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CITY OF LYNNWOOD

ORDINANCE NO. 1840

City of Lynnwood  
DEC 18 2000  
SCANNED

AN ORDINANCE REPEALING LMC 10.04.885 AND PART OF ORDINANCE NO. 637; AMENDING ORDINANCE NO. 1184 AND CHAPTER 10.44 OF THE LYNNWOOD MUNICIPAL CODE; ADDING NEW SECTIONS TO CHAPTER 10.44 OF THE LYNNWOOD MUNICIPAL CODE; REGULATING THE POSSESSION OF MARIJUANA, DISTRIBUTION OF DRUGS, AND PROVIDING FOR NEW MAXIMUM AND MINIMUM PENALTIES FOR THE POSSESSION OF MARIJUANA AND THE POSSESSION AND/OR SALE OF DRUG PARAPHERNALIA.

WHEREAS, the City of Lynnwood ("City") desires to locate in a single chapter of the Lynnwood Municipal Code all those provisions which deal with the possession of marijuana and other drug related offenses; and

WHEREAS, the City desires to create a penalty structure for this chapter which is consistent with the requirements of RCW Chapter 69.50; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF LYNNWOOD DOES ORDAIN AS FOLLOWS:

Section 1. LMC 10.44.010 Amended. Section 1 of Ordinance No. 1184 and Section 10.44.010 are amended to read as follows:

10.44.010 DEFINITIONS:

A. "Drug Paraphernalia" means:

1. 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 unlawful drugs, including but not limited to controlled substances as defined by the Revised Code of Washington, Chapter 69.50, as now existing or hereafter amended. Such term includes, but is not limited to:

(a). 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;

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

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

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

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

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

(g). 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;

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

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

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

(k). Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

(l). 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 material, such as marijuana cigarette, that has 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). Bonges;
- (xiii). Ice pipes or chillers.

2. 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 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 ordinance;
- (d). The proximity of the object to controlled substances;
- (e). The proximity 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, or should reasonably know, intend to use the object to facilitate a violation of this chapter; provided that 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). 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.

B. "Marijuana" means:

All parts of the plant of the genus Cannabis L., 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.

Section 2.      New Section Added.      A new section is added to the Lynnwood Municipal Code to read as follows:

**10.44.020. STATUTORY PROVISIONS ADOPTED BY REFERENCE**

RCW 69.50.408, a statute relating to Second or Subsequent Offenses, as now existing or hereafter amended, and RCW 69.50.420, a statute relating to Juvenile Driving Privileges, as now existing or hereafter amended, are hereby adopted by reference as and for Ordinances of the City of Lynnwood as if set forth in full herein. One copy of each such statute shall be on file with the Lynnwood City Clerk.

Section 3. LMC 10.04.885 Repealed. Part 10.04.885 of Section 1 of Ordinance No.637 entitled *Distribution of Drugs* and Section 10.04.885 of the Lynnwood Municipal Code, are hereby repealed.

Section 4. New Section Added. A new section is added to the Lynnwood Municipal Code, to read as follows:

**10.44.030. POSSESSION OF MARIJUANA**

Except as otherwise provided by Chapter 69.50 RCW, as now existing or hereafter amended, any person possessing forty (40) grams or less of marijuana shall be guilty of a misdemeanor.

Section 5. LMC 10.44.020 Amended and Recodified. Section 2 of Ordinance No. 1184 and Section 10.44.020 of the Lynnwood Municipal Code are recodified as LMC 10.44.040 and amended to read as follows:

**10.44.040. 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 in violation of this chapter. Any person who violates this section is guilty of a misdemeanor.

Section 6. LMC 10.44.030 Amended and Recodified. Section 3 of Ordinance No. 1184 and Section 10.44.030 of the Lynnwood Municipal Code are recodified as LMC 10.44.050 and amended to read as follows:

**10.44.050. 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, 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 this chapter. Any person who violates this section is guilty of a misdemeanor.

Section 7. LMC 10.44.040 Amended and Recodified. Section 4 of Ordinance No. 1184, and Section 10.44.040 of the Lynnwood Municipal Code are recodified as LMC 10.44.060 and amended to read as follows:

**10.44.060. DELIVERY OF DRUG PARAPHERNALIA TO A MINOR.**

Any person eighteen (18) years or over who violates Section 10.44.050 of the Lynnwood Municipal Code by delivering drug paraphernalia to a person under eighteen (18) years of age who is at least (3) years his junior is guilty of a gross misdemeanor.

Section 8. New Section Added. A new Section is added to the Lynnwood Municipal Code to read as follows:

**10.44.070. MISDEMEANOR VIOLATIONS - MINIMUM IMPRISONMENT**

A person who is convicted of a misdemeanor violation of any provision of this chapter shall be punished by imprisonment for not less than twenty-four consecutive hours, and by a fine of not less than two hundred fifty dollars. On a second or subsequent conviction of a misdemeanor violation of any provision of this chapter, the fine shall be not less than five hundred dollars. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition of the minimum imprisonment will pose a substantial risk to the defendant's physical or mental well-being or that local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of forty hours of community service. If a minimum term of imprisonment is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person to be indigent, the minimum fine shall not be suspended or deferred.

Section 9. New Section Added. A new Section is added to the Lynnwood Municipal Code to read as follows:

**10.44.080. PENALTIES UNDER OTHER LAWS**

Any penalty imposed for violation of this Chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

Section 10. LMC 10.44.050 Recodified. Section 10.44.050 of the Lynnwood Municipal Code, entitled *Civil Forfeiture*, is recodified as Section 10.44.090 of the Lynnwood Municipal Code.

Section 11. New Section Added. A new section is added to the Lynnwood Municipal Code to read as follows:

**10.44.100. CHANGES IN STATUTES ADOPTED BY REFERENCE HEREIN**

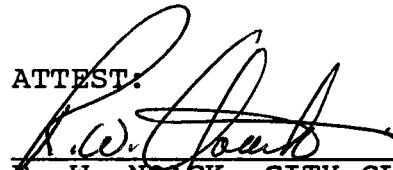
The amendment, revision, addition, repeal, recodification or reenactment by the Washington Legislature of any of the Statutes adopted by reference in this Chapter shall be deemed to amend the provisions of this Chapter in conformity with the Legislature's amendment, revision, addition, repeal, recodification or reenactment of the Statutes adopted by reference herein, and it shall not be necessary for the legislative authority of this City to take any action with respect to such amendment, revision, addition, repeal, recodification or reenactment as provided by RCW 35A.12.140.

Section 12. Severability. If any section, subsection, sentence, clause, paragraph, phrase or word of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, paragraph, phrase or word of this Ordinance.

Section 13. Immediate Effective Date. This Ordinance is necessary for the immediate preservation of the public peace, health and safety, and shall take effect and be in full force immediately after its passage, approval and publication.

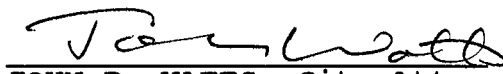
PASSED this 12th day of August, 1991, and signed in authentication of its passage this 13th day of August, 1991.

ATTEST:

  
R. W. NOACK, CITY CLERK

  
M. J. HRDLICKA, MAYOR

APPROVED AS TO FORM:

  
JOHN P. WATTS, City Attorney