILCS 550/1 et. seq.), as amended, as if that definition were incorporated herein. Includes marijuana, hashish and other substances which are identified as including any part 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 cannabinol derivatives, including its naturally occurring or 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 seed of such plant which is incapable of germination; does not include hemp.~~

1.2. Cannabis Drug Paraphernalia: ~~The term “drug paraphernalia” shall have the same meaning as ascribed to it as Section (d) of the Drug Paraphernalia Control Act (720 ILCS 600/1 et. seq.), as amended, as if that definition were incorporated herein. Includes all equipment, products and materials of any kind which are peculiar to, or marketed for use, or are used, 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 in violation of the Cannabis Control Act [1]. It includes, but is not limited to:~~

1.2.1. ~~Kits peculiar to and marketed for use, or used in manufacturing, compounding, converting, producing, processing or preparing cannabis;~~

~~1.2.2. Isomerization devices peculiar to, or marketed for use, or used in increasing the potency of any species of plant which is cannabis;~~

~~1.2.3. Testing equipment peculiar to, or marketed for private home use in, or used for, identifying or analyzing the strength, effectiveness or purity of cannabis;~~

~~1.2.4. Diluents and adulterants peculiar to, or marketed for use in, or used for, cutting cannabis or a controlled substance by private persons;~~

~~1.2.5. Objects peculiar to, marketed for use in, or used for ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, or hashish oil into the human body including, where applicable, the following terms:~~

~~1.2.5.1. Water pipes;~~

~~1.2.5.2. Carburetion tubes and devices;~~

~~1.2.5.3. Smoking and carburetion masks;~~

~~1.2.5.4. Carburetor pipes;~~

~~1.2.5.5. Electric pipes;~~

~~1.2.5.6. Air-driven pipes;~~

~~1.2.5.7. Chillums;~~

~~1.2.5.8. Bong;~~

~~1.2.5.9. Ice pipes or chillers;~~

~~1.2.6. Any item whose purpose, as announced or described by the seller, is for use in violation of this Section.~~

~~1.3. Hemp: Includes the plant Cannabis sativa L. and any part of that plant including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.~~

~~2. Possession Unlawful Possession of Cannabis: A person commits the offense of unlawful possession of cannabis by knowingly possessing thirty (30) grams or less of any substance containing cannabis unless permitted or authorized to do so pursuant to the Cannabis Control Act (720 ILCS 550/1 et. seq.), the Cannabis Regulation and Tax Act (410 ILCS 705/1 et. seq.) or the Compassionate Use of Medical Cannabis Program (410 ILCS 130/1 et seq.), as amended, respectively. It is unlawful for any person knowingly to possess cannabis, and/or paraphernalia as described herein for the use thereof.~~

3. Unlawful Possession of Drug Paraphernalia Related To The Use Of Cannabis: A person commits the offense of unlawful possession of drug paraphernalia by knowingly possessing drug paraphernalia unless permitted or authorized to do so pursuant to the Drug Paraphernalia Control Act (720 ILCS 600/1 et. seq.), the Cannabis Regulation and Tax Act (410 ILCS 705/1 et. seq.), or the Compassionate Use of Medical Cannabis Program (410 ILCS 130/1 et seq.), as amended, respectively.

3.1. A person who knowingly possesses an item of drug paraphernalia in violation of this Section, with the intent to use it in ingesting, inhaling, or otherwise introducing cannabis into the human body, or in preparing cannabis substance for that use, is guilty of the offense hereunder for which the court shall impose a minimum fine of seven hundred fifty dollars (\$750.00), but not more than one thousand dollars (\$1,000.00).

3.2. In determining intent under Subsection 10-2-3-1; 3-1 of this Section, the proximity of the cannabis drug paraphernalia or the presence of cannabis on the drug paraphernalia may be considered.

4. ~~Exempt Items; Determination:~~

4.1 ~~Exempt Items:~~

4.1.1 ~~Items marketed for the use in the preparation, compounding, packaging, labeling, or other use of cannabis as an incident to lawful research, teaching, or chemical analysis and not for sale; or~~

4.1.2 ~~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.~~

4.1.3 ~~Items exempt under this Subsection include, but are not limited to, garden hoes, rakes, sickles, baggies, tobacco pipes, and cigarette-rolling papers.~~

- ~~4.1.4 Items listed in Subsection 10-2-3-1.4.1.3 of this Section which are marketed for decorative purposes, when such items have been rendered completely inoperable or incapable of being used for any illicit purpose prohibited by this Section.~~
- ~~4.2. Considerations: In determining whether or not a particular item is exempt under this Section, all other logically relevant factors should be considered, including the following:~~
- ~~4.2.1 The general, usual, customary, and historical use to which the item involved has been put;~~
- ~~4.2.2 Expert evidence concerning the ordinary or customary use of the item and the effect of any peculiarity in the design or engineering of the item upon its functioning;~~
- ~~4.2.3 Any written instructions accompanying the delivery of the item concerning the purposes or uses to which the item can or may be put;~~
- ~~4.2.4 Any oral instructions provided by the seller of the item at the time and place of sale or commercial delivery;~~
- ~~4.2.5 Any national or local advertising, concerning the design, purpose or use of the item involved, and the entire context in which such advertising occurs;~~
- ~~4.2.6 The manner, place and circumstances in which the item was displayed for sale, as well as any item or items displayed for sale or otherwise exhibited upon the premises where the sale was made;~~
- ~~4.2.7 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;~~
- ~~4.2.8 The existence and scope of legitimate uses for the object in the community.~~
- ~~5. Applicability Of Provisions: The provisions of this Section relating to the possession of cannabis shall be applicable to the possession of any quantity of cannabis less than thirty (30) grams.~~

SECTION 3: This Ordinance shall be in full force and effect upon its passage and approval.

PASSED this _____ day of _____, 2019.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2019.

Steve Chirico
Mayor

ATTEST:

Pam Gallahue, Ph.D.
City Clerk