

ORDINANCE NO. 2021-09-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TONKAWA, OKLAHOMA, AMENDING CHAPTER 10 OF THE TONKAWA MUNICIPAL CODE 202, BY THE ADDITION OF A NEW SECTION 10-801 ENTITLED "DRUGS AND RELATED PROVISIONS", PROVIDING FOR AN ORDINANCE WHICH CODIFIES ALL DRUG RELATED OFFENSES WHICH MAY BE ENFORCED IN THE CITY OF TONKAWA, NOT INCLUDING THOSE OFFENSES ADOPTED BY REFERENCE FROM STATE LAW; PROVIDING FOR REPEALER; SAVINGS; CODIFICATION; SEVERABILITY; PENALTY; EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

EMERGENCY ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TONKAWA, OKLAHOMA:

Section I: Chapter 10 of the Tonkawa Municipal Code 2021 is hereby amended by the addition of a new Section 10-801 which shall read as follows:

Section 10-801 DRUGS AND RELATED PROVISIONS.

A. DEFINITIONS.

As used in this section the following words and phrases shall have the meanings respectively ascribed to them in this Section:

"Administer" shall be defined in Section 2-101 of Title 63 of the Oklahoma Statutes.

"Controlled dangerous substance" shall be as defined in Section 2-101 of Title 63 of the Oklahoma Statutes.

"Deliver" or "delivery" shall be as defined in Section 2-101 of Title 63 of the Oklahoma Statutes.

"Drug paraphernalia" shall mean all equipment, products and materials of any kind which are 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 dangerous substance in violation of state law. It includes, but is not limited to:

1. Kits used, intended 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 dangerous substance can be derived;

2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled dangerous substances;
3. Isomerization devices used intended for use, or designed for use in increasing the potency of any species of plant which is a controlled dangerous substance;
4. Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances;
5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled dangerous substances;
6. Dilutants and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled dangerous substances;
7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana;
8. Blenders, bowls, containers, spoons and mixing devices used, intended for use in compounding controlled dangerous substances;
9. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled dangerous substances;
10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled dangerous substances;
11. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled dangerous substances into the human body;
12. Objects used, intended for use, or designed 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 materials, 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. Chillums;
- l. Bongs;
- m. Ice pipes or chillers;

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

Statements by an owner or by anyone in control of the object concerning its use;

- a. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled dangerous substance;
- b. The proximity of the object, in time and space, to a direct violation of this article or of the State Uniform Controlled Dangerous Substance Act;
- c. The proximity of the object to controlled dangerous substance;
- d. The existence of any residue of controlled dangerous substances on the object;
- e. Direct or circumstantial evidence of the intent of any owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intended to use the object to facilitate a violation of this article or the State Uniform Controlled Dangerous Substance Act; the innocence of the owner, or of anyone in control of the object, as to a direct violation of this article shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
- 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. National and local advertising concerning its use;
- i. The manner in which the object is displayed for sale;

j. 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;

k. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

l. The existence and scope of legitimate uses for the object in the community;

m. Expert testimony concerning its use.

“Marijuana” shall be as defined in Section 2-101 of Title 63 of the Oklahoma Statutes.

“Sale” includes barter, exchange or gift or offer therefor, and each such transaction made by any person, principal, proprietor, agent, servant, or employee.

“Controlled Dangerous Substance” shall be as defined in 63 Oklahoma Statutes Section 2-101.

B. IMPLEMENTS FOR CONTROLLED DANGEROUS SUBSTANCES.

1. It is unlawful for any person to use, or to possess with 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 dangerous substance in violation of this article or state law.
2. It is unlawful for any person to deliver, possess with intent to deliver or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it 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 dangerous substance in violation of this article or state law.
3. It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

C. POSSESSION OF ILLEGAL DRUGS AND OTHER REGULATIONS:

1. It is unlawful for any person knowingly or intentionally to possess any controlled dangerous substance other than marijuana unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice, or except as authorized by State law.
2. The violation of this subsection C.1, shall be punishable by a fine of not more than five

hundred dollars (\$500.00) plus court costs, fees and state assessments.

