

ORDINANCE NO. 2018 - 718

An Ordinance prohibiting possession of marijuana and drug paraphernalia with penalties as set forth in newly created J.G.O. 9.55.060.

THE COMMON COUNCIL OF THE CITY OF JANESVILLE DO ORDAIN AS FOLLOWS:

SECTION I. Chapter 9.55 of the Code of General Ordinances of the City of Janesville is hereby created to read as follows:

CHAPTER 9.55

POSSESSION OF MARIJUANA OR DRUG PARAPHERNALIA PROHIBITED

Section 9.55.010	Definitions.
Section 9.55.020	Possession of Marijuana Prohibited - Exceptions
Section 9.55.030	Adoption of State Law Prohibiting Possession of Drug Paraphernalia
Section 9.55.040	Possession of Drug Paraphernalia Prohibited - Determination
Section 9.55.050	Seizure.
Section 9.55.060	Violation--Penalty

9.55.010 Definitions.

In this chapter:

A. "Drug paraphernalia" means all equipment, products and materials of any kind that are used, designed for use or primarily intended 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 or controlled substance analog as defined in Chapter 961, Wis. Stats. "Primarily" means chiefly or mainly. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting substances into the human body and any items, including pipes, papers and accessories, that are designed for use or primarily intended for use with tobacco products are excluded from this definition. "Drug paraphernalia" includes, but is not limited to, any of the following:

1. Kits used, designed for use or primarily intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant that is a controlled substance or from which a controlled substance or controlled substance analog can be derived.
2. Kits used, designed for use or primarily intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs.
3. Isomerization devices used, designed for use or primarily intended for use in increasing the potency of any species of plant that is a controlled substance.
4. Testing equipment used, designed for use or primarily intended for use in identifying, or in analyzing the strength, effectiveness or purity of, controlled substances or controlled substance analogs.

5. Scales and balances used, designed for use or primarily intended for use in weighing or measuring controlled substances or controlled substance analogs.

6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, designed for use or primarily intended for use in cutting controlled substances or controlled substance analogs.

7. Separation gins and sifters used, designed for use or primarily intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

8. Blenders, bowls, containers, spoons and mixing devices used, designed for use or primarily intended for use in compounding controlled substances or controlled substance analogs.

9. Capsules, balloons, envelopes and other containers used, designed for use or primarily intended for use in packaging small quantities of controlled substances or controlled substance analogs.

10. Containers and other objects used, designed for use or primarily intended for use in storing or concealing controlled substances or controlled substance analogs.

11. Objects used, designed for use or primarily intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil 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.

c. Carburetion tubes and devices.

d. Smoking and carburetion masks.

e. Roach clips: meaning 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 pipes.

h. Carburetor pipes.

i. Electric pipes.

j. Air-driven pipes.

k. Chilams.

l. Bongs.

m. Ice pipes or chillers.

B. "Practitioner" means:

1. A physician, advanced practice nurse, dentist, veterinarian, podiatrist, optometrist, scientific investigator or, subject to Section 448.21 (3) of the Wisconsin Statutes, a physician assistant, or other person licensed, registered, certified or otherwise permitted to distribute, dispense, conduct research with respect to, administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in the State of Wisconsin.

2. A pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in the State of Wisconsin.

9.55.020 Possession of Marijuana Prohibited - Exceptions.

A. No person shall possess marijuana, as defined in Section 961.01(14), Wis. Stats,

unless it was obtained directly from, or pursuant to a valid prescription or order of, a practitioner who is acting in the course of his or her professional practice, or unless otherwise authorized by Chapter 961, Wis. Stats to possess marijuana.

B. If a complaint is issued regarding an allegation of possession of more than 25 grams of marijuana, or possession of any amount of marijuana following a conviction in the State of Wisconsin for possession of marijuana, the subject of the complaint may not be prosecuted under this Section for the same action that is the subject of the complaint unless the charges are dismissed or the district attorney declines to prosecute the case as required by Section 66.0107(1)(bm) of the Wisconsin Statutes.

9.55.030 Adoption of State Law Prohibiting Possession of Drug Paraphernalia

A. Section 961.573(1) of the Wisconsin Statutes, as from time to time amended, revised, or renumbered prohibiting the possession of drug paraphernalia is hereby adopted by reference and incorporated herein as if fully set forth as permitted by Sections 66.0107(1)(bp) and 961.577 of the Wisconsin Statutes.

9.55.040 Possession of Drug Paraphernalia Prohibited - Determination.

A. No person may use, or possess with the primary intent to use, drug paraphernalia 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 or controlled substance analog as defined in Chapter 961, Wis. Stats.

B. In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other legally 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 this chapter.
3. The proximity of the object to controlled substances or controlled substance analogs.
4. The existence of any residue of controlled substances or controlled substance analogs 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 chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is designed for use or primarily intended for use as drug paraphernalia.
6. Instructions, oral or written, provided with the object concerning its use.
7. Descriptive materials accompanying the object that explain or depict its use.
8. Local advertising concerning its use.
9. The manner in which the object is displayed for sale.
10. 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.
11. The existence and scope of legitimate uses for the object in the community.

12. Expert testimony concerning its use.

C. In determining under this Section whether an item is designed for a particular use, a court or other authority shall consider the objective physical characteristics and design features of the item.

D. In determining under this Section whether an item is primarily intended for a particular use, a court or other authority shall consider the subjective intent of the defendant.

9.55.050 Seizure.

A. A law enforcement officer shall seize any marijuana or drug paraphernalia involved in a violation of any provision of this chapter committed in his or her presence.

B. All seized marijuana or drug paraphernalia shall be held as evidence by the Janesville Police Department and, after disposition of the related case(s), be disposed of in the manner provided by law.

9.55.060 Violation--Penalty. The penalty for violating any provision set forth in this chapter shall be a forfeiture to the city of not less than fifty dollars nor more than five hundred dollars together with the costs of prosecution, or in default of payment of such forfeiture and costs, imprisonment in the county jail for not more than ninety (90) days and/or as otherwise provided by law.

ADOPTED: _____

APPROVED:

Mark A. Freitag, City Manager

ATTEST:

David T. Godek, City Clerk-Treasurer

APPROVED AS TO FORM:



Tim Wellnitz, Assistant City Attorney

Proposed by: Police Department

Prepared by: Assistant City Attorney

Motion by:				
Second by:				
Councilmember	Aye	Nay	Pass	Absent
Conley				
Farrell				
Gruber				
Jorgensen				
Marklein				
Williams				
Wolfe				