

**ORDINANCE NO. 989**

**AN ORDINANCE AMENDING STAYTON MUNICIPAL CODE TITLE 9, CHAPTER 9.40 RELATING TO DRUG PARAPHERNALIA AND DECLARING AN EMERGENCY**

WHEREAS, the City of Stayton's Municipal Code (SMC) Chapter 9.40 presently must be amended to comply with Oregon State laws affecting drug paraphernalia to allow for use by those who may legally possess and sell marijuana;

WHEREAS, drug paraphernalia may be displayed and available for sale in "kid-friendly" shapes and colors, and promoted near items that appeal to youth such as candy, toys, and soda. Displaying and selling drug paraphernalia at sites where youth commonly have access sends the message that drug use is acceptable;

WHEREAS, the City of Stayton chooses to amend SMC Chapter 9.40 to allow marijuana paraphernalia to be sold only in licensed facilities to those who may legally possess it; and

WHEREAS, the City of Stayton realizes current language in SMC Chapter 9.40 contradicts State law and therefore declares an emergency.

NOW THEREFORE, the City of Stayton ordains:

**SECTION 1. SMC CHAPTER 9.40 AMENDED.** Stayton Municipal Code Chapter 9.40 relating to Drug Paraphernalia is amended to read as set forth in Exhibit A, attached hereto as incorporated herein, replacing and superseding the current text of SMC Chapter 9.40.

**SECTION 2. EMERGENCY ORDINANCE.** Upon enactment by the Stayton City Council and the Mayor's signature, this Ordinance shall become effective immediately.

**ADOPTED BY THE STAYTON CITY COUNCIL THIS 5th DAY OF OCTOBER, 2015.**

CITY OF STAYTON

Signed: Oct 5, 2015, 2015

By: Henry A. Porter  
Henry A. Porter, Mayor

Signed: Oct 5, 2015

ATTEST: Keith Campbell  
Keith Campbell, City Administrator

APPROVED AS TO FORM:

David A. Rhoten  
David A. Rhoten, City Attorney

EXHIBIT A  
SMC TITLE 9 PUBLIC PEACE, MORALS AND WELFARE  
CHAPTER 9.40 DRUG PARAPHERNALIA

Additions are underlined; Deletions are ~~crossed out~~

SECTIONS

9.40.010	Purpose
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9.40.030	Factors to be Considered
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9.40.010 PURPOSE

1. The purpose of this chapter is to limit the display, sale and availability of drug paraphernalia and deter the negative affects in the City of Stayton. Some of the negative affects of drug paraphernalia include:
  - a. Youth who believe drug use is acceptable and common are more likely to use drugs.
  - b. Availability of drug paraphernalia increases the chance of relapse among citizens overcoming drug addiction.
  - c. Drug paraphernalia often is designed to appeal to youth with kid friendly colors and shapes and are often promoted near commodities youth tend to purchase (candy, toys etc.)
  - d. The prevalence of drugs in a neighborhood increases the likelihood of violence and crime
2. Limiting the display and availability for sale of paraphernalia will not eliminate drug abuse, but endeavoring to make access to paraphernalia less convenient, is intended to discourage the individual drug use.

9.40.020 DEFINITIONS

- ~~1. "Controlled substance" means a drug or its immediate precursor classified in Schedules I through V under the Federal Controlled Substances Act, 21 U.S.C., sections 811 to 812, as modified under ORS 475.035.~~
- ~~2. "Deliver" or "delivery" means the actual, constructive, or attempted transfer, other than by administering or dispensing from one person to another of a controlled substance or drug paraphernalia, whether or not there is an agency relationship and regardless of consideration.~~

For the purpose of this Chapter, any word or phrase defined by Oregon Revised Statutes or administrative rule and not defined below shall have the same meaning as defined by statute or rule; otherwise, the following words or phrases mean:



