

**ORDINANCE NO. 606  
CITY OF DAYTON**

**AN ORDINANCE AMENDING THE DAYTON MUNICIPAL CODE AND  
AUTHORIZING VIOLATION OF POSSESSION OF LESS THAN AN OUNCE OF  
MARIJUANA AND DRUG PARAPHERNALIA**

**WHEREAS**, ORS 475.864 makes it unlawful for any person to knowingly or intentionally possess less than an ounce of marijuana and ORS 475.525 makes it unlawful for any person to possess drug paraphernalia; and

**WHEREAS**, all violation and fine amounts collected for violations of ORS 475.864 and ORS 475.525 are currently remitted to the state; and

**WHEREAS**, establishing the aforementioned violations will not create new violations as these laws are already enforced under state law; and

**WHEREAS**, the City wishes to revise the Dayton Municipal Code to authorize violations for possession of less than an ounce of marijuana and possession of drug paraphernalia to ensure the City collects and retains the fine amounts collected for these violations;

**THE CITY OF DAYTON ORDAINS AS FOLLOWS:**

**Section 1:** New section 2.27 is added to Chapter 2 of the Dayton Municipal Code to read as follows:

**2.27            DRUG OFFENSES**

**2.27.1        General Provisions**

**2.27.1.1      Possession of Less Than One Avoirdupois Ounce of Marijuana**

A person commits the offense of possession of less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae (marijuana), if he/she knowingly and unlawfully possesses less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae (marijuana). Penalty see § 2.27.2.6.

**2.27.1.2      Exemption**

The provisions of this chapter relating to marijuana offenses shall not apply when exempted by O.R.S. 475.300 to 475.340.

**2.27.2        Sale of Drug Paraphernalia**

**2.27.2.1 Definitions** For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(a) **Controlled Substance.** A drug or its immediate precursor classified in Schedules I through V under the Federal Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under O.R.S. 475.035.

(b) **Deliver or Delivery.** The actual, constructive or attempted transfer, other than by administering or dispensing, from one person or another of a controlled substance, whether or not there is an agency relationship.

(c) **Drug Paraphernalia.** All equipment, products and materials of any kind which are used, intended for use, 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 the Uniform Controlled Substances Act of Oregon (O.R.S. 475.005 to 475.285 and 475.991 to 475.995). It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;

(8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(9) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities or controlled substances;

(10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(11) Hypodermic syringes, needles and other objects used, intended for use in storing or concealing controlled substances;

(12) Objects used, intended for use, or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body; such as:

(i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

(v) Roach clips: meaning objects used to hold burning materials, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) Chamber pipes;

(vii) Carburetor pipes;

(viii) Electric pipes;

(ix) Air-driven pipes;

(x) Chillums;

(xi) Bongs;

(xii) Ice pipes or chillers;

(d) **Marijuana.** All parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It 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, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

**2.27.2.2 Factors to be Considered.** 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 by 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 municipal, state, or federal law relating to any controlled substance;
- (c) The proximity of the object in time and space, to a direct violation of this subchapter or the Uniform Controlled Substances Act of Oregon;
- (d) The proximity of the object to controlled substances;
- (e) The existence of any residue of controlled substances 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 knows intend to use the object to facilitate a violation of municipal, or state law; the innocence of an owner, or of anyone in control of the object, as to a violation of this law or state law shall not prevent a finding that the object is intended for use, or designed for use as a 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) 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;
- (l) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
- (m) The existence and scope of legitimate uses for the object in the community;
- (n) Expert testimony concerning its use.

### **2.27.2.3 Offenses and Penalties.**

- (a) Possession of drug paraphernalia. It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

(b) Manufacture or delivery of drug paraphernalia. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance.

(c) Delivery of drug paraphernalia to a minor. Any person 18 years of age or older who violates division (B) of this section by delivering drug paraphernalia to a person under 18 years of age who is at least three years his junior is guilty of a misdemeanor offense.

#### **2.27.2.4 Nuisance.**

(a) Drug paraphernalia are public nuisances. Any peace officer shall summarily seize any such paraphernalia and shall deliver it to the Chief of Police, who shall hold it subject to the order of municipal court.

(b) Whenever it appears to the court that drug paraphernalia has been possessed in violation of this subchapter, the court shall order the Chief of Police to destroy the paraphernalia.

(c) In such event that the City of Dayton contracts with any law enforcement agency to provide contract law enforcement services it shall be the responsibility of such law enforcement agency to maintain and destroy paraphernalia in accordance with sub sections (a) and (b) above.

**2.27.2.5 Infraction Procedure.** Violation of § 2.27.2.3(a) and (b) of this chapter is an infraction. Citations shall be issued and court procedures followed that are in accordance with O.R.S. 153.110 to 153.280.

#### **2.27.2.6 Penalty.**

(a) The penalty for the conviction of § 2.27.1.1 of this chapter shall be punishable by a fine of not less than \$500 and not more than \$1,000; provided that if the unlawful possession occurs in a public place as defined in O.R.S. 161.015, that is within 1,000 feet of the real property comprising a public or private elementary, vocational or secondary school attended primarily by minors, the offense shall be a misdemeanor offense and upon conviction, the defendant may be imprisoned for not more than 30 days, and/or fined not more than \$1,000, or both.

(b) Any person who violates § 2.27.2.3(a) and (b) of this chapter is guilty of an infraction and upon conviction may be fined not more than \$500.

(c) Any person who violates § 2.27.2.3 (c) of this chapter upon conviction may be imprisoned for not more than one year, fined not more than \$2,500, or both.”

**Section 3:** This ordinance will be effective thirty (30) days after adoption by the City Council.

Date of first reading: March 7, 2011 In full \_\_\_\_\_ or by title only

Date of second reading: April 4, 2011 In full \_\_\_\_\_ or by title only

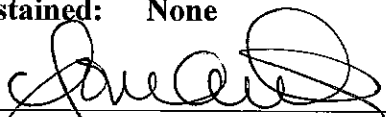
**ADOPTED** this 4<sup>th</sup> day of April, 2011.

**In Favor:** Blackburn, Evers, Frank, Utt, White & Wytoski

**Opposed:** None

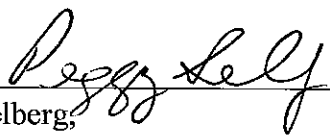
**Absent:** None

**Abstained:** None

  
\_\_\_\_\_  
Jolie White  
Mayor

4/20/2011  
Date of Signing

ATTESTED BY:

  
\_\_\_\_\_  
Peggy Selberg,  
City Recorder

4/4/2011  
Date of Enactment