

CHAPTER XI. PUBLIC OFFENSES

ARTICLE 6. DRUGS

SECTIONS

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11-601. DEFINITIONS.

When used in this section:

- (a) **“Controlled substance”** means any drug, substance or immediate precursor included in any of the schedules as designated in the Uniform Controlled Substance Act, Chapter 65, Article 41 of the Kansas Statutes Annotated.
- (b) **“Deliver”** or **“delivery”** means actual constructive or attempt to transfer from one person to another whether or not there is an agency relationship.
- (c) **“Dangerous drug”** means one that is unsafe for use except under the supervision of a practitioner because of its toxicity or other potentiality for human effect, method of use, or collateral measures necessary to use; “Dangerous drug” shall include all other drugs or compounds, preparations or mixtures thereof which the state board of health shall find and declare by rule or regulation duly promulgated after reasonable public notice and opportunity for hearing to have a dangerous hallucinogenic hypnotic, somnifacient or stimulating effect of the body of a human or animal.
- (d) **“Drug”** means:
 - 1. Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary, or any supplement to any of them;
 - 2. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animal;
 - 3. Substances other than food intended to affect the structure or any function of the body or man or animal;
 - 4. Substances intended for use as a component of any articles specified in paragraphs 1, 2 or 3 of this subsection, but does not include devices or their components, parts or accessories.

- (e) **“Drug Paraphernalia”** means all equipment, products and materials of any kind which are used or primarily intended 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. Drug Paraphernalia shall include, but is not limited to:
1. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;
 2. Kits used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
 3. Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;
 4. Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of a controlled substance;
 5. Scales and balances used or intended for use in weighing or measuring controlled substances;
 6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;
 7. Separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;
 8. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;
 9. Capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;
 10. Containers and other objects used or intended for use in storing or concealing controlled substances;
 11. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;
 12. Objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), heroin, methamphetamine, amphetamine or any other illegal or dangerous drug 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, bongs or smoking pipes designed to draw smoke through water or another cooling device;
 - (iii) Carburetion pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for inhalation;
 - (iv) Smoking and carburetion masks;
 - (v) Roach clips (objects used to hold burning material such as marijuana cigarettes that have become too small or too short to be held in the hand);
 - (vi) Miniature cocaine spoons and cocaine vials;
 - (vii) Chamber pipes;
 - (viii) Carburetor pipes;

- (ix) Electric pipes;
- (x) Air-driven pipes;
- (xi) Chillums;
- (xii) Bongos;
- (xiii) Ice pipes or chillers;
- (xiv) Any smoking pipe manufactured to disguise its intended purpose;
- (xv) Wired cigarette papers; or
- (xvi) Cocaine freebase kits.

In determining whether an object is drug paraphernalia, a court or other authority shall consider in addition to all other logically relevant factors, the following:

1. Statements by an owner or person in control of the object concerning its use;
2. Prior convictions, if any, of the owner or person in control of the object under any city, state or federal law relating to any controlled substance;
3. The proximity of the object to a direct violation of the Uniform Controlled Substances Act or other similar law;
4. The proximity of the object to a controlled substance;
5. The existence of any residue of controlled substances on the object;
6. Direct or circumstantial evidence of the intent of an owner, or person in control of the object to deliver it to a person the owner or person in control of the object knows or should reasonably know, intends to use the object to facilitate a violation of the Uniform Controlled Substances Act or other similar law; the innocence of an owner or person in control of the object, as to a direct violation of the Uniform Controlled Substances Act or similar law shall not prevent a finding that the object is intended for use as drug paraphernalia;
7. Oral or written instructions provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning the object's use;
10. The manner in which the object is displayed for sale;
11. Whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community such as a distributor or dealer of tobacco products;
12. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
13. The existence and scope of legitimate uses for the object in the community;
14. Expert testimony concerning the object's use;
15. Any evidence that alleged paraphernalia can or has been used to store a controlled substance or to introduce a controlled substance into the human body as opposed to any legitimate use for the alleged paraphernalia; or
16. Advertising of the item in magazines or other means which specifically glorify, encourage or espouse the illegal use, manufacture, distribution or cultivation of controlled substances.

- (f) **“Immediate precursor”** means a substance which the board of pharmacy has found to be and by rules and regulations designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.
- (g) **“Marijuana”** means all parts of all varieties of the plant Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or 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.
- (h) **“Manufacture”** means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container. This term does not include the preparation or compounding of a controlled substance by an individual for his own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:
1. By a practitioner or his agent pursuant to a lawful order of a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
 2. By a practitioner or by his authorized agent under his supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to his or its dispensing of a controlled substance.
- (i) **“Patient”** means, as the case may be:
1. The individual for whom a drug is prescribed or to whom a drug is administered; or
 2. The owner or the agent or the owner of the animal for which a drug is prescribed or to which a drug is administered; provided, that the prescribing or administering referred to in subdivisions 1 and 2 of this subsection is in good faith and in the course of professional practice only.
- (j) **“Person”** means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.
- (k) **“Pharmacist”** means an individual currently licensed to practice the profession of pharmacy in this state.

