

VILLAGE OF ARMADA
MACOMB COUNTY, MICHIGAN

ORDINANCE NO. 132

AN ORDINANCE TO AMEND TITLE IX, CHAPTER 99.1 OF THE VILLAGE
CODE OF ORDINANCES TO UPDATE THE VILLAGE'S MARIJUANA USE
AND POSSESSION RESTRICTIONS TO CONFORM WITH STATE LAW

THE VILLAGE OF ARMADA ORDAINS:

Section 1. Section 99.1-3 of Chapter 99.1 of Title IX of the Village Code of Ordinances is amended to read as follows:

Sec. 99.1-3. - Use or possession of marijuana; probation without judgment of guilt; transportation of medical marijuana.

(a) It shall be unlawful for any person to use or possess marijuana, except as provided by Public Act 368 of 1978, being MCL 333.1101 et seq., as amended. A person who violates this subsection by using marijuana is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both. A person who violates this subsection by possessing marijuana is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(1) When an individual, who has not previously been convicted of an offense under subsection 99.1-3(a) or under any statute of the United States or of this or any other state relating to narcotic drugs, coca leaves, marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession or use of marijuana under subsection 99.1-3(a), the court, without entering a judgment of guilt with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions that shall include, but are not limited to, payment of a probation supervision fee as prescribed in section 3c of chapter XI of the state code of criminal procedure, 1927 PA 175, MCL 771.3c. The terms and conditions of probation may include participation in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1084.

(i) Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and, except as otherwise provided by law, is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent

convictions. There may be only one (1) discharge and dismissal under this section as to an individual.

- (2) All court proceedings under this section shall be open to the public. Except as provided in subsection (3), if the record of proceedings as to the defendant is deferred under this section, the record of proceedings during the period of deferral shall be closed to public inspection.
- (3) Unless the court enters a judgment of guilt under this section, the department of state police shall retain a nonpublic record of the arrest, court proceedings, and disposition of the criminal charge under this section. However, the nonpublic record shall be open to the following individuals and entities for the purposes noted:
 - (i) The courts of this state, law enforcement personnel, the department of corrections, and prosecuting attorneys for use only in the performance of their duties or to determine whether an employee of the court, law enforcement agency, department of corrections, or prosecutor's office has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, law enforcement agency, department of corrections, or prosecutor's office.
 - (ii) The courts of this state, law enforcement personnel, and prosecuting attorneys for the purpose of showing either of the following:
 - (a) That a defendant has already once availed himself or herself of this section.
 - (b) Determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under section 1076(5) of the revised judicature act of 1961, 1961 PA 236, MCL 600.1076.
 - (iii) The department of human services for enforcing child protection laws and vulnerable adult protection laws or ascertaining the preemployment criminal history of any individual who will be engaged in the enforcement of child protection laws or vulnerable adult protection laws.
- (4) If an individual is convicted of a violation of subsection 99.1-3(a), the court, as part of the sentence, during the period of confinement or the period of probation, or both, may require the individual to attend a course of instruction or rehabilitation program approved by the state on the medical, psychological, and social effects of the misuse of drugs. The court may order the individual to pay a fee, as approved by the director of the state agency, for the instruction or program. Failure to complete the instruction or program shall be considered a violation of the terms of probation.

(b) No person shall transport or possess usable marijuana as defined in the Act in or upon a motor vehicle or any self-propelled vehicle designed for land travel unless the usable marijuana is either:

- (1) Enclosed in a case that is carried in the trunk of the vehicle; or
- (2) Enclosed in a case that is not readily accessible from the interior of the vehicle in vehicles which do not have a trunk.

(c) A person who violates subsection (b) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

State law reference— Possession, MCL 333.7403; Use, MCL 333.7404; Similar provisions, MCL 333.7411; Transportation of medical marijuana, MCL 750.474

Section 2. Section 99.1-2 of Chapter 99.1 of Title IX of the Village Code of Ordinances is amended to read as follows:

Sec. 99.1-2. - Drug paraphernalia.

(a) *Drug paraphernalia* means all equipment, products, and materials of any kind which are or have been 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; including, but not limited to, all of the following:

- (1) An isomerization device specifically designed for use in increasing the potency of any species of plant which plant is a controlled substance.
- (2) Testing equipment specifically designed for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance.
- (3) A weight scale or balance specifically designed for use in weighing or measuring a controlled substance.
- (4) A diluent or adulterant, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose, and lactose, specifically designed for use with a controlled substance.
- (5) A separation gin or sifter specifically designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana.
- (6) An object specifically designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body.

- (7) A kit specifically designed 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.
- (8) A kit specifically designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
- (9) A device, commonly known as a cocaine kit, that is specifically designed for use in ingesting, inhaling, or otherwise introducing controlled substances into the human body, and which consists of at least a razor blade and a mirror.
- (10) A device, commonly known as a bullet, that is specifically designed to deliver a measured amount of controlled substances to the user.
- (11) A device, commonly known as a snorter, that is specifically designed to carry a small amount of controlled substances to the user's nose.
- (12) A device, commonly known as an automotive safe, that is specifically designed to carry and conceal a controlled substance in an automobile, including, but not limited to, a can used for brake fluid, oil, or carburetor cleaner which contains a compartment for carrying and concealing controlled substances.
- (13) A spoon, with or without a chain attached, that has a small diameter bowl and that is specifically designed for use in ingesting, inhaling, or otherwise introducing controlled substances into the human body.