3. Possession of Marijuana:

- a. It is unlawful for any person to knowingly or intentionally possess marijuana without an Oklahoma State issued medical marijuana license.
- b. It is unlawful for any person with an Oklahoma State issued medical marijuana license to knowingly or intentionally possess marijuana in quantities greater than permitted by state law.

4. Possession of Marijuana by license holder in unpermitted amounts.

No person who possesses an Oklahoma State issued medical marijuana license may possess more than:

- a. three (3) ounces (84.9 grams) of marijuana on their person;
 - b. six (6) mature marijuana plants;
 - c. six (6) seedling plants;
 - d. one (1) ounce (28.3 grams) of concentrated marijuana;
 - e. seventy-two (72) ounces (2037.6 grams) of edible marijuana; or
 - f. eight (8) ounces (226.4 grams) of marijuana in their residence.
5. No person shall use tincture of opium, tincture of opium camphorated, or any derivative thereof, by the hypodermic method, either with or without a medical prescription therefor.
6. No person shall 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 dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, except those persons holding an unrevoked license in the professions of podiatry, dentistry, medicine, nursing, optometry, osteopathy, veterinary medicine or pharmacy.
7. No person shall deliver, sell, possess or manufacture drug paraphernalia knowing, or under circumstances where one reasonably should know, that it 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 dangerous substance in violation of the Uniform Controlled Dangerous Substances Act.
8. All medical marijuana grown by medical marijuana patient license holders or caregivers may only be grown on real property owned by the patient license holder or on real property for which the patient license holder has the property owner's written permission to grow marijuana on the property. A violation of this subsection shall be an offense.

9. All medical marijuana plants grown by a patient or caregiver shall be grown so that the marijuana is not accessible to a member of the general public. A violation of this subsection shall be an offense.
10. No marijuana plants shall be visible from any street adjacent to the property. For purposes of this section, "visible" means viewable by a normal person with 20/20 eyesight without the use of any device to assist in improving viewing distance or vantage point. Any owner or person in lawful control of any real property who violates this subsection shall be guilty of an offense.

11. As used in this subsection:

- a. The following definitions shall apply to this subsection:

"Glass tube" means an object which meets all of the following requirements:

- (1) a hollow glass cylinder, either open or closed at either end,
- (2) not less than two (2) nor more than seven (7) inches in length,
- (3) not less than one-eighth (1/8) inch nor more than three-fourths (3/4) inch in diameter,
- (4) may be used to facilitate, or intended or designed to facilitate, violations of the Uniform Controlled Dangerous Substances Act including, but not limited to, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, and concealing controlled substances and injecting, ingesting, inhaling, or otherwise introducing controlled substances into the human body, and
- (5) sold individually, or in connection with another object such as a novelty holder, flower vase, or pen. The foregoing descriptions are intended to be illustrative and not exclusive;

"Patron" means a person who enters a business for the purpose of purchasing or viewing as a shopper, merchandise offered for sale at the business; and

"Retailer" means a person, corporation, or partnership primarily engaged in the sale of consumable goods and services including, but not limited to, food and gasoline, at retail to the general public. A retailer shall not include any person, corporation, or partnership that sells specialized laboratory equipment for research or educational purposes.

- b. It shall be unlawful for a retailer within the State of Oklahoma to offer for retail sale to any patron a glass tube, as defined in subsection 11a.
12. An Oklahoma medical marijuana business shall not sell, transfer or otherwise distribute medical marijuana or medical marijuana product that has not been packaged and labeled in accordance with this section and rules promulgated by the State Commissioner of Health. A violation of this subsection shall be an offense.
13. A medical marijuana dispensary shall return medical marijuana and medical marijuana product that does not meet packaging or labeling requirements in this section or rules promulgated pursuant thereto to the entity who transferred it to the dispensary. The medical marijuana dispensary shall document to whom the item was returned, what was

returned and the date of the return or dispose of any usable marijuana that does not meet these requirements in accordance with the Oklahoma Medical Marijuana and Patient Protection Act. Medical marijuana packaging shall be packaged to minimize its appeal to children and shall not depict images other than the business name logo of the medical marijuana producer and image of the product. A medical marijuana business shall not place any content on a container in a manner that reasonably appears to target individuals under the age of twenty-one (21) including, but not limited to, cartoon characters or similar images. Labels on a container shall not include any false or misleading statements. No container shall be intentionally or knowingly labeled so as to cause a reasonable patient confusion as to whether the medical marijuana, medical marijuana concentrate or medical marijuana product is a trademarked product or labeled in a manner that violates any federal trademark law or regulation. The label on the container shall not make any claims regarding health or physical benefits to the patient. All medical marijuana, medical marijuana concentrate and medical marijuana products shall be in a child-resistant container at the point of transfer to the patient or caregiver. Any violation of this subsection shall be an offense.