1. "Drug paraphernalia" means all equipment, products, and materials of any kind which are used, marketed 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 in violation of the laws of the State of Oregon. ~~ORS 475.840 to 475.980~~. Drug paraphernalia includes, but is not limited to:
  - a. Kits used, marketed for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
  - b. Kits used, marketed for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
  - c. Isomerization devices used, marketed for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
  - d. Testing equipment used, marketed for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;
  - e. Scales and balances used, marketed for use, or designed for use in weighing or measuring controlled substances;
  - ~~a. Lighting equipment specifically designed for the growing of controlled substances;~~
  - f. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, marketed for use, or designed for use in cutting controlled substances;
  - g. Separation gins and sifters used, marketed for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
  - h. Containers and other objects used, marketed for use, or designed for use in storing or concealing controlled substances;
  - ~~b. Hypodermic syringes, needles and other objects used, marketed for use or intended to be used for injecting illegal controlled substances into the human body;~~
  - i. Objects used, marketed for use, or designed specifically for use of an inhalant as defined in Oregon law;
  - j. Objects used, marketed for use, or designed specifically for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
    - i. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
    - ii. Water pipes;
    - iii. Carburetion tubes and devices;
    - iv. Smoking and carburetion masks;
    - v. Roach clips: meaning objects used to hold burning material, that has become too small or too short to be held in the hand, such as a marijuana cigarette;
    - vi. Miniature cocaine spoons, and cocaine vials;

- vii. Chamber pipes;
- viii. Carburetor pipes;
- ix. Electric pipes;
- x. Air-driven pipes;
- xi. Chillums;
- xii. Bongs;
- xiii. Ice pipes or chillers;
- ~~xiii.~~ xiv. Lighting equipment specifically designed for the growing of controlled substances.

Drug paraphernalia does not include hypodermic syringes or needles.

- 2. "Drug test" means a lawfully administered test designed to detect the presence of a controlled substance.
- 3. "Marijuana paraphernalia" means all equipment, products, and materials of any kind which are marketed 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 in the human body marijuana .  
~~"Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, the sterilized seed of the plant which is incapable of germination, industrial hemp as defined in ORS 571.300, or industrial hemp commodities or products.~~
- 2.4. "Marijuana facility" has the same meaning as in SMC 5.12.020.

#### 9.40.030 FACTORS TO BE CONSIDERED

- 1. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logical, relevant factors, the following:
  - a. Statements by an owner or by anyone in control of the object concerning its use;
  - b. Prior convictions, if any, of an owner, or of anyone in control of the object, under any Municipal, State, or Federal law relating to any controlled substance;
  - c. The proximity of the object in time and space, to a direct violation of this chapter or ORS 475.840 to 475.980;
  - d. The proximity of the object to controlled substances;
  - e. The existence of any residue of controlled substances to the object;
  - f. Instructions, oral or written, provided with the object concerning its use;
  - g. Descriptive materials accompanying the object which explain or depict its use;
  - h. The manner in which the object is displayed for sale;
  - i. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
  - j. The existence and scope of legitimate uses for the object in the community;



- k. All objects present, when viewed collectively, can have significant clues to their intended use as drug paraphernalia

#### 9.40.040 OFFENSES

1. Possession of Drug Paraphernalia. It is unlawful for any person to use or to possess drug paraphernalia to unlawfully 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 in violation of this chapter.
2. Delivery of Drug Paraphernalia. It is unlawful for any person to sell, deliver, possess with intent to sell or deliver, or manufacture with intent to sell or deliver drug paraphernalia as defined in this chapter.
3. Possession or Delivery of Drug Test Equipment. It is unlawful for any person to use, possess, deliver, or manufacture with intent to deliver any substance or device designed to enable a person to falsify a drug test as defined in this chapter.

#### 9.40.050 NUISANCE

1. Drug paraphernalia are public nuisances. Any peace officer shall summarily seize any such drug paraphernalia. Seized drug paraphernalia shall be held subject to the order of the court.
2. Whenever it appears, to the court that a seized item constitutes drug paraphernalia in violation of this ordinance, the court shall, upon motion of the district attorney, order the forfeiture and destruction of the drug paraphernalia.

#### 9.40.060 ~~EXCEPTIONS~~ DEFENSES

1. It is an ~~exception to affirmative defense to prosecution under SMC Section 9.40.040 (1) Possession of Drug Paraphernalia~~, if the person ~~holds a valid registry identification card for medical use, is the person responsible for a registered grow site, or is a designated primary caregiver under the Oregon Medical Marijuana Act~~ has been issued a Oregon Medical Marijuana Program card or is 21 years of age or older, and possesses marijuana paraphernalia in accordance with applicable recreational and medical marijuana laws of the State.
2. ~~Holding a valid registry identification card for medical use, being the person responsible for a registered grow site, or a designated primary caregiver under the Oregon Medical Marijuana Act is not a defense to Delivery of Drug Paraphernalia SMC 9.40.940 (2).~~ It is an exception to Section 9.40.040 (2) to sell, or to possess with the intent to sell, marijuana paraphernalia at a marijuana facility licensed by the State and the City.

#### 9.40.070 SEVERABILITY

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.