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

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) The proximity of the object, in time and space, to a direct violation of laws and ordinances relating to controlled substances;
- (3) The proximity of the object to controlled substances;
- (4) The existence of any residue of controlled substances on the object;
- (5) 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 or she knows intend to use the object to facilitate a violation of this section; the innocence of an owner or of anyone in control of the object, as to a direct violation of this section shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
- (6) Instructions, oral or written provided with the object concerning its use;

- (7) Descriptive materials accompanying the object which explain or depict its use;
- (8) National and local advertising concerning its use;
- (9) The manner in which the object is displayed for sale;
- (10) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
- (11) The existence and scope of legitimate uses for the object in the community;
- (12) Expert testimony concerning its use;
- (13) 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;
- (14) Prior violations by an owner, or by anyone in control of the object, of any law or ordinance relating to controlled substances; and
- (15) Positive tests revealing the current or former presence of controlled substances in the body of the owner or person with possession or control of the object.

(c) *Drug paraphernalia violations.*

- (1) It is unlawful for any person to possess drug paraphernalia.
- (2) It shall be unlawful and a violation of this chapter for any person to knowingly use, occupy, frequent, or live in a home, building, apartment, store, automobile, boat, boathouse, airplane, or other place of any description whatsoever where drug paraphernalia as defined herein are sold, dispensed, furnished, given out, stored, possessed, manufactured, or otherwise kept.
- (3) The prohibition contained in this section shall not apply to manufacturers, wholesalers, licensed medical technicians, technologists, nurses, hospitals, research teaching institutions, clinical laboratories, medical doctors, osteopathic physicians, dentists, chiropractors, veterinarians, pharmacists, or embalmers in the normal, lawful course of their respective businesses or professions, nor to common carriers or warehousemen or their employees engaged in the lawful transportation of such paraphernalia, nor to public officers or employees while engaged in the performance of their official duties, nor to persons suffering from any medical condition requiring injection.
- (4) A person shall not sell or offer for sale drug paraphernalia, knowing that the drug paraphernalia 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. This subsection does not apply to any of the following:

- (i) An object sold or offered for sale to a person licensed under article 15 of the Public Health Code or under the occupational code, 1980 PA 299, MCL 339.101 to 339.2721, or any intern, trainee, apprentice, or assistant in a profession licensed under article 15 of the Public Health Code or under the occupational code, 1980 PA 299, MCL 339.101 to 339.2721, for use in that profession.
- (ii) An object sold or offered for sale to any hospital, sanitarium, clinical laboratory, or other health care institution including a penal, correctional, or juvenile detention facility for use in that institution.
- (iii) An object sold or offered for sale to a dealer in medical, dental, surgical, or pharmaceutical supplies.
- (iv) A blender, bowl, container, spoon, or mixing device not specifically designed for a use described in subsection (c).
- (v) A hypodermic syringe or needle sold or offered for sale for the purpose of injecting or otherwise treating livestock or other animals.
- (vi) An object sold, offered for sale, or given away by a state or local governmental agency or by a person specifically authorized by a state or local governmental agency to prevent the transmission of infectious agents.
- (vii) To the extent of the permitted conduct only, this section does not apply to any person or entity who is licensed or otherwise permitted by law to manufacture, use, possess, prescribe, dispense, distribute, conduct research with respect to, or administer a controlled substance in the normal course of their respective businesses or professions, if such actions are taken in the normal course; nor to common carriers or warehousemen or their employees engaged in the lawful transportation of the paraphernalia, nor to public officers or employees while engaged in the performance of their official duties, nor to persons suffering from asthma, diabetes, or other medical conditions requiring introduction of a controlled substance into the human body by self-injection.

(d) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both. Any drug paraphernalia used, sold, possessed with intent to use or sell, or manufactured with intent to sell in violation of this section shall be seized and forfeited.

Cross reference— Tobacco products, definitions, § 62-1.

State law reference— Similar provisions, MCL 333.7451, 333.7453, 333.7457.

Section 3. All ordinances or parts of ordinances or any section of the Village Code of Ordinances in conflict herewith are hereby repealed.

Section 4. The sections of this Ordinance are declared to be severable and if any section is declared illegal, or void for any reason, it shall not affect the remainder of the Ordinance.

Section 5. This Ordinance shall be published in accordance with the terms, conditions, and requirements of the Village Charter of the Village of Armada.

MOTION BY: COOPER

SECONDED BY: COENEN

AYES: COOPER, COENEN, BALLARD, AWDEY, CLARK, STIRRETT, WOLAK

NAYS: NONE

Adopted at a Regular Session of the Village Council for the Village of Armada on the 24th day of November, 2014.

Marvin Wolak, Village President

Michelle Poulos, Village Clerk

NOTICE OF ADOPTION OF ORDINANCE

The Village of Armada has adopted an ordinance that amends Chapter 99.1 of the Village Code of Ordinances to update the Village's marijuana use and possession ordinances and restrictions to conform with state law. The ordinance shall be effective 21 days after its adoption. A copy of the ordinance can be inspected or obtained from the Office of the Village Clerk located at 74274 Burk Street, Armada, Michigan 48005, during normal business hours.