

ORDINANCE NO. 50-540

AN ORDINANCE AMENDING SECTION 5.26.040 AND CREATING SECTION 5.26.050 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO MARIJUANA PENALTIES AND REPEALING THE ORIGINAL OF 5.26.040.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 5.26.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Penalty.

- (a) Except as provided in Subsection (b), a violation of the provisions of this chapter is a misdemeanor and, upon conviction, the sentence shall be a fine not to exceed two thousand five hundred dollars (\$2,500.00), and/or imprisonment of up to twelve (12) months in the Sedgwick County Jail.
- (b) A violation of Section 5.26.010 of the Code of the Wichita for the possession of marijuana, as defined by this chapter, is a misdemeanor and upon a first conviction, the sentence shall be a fine not to exceed one thousand dollars (\$1,000.00), and/or imprisonment of up to six (6) months in the Sedgwick County Jail. Upon a second conviction, the sentence shall be a fine not to exceed two thousand five hundred dollars (\$2,500.00), and/or imprisonment of up to twelve (12) months in the Sedgwick County Jail.

- (c) In addition to any other sentence authorized by this chapter, any person convicted of having violated the terms of this chapter, while under twenty-one (21) years of age, shall be ordered to submit to and complete 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 for such evaluation. If the judge finds that the person is indigent, the fee may be waived.
- (d) The municipal court judge shall order any person convicted of a charge alleging a violation of this chapter to pay the laboratory analysis fees specified in K.S.A. 28-176, and amendments thereto, as an additional cost provided that forensic laboratory services were rendered or administered in conjunction with the case. Any diversion agreement for a charge alleging a violation of this chapter shall also contain a provision requiring the defendant to pay such laboratory analysis fees provided that forensic laboratory services were rendered in conjunction with the case. Upon a finding that the defendant is indigent, such fee may be waived by the court.
- (e) Any person who is diverted on a charge alleging a violation of this chapter may be required by the prosecutor to obtain a drug abuse evaluation. Based upon the results of such evaluation, the offender may be required to attend a drug abuse education, counseling or treatment program as a condition of such diversion agreement.”

SECTION 2. Section 5.26.050 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Policies for Marijuana and Marijuana Paraphernalia Offenses.

- (a) On April 7, 2015, citizens voted to adopt an ordinance reducing the penalties for possession of small quantities of marijuana and marijuana paraphernalia to a criminal infraction. Based on this vote, it is the Council’s intent to enact an ordinance consistent with the spirit and intent of the ordinance approved by the Wichita voters, while remaining in compliance with provisions and dictates of state law.
- (b) The purpose of this section is to ensure that individuals over the age of twenty-one (21) years of age, other than those excluded herein, possessing a small quantity of marijuana or who possess drug paraphernalia, as defined by the chapter, utilized to contain, store, use, ingest, smoke or inhale marijuana, are not arrested and suffer only a fine and/or community service and no other punishment or penalty for the possession of a small quantity of marijuana and/or marijuana paraphernalia. This section shall be liberally construed for the accomplishment of these purposes.
- (c) For the purposes of this section:
 - (1) A small quantity of marijuana means the possession of thirty (32) grams or less of marijuana as defined by this chapter;
 - (2) Class A misdemeanor means an offense for which the statutory penalty is a fine not to exceed two thousand five hundred dollars

(\$2,500.00), and/or imprisonment of up to twelve (12) months in jail.

- (3) Conviction includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance;
- (d) Unless the arrest of an individual is required by state or federal law, a valid court order, or the identity of the individual cannot be determined, when any Wichita police officer suspects any individual over the age of twenty-one (21) years of age, other than those excluded herein, of possession of a small quantity of marijuana or marijuana paraphernalia, that person shall not be required to post bond, suffer arrest, be taken into custody for any purpose or detained for any reason other than the issuance of a summons, suffer incarceration, suffer loss of driver's license, or any other punishment or penalty other than the issuance of a summons and, if found guilty, a fine of up to fifty (50) dollars and all applicable court costs and laboratory fees. There shall be a strong presumption that the proper disposition of any such case by the court is limited to the assessment of a fifty (50) dollar fine and all applicable court costs.
- (e) Subsection (d) shall not apply to persons:
 - (1) Who have been convicted of a felony within the preceding five (5) years;
 - or

- (2) Who have been convicted of a Class A misdemeanor within the preceding three (3) years; or
 - (3) Who have been convicted in a state or municipal court of misdemeanor marijuana possession or marijuana paraphernalia on one or more prior occasions within the preceding three (3) years; or
 - (4) Who are arrested on suspicion of any felony, criminal misdemeanor or Driving Under the Influence of Alcohol and/or Drugs offense, other than possession of drug paraphernalia, arising from the same set of facts and circumstances as the alleged marijuana offense.
- (f) The provisions of this section are severable. If any provision of this section is declared invalid, that invalidity shall not affect other provisions of the section which can be given effect without the invalid provision.
- (g) The message of this section is that people should not use marijuana, but should also not lose opportunities for education and employment because of such use.”

SECTION 3. The original of Section 5.26.040 of the Code of the City of Wichita, Kansas is hereby repealed.

SECTION 4. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 13th day of June, 2017.

Jeff Longwell, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Jennifer L. Magaña
City Attorney and Director of Law