

## **ORDINANCE NUMBER 17-10900**

### **AN ORDINANCE AMENDING CHAPTER 25 OF THE SALINA CODE BY ADDING ARTICLE XIII PERTAINING TO DRUG OFFENSES.**

**BE IT ORDAINED** by the Governing Body of the City of Salina, Kansas:

**Section 1.** That Article XIII is hereby added as follows:

#### **ARTICLE XIII. DRUG OFFENSES.**

##### **Sec. 25-201. DEFINITIONS.**

As used in this article:

- (a) **Controlled substance** means any drug, substance or immediate precursor included in any of the schedules designated in the uniform controlled substances act, Chapter 65, Article 41 of the Kansas Statutes Annotated, and amendments thereto.
- (b) **Drug** means:
  - 1) Substances recognized as drugs in the official United States pharmacopeia, 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 animals;
  - 3) Substances, other than food, intended to affect the structure or any function of the body of man or animals; and
  - 4) Substances intended for use as a component of any article specified in clause 1, 2, or 3 of this subsection. It does not include devices or their components, parts or accessories.
- (c) **Drug paraphernalia** means all equipment and materials of any kind which are used, or primarily intended 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 and 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 controlled substances;
- 5) scales and balances used or intended for use in weighing or measuring controlled substances;
- 6) diluents and adulterants, including, but not limited to, 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), methamphetamine or amphetamine into the human body, such as:
  - A. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
  - B. water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;
  - C. carburetion pipes, glass or other heat resistant tubes or any other device used, intended to be used, or designed to be used to cause vaporization of a controlled substance for inhalation;
  - D. smoking and carburetion masks;
  - E. roach clips, objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
  - F. miniature cocaine spoons and cocaine vials;
  - G. chamber smoking pipes;
  - H. carburetor smoking pipes;
  - I. electric smoking pipes;
  - J. air-driven smoking pipes;
  - K. chillums;
  - L. bongs;
  - M. ice pipes or chillers;
  - N. any smoking pipe manufactured to disguise its intended purpose;
  - O. wired cigarette papers; or
  - P. cocaine freebase kits.

“Drug paraphernalia” shall not include any products, chemicals or materials described in K.S.A. 2016 Supp. 21-5709(a), and amendments thereto.

- (d) **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.

- (e) **Manufacture** means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. Manufacture does not include:
  - 1) The preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:
    - A. By a practitioner or the practitioner's agent pursuant to a lawful court order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or
    - B. By a practitioner or by the practitioner's authorized agent under such practitioner's 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 dispensing of a controlled substance; or
  - 2) The addition of diluents or adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose or lactose, which are intended for use in cutting a controlled substance.
- (f) **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. Marijuana does not include: (1) 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; or (2) any substance listed in schedules II through V of the uniform controlled substances act.
- (g) **Person** means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.
- (h) **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 items in a place where the person has some measure of access and right of control.
- (i) **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.
- (j) **Production** includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.
- (k) **Simulated drug** or **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.

- (l) **Tetrahydrocannabinol** means any material, compound, mixture, or preparation naturally contained in a plant of the genus *Cannabis* (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).

**Sec. 25-202. Unlawful Possession of Controlled Substances.**

- (a) Except as authorized by the Uniform Controlled Substance Act, K.S.A. 65-4101 *et. seq.*, and amendments thereto, it shall be unlawful for any person to possess, or have under such person's control marijuana and/or tetrahydrocannabinol.
- (b) Violation of this section shall be punishable as:
1. A Class B violation, as defined by the Uniform Public Offense Code for Kansas Cities, as incorporated by 25-01 of this Chapter; except as provided under (b)(2);
  2. A Class A violation, as defined by the Uniform Public Offense Code for Kansas Cities, as incorporated by 25-01 of this Chapter, if that person has a prior conviction for possession of marijuana and/or tetrahydrocannabinol in this City, or under K.S.A. 65-4162, prior to its repeal, K.S.A. 21-36a06, prior to its repeal, K.S.A. 2016 Supp. 21-5706, and amendments thereto, or under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense.
- (c) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog.
- (d) In addition to or in lieu of any other sentence authorized by ordinance, whenever a person is convicted of having committed unlawful possession of controlled substances under this section, while under 21 years of age, the court shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the court finds that the person is indigent, the fee may be waived.

**Sec. 25-203. Unlawful possession of drug paraphernalia.**

- (a) It shall be unlawful for any person to use or possess with intent to use any drug paraphernalia to:
1. Store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body.

2. Manufacture, cultivate, plant, propagate, harvest, test, analyze or distribute fewer than five marijuana plants.
- (b) Violation of this section is punishable as a Class B violation.

**Sec. 25-204. Factors to consider when determining what is drug paraphernalia.**

- (a) In determining whether an item constitutes 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 an owner or person in control of the object, under any state, federal or municipal law relating to any controlled substance;
  - 3) the proximity of the object, in time and space, to a direct violation of K.S.A. 2016 Supp. 21-5701 through 21-5717, and amendments thereto;
  - 4) the proximity of the object to controlled substances;
  - 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 K.S.A. 2016 Supp. 21-5701 through 21-5717, and amendments thereto. The innocence of an owner or person in control of the object as to a direct violation of K.S.A. 2016 Supp. 21-5701 through 21-5717, and amendments thereto, 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 or 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 as to 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.
- (b) The fact that an item has not yet been used or did not contain a controlled substance at the time of the seizure is not a defense to a charge that the item was possessed with the intention for use as drug paraphernalia.

**Section 2.** This ordinance shall be in full force and effect from and after its adoption and publication by the following summary once in the official city newspaper.

On October 9, 2017, the City of Salina, Kansas, passed Ordinance No. 17-10900. The ordinance amends Chapter 25 of the Salina Code by adding Article XIII pertaining to drug offenses. A complete copy of the ordinance is available at [www.salina-ks.gov](http://www.salina-ks.gov) or in the office of the city clerk, 300 W. Ash Street, free of charge. This summary is certified by the City Attorney.

Introduced: October 9, 2017  
Passed: October 9, 2017

Kaye J. Crawford, Mayor

[SEAL]

ATTEST:

Shandi Wicks, CMC, City Clerk

The publication summary set forth above is certified this \_\_\_\_\_ day of October, 2017.

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Greg A. Bengtson, City Attorney