- (l) **“Possess”** or **“possession”** means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.
- (m) **“Practitioner”** means a physician (M.D. or D.O.), dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise authorized by law to administer and prescribe, use in teaching or chemical analysis, or conduct research with respect to a controlled substance in the course of professional practice and research.
- (n) **“Production”** includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.
- (o) **“Prescription”** means a written order, and in cases of emergency, a telephone order, issued by a practitioner in good faith in the course of his professional practice to a pharmacist for a drug for a particular patient, which specifies the date of its issue, the name and address of the patient (and, if such drug is prescribed for an animal, the species of such animal), the name and quantity of the drug prescribed, the directions for use of such drug, and the signature of such practitioner.
- (p) **“Simulated drug”** and **“simulated controlled substance”** means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.
- (q) **“Somnifacient”** and “stimulating” have the meaning attributable in standard medical lexicons.
- (r) **“Warehouseman”** means a person who, in the usual course of business, stores drugs for others lawfully entitled to possess them and who has no control over the disposition of such drugs except for the purpose of such storage.
- (s) **“Wholesaler”** means a person engaged in the business of distributing drugs to persons included in any of the classes named in this chapter.
 (Ord. 1128C; 09-18-89)
 (Ord. 2804C; 09-19-16)

11-602. POSSESSION OF CONTROLLED SUBSTANCES.

- (a) It is unlawful for any person to possess, or have under his or her control, any dangerous drug or controlled substance.
- (b) [Repealed]
- (c) It is unlawful for any person to possess, or have under his or her control, any marijuana. A violation of this subsection (c) shall be punishable as a Class B violation as defined by the “Uniform Public Offense Code for Kansas Cities,” as incorporated by reference by Section 11-101 of this Chapter, as amended; except that if a person has a prior conviction for possession of marijuana in this City or under a substantially similar law from any another jurisdiction, it shall be punishable as a Class A violation.
 (Ord. 1128C; 09-18-89)
 (Ord. 2804C; 09-19-16)

11-603. DRUG PARAPHERNALIA .

- (a) It shall be unlawful for any person to use, or possess with the intent to use, any drug paraphernalia to store, contain, conceal, inject, inhale or otherwise introduce into the human body, a controlled substance.
- (b) [Repealed]
- (c) No person shall sell, offer for sale, deliver, possess with intent to deliver, manufacture with intent to deliver, or display for sale any drug paraphernalia within this City, knowing, or under circumstances where one reasonably should know, 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 in violation of the Uniform Controlled Substances Act and amendments thereto.
- (d) The fact that an item has not yet been used or did not contain a controlled substance at the time of its seizure is not a defense to a charge that the item was possessed with the intent for use as drug paraphernalia.

(Ord. 1702C; 11-03-97)

(Ord. 2804C; 09-19-16)

11-604. SIMULATED CONTROLLED SUBSTANCES AND SIMULATED DRUGS PROHIBITED.

It shall be unlawful for any person to use, possess with intent to use, sell, offer for sale, deliver, possess with intent to deliver, manufacture with intent to deliver or display for sale any simulated controlled substance, or any simulated drug within the city limits of Leawood, Kansas.

(Ord. 1128C; 09-18-89)

(Ord. 2804C; 09-19-16)

11-605. EXEMPTIONS.

- (a) Section 11-602(a) does not apply:
 - 1. to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons duly registered with the Kansas Board of Pharmacy as prescribed in the Uniform Controlled Substances Act, Article 41, Chapter 65 of the Kansas Statutes Annotated.
 - 2. when such drug or controlled substance is delivered by a pharmacist, or his authorized agent, in good faith upon prescription, and there is affixed to the immediate container in which such drug is delivered a label bearing:
 - (i) the name and address of the owner of the establishment from which such drug or controlled substance was delivered;
 - (ii) the date on which the prescription for such drug was filled;
 - (iii) the number of such prescription as filed in the prescription files of the pharmacist who filled such prescription;
 - (iv) the name of the practitioner who prescribed such drug;

- (v) the name and address of the patient, if such drug was prescribed for an animal, a statement showing the species of the animal, and
 - (vi) the direction for use of the drug and cautionary statements, if any, as contained in the prescription.
 - 3. when such drug is delivered by a practitioner in good faith and in the course of his or her professional practice only.
 - 4. to the delivery of drugs for medical or scientific purposes only to persons included in any of the classes hereinafter named, or to the agents or employees of such person, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be;
 - 5. to the possession of drugs by the following persons or their agents or employees for such use:
 - (i) Pharmacists,
 - (ii) Practitioners,
 - (iii) Persons who procure drugs: (a) for disposition by or under the supervision of pharmacists or practitioners employed by them or (b) for the purpose of lawful research, teaching, or testing and not for resale,
 - (iv) Hospitals and other institutions which procure drugs for lawful administration by or under the supervision of practitioners,
 - (v) Manufacturers and wholesalers, and
 - (vi) Carriers and warehousemen.
- (b) Nothing contained in Section 11-602 shall make it unlawful for a public officer, agent or employee, or person aiding such public officer in performing his official duties to possess, obtain, or attempt to obtain a drug for the purpose of enforcing the provisions of any law of this state or of the United States relating to the regulation of the handling, sale or distribution of drugs.

(Ord. 1128C; 09-18-89)

(Ord. 2804C; 09-19-16)

11-606. PENALTIES. Unless a more specific penalty is provided, a violation of any provision of this Article shall be punishable as a Class A violation as defined by the "Uniform Public Offense Code for Kansas Cities," as incorporated by reference by Section 11-101 of this Chapter, as amended.

(Code 2000)

(Ord. 1907C; 08-06-01)

(Ord. 2804C; 09-19-16)

11-607. FORFEITURE OF DRUGS, PARAPHERNALIA AND SIMULATED CONTROLLED SUBSTANCES. All drugs, drug paraphernalia, controlled substances and simulated controlled substances seized hereunder, when no longer required as evidence, are subject to destruction or forfeiture as provided by law.

(Ord. 1128C; 09-18-89)

(Ord. 2804C; 09-19-16)