

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER URBAN
Council Bill No. 05
Ordinance No. 1666
Series of 2019

TITLE: AN ORDINANCE AMENDING SECTION 16-132 AND SUBSECTION 16-133(H) OF THE WHEAT RIDGE CODE OF LAWS TO EXEMPT NEEDLE-STICK PREVENTION AND SYRINGE EXCHANGE PROGRAM PARTICIPANTS FROM CRIMINAL PROSECUTION

WHEREAS, the City of Wheat Ridge, Colorado (the "City"), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-15-401, the City, acting through its City Council (the "Council"), is authorized to adopt rules and regulations prohibiting certain conduct and defining general offenses that harm or pose a threat to the public health, safety or welfare; and

WHEREAS, pursuant to such authority, the Council has previously defined and adopted certain general offenses, codified as Chapter 16 of the Wheat Ridge Code of Laws ("Code"), including prohibitions of possessing injection devices, such as needles and syringes, generally consistent with state statute; and

WHEREAS, state statutes have evolved to provide exemptions from criminal prosecution for individuals who actively alert law enforcement and first responder personnel to the presence of syringes and needles in their possession and who possess syringes in connection with a clean syringe exchange program operated by a public health agency; and

WHEREAS, the City Council finds that such criminal exemptions incentivize individuals to protect law enforcement and first responders from potentially grave injury and harm via needle-sticks and to protect the public health generally by participation in approved clean syringe exchange programs; and

WHEREAS, the City Council therefore finds that it would promote the public health, safety and welfare to provide exemptions from City prosecution for such individuals in a manner that mirrors the exemptions provided under state law.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Section 16-132 of the Wheat Ridge Code of Laws, concerning injection devices, is hereby amended as follows:

Sec. 16-132. Possession of injection devices.

(A) It shall be unlawful for any person to possess any hypodermic needle, syringe or similar device which may be adapted or used for injecting drugs or other substances by subcutaneous or intracutaneous injection into the body, unless such possession has been authorized for medical or physical treatment by a licensed medical doctor or osteopathic physicians; provided,

however, that the prohibitions contained in this section shall not apply to manufacturers, jobbers, licensed medical technicians, hospitals, nursing homes, technologists, nurses, laboratories, research teaching institutes, medical doctors, osteopathic physicians, dentists, veterinarians or persons who lawfully use injection devices for the sole purpose of providing medical treatment to their pets or livestock, pharmacists and embalmers selling or using such devices in the legal course of their respective businesses or professions. A violation of this section shall be subject to the penalty provided in section 16-4 of this Code, together with a surcharge of ten dollars (\$10.00) to be paid to the police department through the court to offset the expense of destruction of drugs, injection devices and drug paraphernalia, whether or not any of those items was confiscated from the defendant.

(B) (1) PRIOR TO SEARCHING A PERSON, A PERSON'S PREMISES, OR A PERSON'S VEHICLE, A PEACE OFFICER MAY ASK THE PERSON WHETHER THE PERSON IS IN POSSESSION OF A HYPODERMIC NEEDLE OR SYRINGE THAT MAY CUT OR PUNCTURE THE OFFICER OR WHETHER SUCH A HYPODERMIC NEEDLE OR SYRINGE IS ON THE PREMISES OR IN THE VEHICLE TO BE SEARCHED. IF A HYPODERMIC NEEDLE OR SYRINGE IS ON THE PERSON, ON THE PERSON'S PREMISES, OR IN THE PERSON'S VEHICLE AND THE PERSON, EITHER IN RESPONSE TO THE OFFICER'S QUESTION OR VOLUNTARILY, ALERTS THE OFFICER OF THAT FACT PRIOR TO THE SEARCH, ASSESSMENT, OR TREATMENT, THE PEACE OFFICER SHALL NOT ARREST OR CITE THE PERSON PURSUANT TO THIS SECTION, NOR SHALL THE CITY PROSECUTOR CHARGE OR PROSECUTE SUCH OFFENSE. THE CIRCUMSTANCES DESCRIBED IN THIS PARAGRAPH (B) MAY BE USED AS A FACTOR IN A PROBABLE CAUSE OR REASONABLE SUSPICION DETERMINATION OF ANY CRIMINAL OFFENSE IF THE ORIGINAL STOP OR SEARCH WAS LAWFUL.

(2) PRIOR TO ASSESSING OR TREATING A PERSON, AN EMERGENCY MEDICAL SERVICE PROVIDER OR OTHER FIRST RESPONDER MAY ASK THE PERSON WHETHER THE PERSON IS IN POSSESSION OF A HYPODERMIC NEEDLE OR SYRINGE THAT MAY CUT OR PUNCTURE THE TECHNICIAN OR FIRST RESPONDER. IF A HYPODERMIC NEEDLE OR SYRINGE IS ON THE PERSON, AND THE PERSON, EITHER IN RESPONSE TO THE QUESTION OR VOLUNTARILY, ALERTS THE EMERGENCY MEDICAL SERVICE PROVIDER OR FIRST RESPONDER OF THAT FACT, A PEACE OFFICER SHALL NOT ARREST OR CITE THE PERSON PURSUANT TO THIS SECTION, NOR SHALL THE CITY PROSECUTOR CHARGE OR PROSECUTE SUCH OFFENSE.

Section 2. Subsection 16-133(h) of the Wheat Ridge Code of Laws, concerning exemptions to offenses related to drug paraphernalia, is hereby amended as follows:

- (h) The provisions of this section shall not apply to the possession, display, purchase, transport or use in private by any person that is twenty-one (21) years of age or older of drug paraphernalia that is used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging,

repackaging, storing, vaporizing, or containing marijuana or for ingesting, inhaling, or otherwise introducing marijuana into the human body; OR TO ANY PERSON PARTICIPATING AS AN EMPLOYEE, VOLUNTEER, OR PARTICIPANT IN AN APPROVED SYRINGE EXCHANGE PROGRAM CREATED PURSUANT TO SECTION 25-1-520, C.R.S.

Section 3. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Wheat Ridge, that it is promulgated for the health, safety, and welfare of the public and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 4. Severability; Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 5. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 8 to 0 on this 22nd day of April, 2019 (continued from April 8, 2019), ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for May 13, 2019, at 7:00 o'clock p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 8 to 0, this 13th day of May, 2019.

SIGNED by the Mayor on this 13th day of May, 2019.



Bud Starker, Mayor

ATTEST:


Janelle Shaver, City Clerk
Robin Eaton, Deputy City Clerk

Approved As To Form


Gerald E. Dahl, City Attorney

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