

**CITY OF FAIRWAY, KANSAS  
ORDINANCE NO. 1752**

**AN ORDINANCE RELATING TO THE REGULATION OF PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF FAIRWAY, KANSAS; INCORPORATING BY REFERENCE THE *UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES*, 37<sup>TH</sup> EDITION, WITH CERTAIN CHANGES; AMENDING AND REPEALING EXISTING SECTIONS 8-25, 8-26, 8-27, 8-29, 8-30, AND SECTIONS 8-49 THROUGH 8-55, INCLUSIVE, OF THE CODE OF ORDINANCES, CITY OF FAIRWAY, KANSAS; AND REPEALING ORDINANCE NO. 1726.**

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

**SECTION 1.** Existing Section 8-25 of the Code of Ordinances, City of Fairway, Kansas (the "Code"), is hereby amended to read as follows:

**Sec. 8-25. – Incorporating uniform public offense code.**

There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Fairway, Kansas, that certain code known as the *Uniform Public Offense Code for Kansas Cities*, 37<sup>th</sup> Edition (the "2021 UPOC"), prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter modified or changed. At least one official copy of the 2021 UPOC shall be marked or stamped "Official Copy as Adopted by Ordinance No. 1752", with all sections or portions thereof intended to be changed clearly marked to show any such change and to which shall be attached a copy of Ordinance No. 1752 and filed with the City Clerk to be open to inspection and to be available to the public at all reasonable hours. The Police Department, Municipal Judge and all administrative departments of the City charged with enforcement of the 2021 UPOC shall be supplied, at the cost of the City, with the number of official copies of the 2021 UPOC similarly marked as may be deemed expedient.

**SECTION 2.** Existing Section 8-26 of the Code is hereby renumbered and amended to read as follows:

**Sec. 8-26. – 2021 UPOC Section 9.9.2 amendment.** Section 9.9.2 of the 2021 UPOC is hereby changed to read as follows:

**Sec. 9.9.2. Possession of drug paraphernalia and certain drug precursors.**

- (a) No person shall use or possess with intent to use any drug paraphernalia, as designated in K.S.A. 21-5701, to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Act, K.S.A. 65-4101 *et seq.* and amendments thereto.
- (b) No person shall purchase, receive or otherwise acquire at retail any compound,

mixture or preparation containing more than 3.6 grams of pseudoephedrine base or ephedrine base in any single transaction or any compound, mixture or preparation containing more than 9 grams of pseudoephedrine base or ephedrine base within any thirty (30) day period.

- (c) No person shall distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of K.S.A. 21-5706 and amendments thereto.
- (d) No person shall use or possess with the intent to use any drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, sell or distribute a controlled substance.
- (e) Penalty.
  - (1) Violation of subsection (a) is a Class B violation.
  - (2) Violation of subsection (b) is a Class A violation.
  - (3) Violation of subsection (c) is a Class A violation.
  - (4) Violation of subsection (d) is a Class A violation.
- (f) In determining whether an object is drug paraphernalia, the finder of fact shall consider, in addition to all other logically relevant factors, the following:
  - (1) Statements of the owner or person in control of an object concerning its use;
  - (2) Prior convictions, if any, of an owner or person in control of the object under any state or federal law relating to any controlled substance;
  - (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 person in control of an object, to deliver it to a person the owner or person in control of an object knows, or should reasonably know, intends to use the object to facilitate a violation of the Uniform Controlled Substances Act, K.S.A. 65-4101 *et seq.* and amendments thereto. The innocence of an owner or person in control of the object as to a direct violation of the Uniform Controlled Substances Act shall not prevent a finding that the object is intended for use as drug paraphernalia;
  - (6) Oral or written instructions 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 the object's use; and
- (9) The method and manner in which the object is displayed for sale, if applicable.

(K.S.A. 21-5709 to 21-5711).

**SECTION 3.** Existing Sections 8-25 and 8-26 of the Code, and Ordinance No. 1726, are hereby repealed. The repeal of any ordinance or parts of an ordinance by this Ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding under or by virtue of the repealed ordinance.

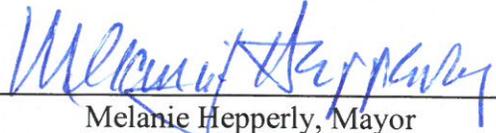
**SECTION 4.** This Ordinance shall be construed as follows:

- a. **Liberal Construction:** The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes, which are hereby found and declared to be in furtherance of the public health, safety, welfare and convenience.
- b. **Savings Clause:** The repeal of any ordinance or Code section, as provided herein, shall not revive an ordinance previously repealed, nor shall the repeal affect any right that accrued, any duty imposed, any penalty incurred or any proceedings commenced, under or by virtue of the ordinance repealed. Any ordinance or Code repealed continues in force and effect after the passage, approval, and publication of this Ordinance for the purpose of pursuing these rights, duties, penalties or proceedings.
- c. **Invalidity:** If for any reason any chapter, article, section, subsection, sentence, portion or part of this Ordinance, or the application thereof to any person or circumstance, is declared to be unconstitutional or invalid, that decision shall not affect the validity of the remaining sections of this ordinance, the Code or other ordinances.

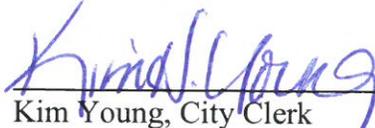
**SECTION 5.** This Ordinance shall take effect and be in force from and after its publication, or the publication of a certified summary thereof, in the official City newspaper.

*[Remainder of page intentionally left blank; signature page follows.]*

**PASSED** by the City Council the 8th day of November, 2021. **APPROVED** by the Mayor.

  
\_\_\_\_\_  
Melanie Hepperly, Mayor

ATTEST:

  
\_\_\_\_\_  
Kim Young, City Clerk

APPROVED AS TO FORM:

  
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Anna M. Krstulic, City Attorney