14. A medical marijuana business shall not engage in advertising that is deceptive, false or misleading. A violation of this subsection shall be an offense.

15. Medical marijuana advertising shall not contain any statement or illustration that:

- a. Promotes overconsumption;
- b. Represents that the use of marijuana has curative or therapeutic effects; or
- c. Depicts a child or other person under legal age to consume marijuana, or:
 - (1) objects such as toys or cartoon or other characters, which suggest the presence of a child, or any other depiction designed in any manner to be especially appealing to children or other persons under legal age to consume marijuana, or
 - (2) in any manner or design that would be especially appealing to children or other persons under eighteen (18) years of age.

Any violation of this subsection shall be offense.

16. All marijuana or marijuana products shall be transported in a locked container and clearly labeled "Medical Marijuana or Derivative". A violation of this subsection shall be an offense.

17. Under no circumstances may a licensed commercial grower sell marijuana directly to a licensed medical marijuana patient or licensed caregiver. A violation of this subsection shall be an offense.

18. Under no circumstances may a licensed processor sell marijuana or any marijuana product directly to a licensed medical marijuana patient or licensed caregiver. A violation of this subsection shall be an offense.

19. No person or entity shall possess, transport or dispose of medical marijuana waste without a valid medical marijuana waste disposal license. A violation of this subsection shall be an offense.

Section II. REPEALER. The current Section 1-114E, Section 10-803 and Section 10-805 are hereby repealed, with Section 10-803 and Section 10-805 to be marked as reserved, together with all ordinances or parts thereof which are inconsistent with this ordinance are hereby repealed.

Section III. SAVINGS CLAUSE. Nothing in this ordinance hereby adopted shall be construed to affect any suit or proceeding now pending in any court, or any rights acquired, or liability incurred nor any cause or causes of action accrued or existing, under any act or ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired or affected by this ordinance.

Section IV. CODIFICATION. This ordinance shall be codified as herein provided.

Section V. SEVERABILITY. If any one or more of the sections, sentences, clauses or parts of this ordinance, chapter or section shall for any reason be held invalid, the invalidity of such section, clause or part shall not affect or prejudice in any way the applicability and validity of any other provision of this ordinance. It is hereby declared to be the intention of the City Council of the City of Tonkawa that this section of the Tonkawa Municipal Code would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

Section VI. PENALTY. Except as otherwise specifically provided by this ordinance, any person who shall violate the terms and conditions of this ordinance by act or omission of any provision of this ordinance shall be guilty of an offense and if convicted shall be fined in the maximum amount of \$300, together with state assessments, fees and court costs; provided each day of continued violation shall be considered a separate offense.

Section VII. EFFECTIVE DATE. This ordinance shall be effective on November 1, 2021.

Section VIII. EMERGENCY. WHEREAS, it being immediately necessary for the preservation of the peace, health, safety and public good of the City and the inhabitants thereof that the provisions of this Ordinance be put into full force and effect to provide for additional ordinances concerning drugs and related offenses; By reason whereof, this Ordinance shall take effect and be in full force and effect after its passage, as provided by law.

Approved and executed, this 21st day of September 2021.



{Seal}

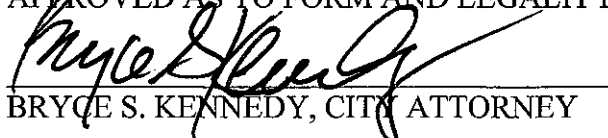
THE CITY OF TONKAWA, OKLAHOMA


KENNETH W. SMITH, MAYOR

ATTEST:


NANCY C. SKIPPER, CITY CLERK

APPROVED AS TO FORM AND LEGALITY:


BRYCE S. KENNEDY, CITY ATTORNEY