

ORDINANCE NO. 06-_____

AN ORDINANCE OF THE COUNTY OF PINELLAS RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING ARTICLE IV OF CHAPTER 86 OF THE PINELLAS COUNTY CODE BY ADDING SECTIONS 86-105 THROUGH 86-110; PROVIDING A TITLE TO BE NAMED "DRUG PARAPHERNALIA"; PROVIDING FOR DEFINITION OF TERMS USED IN THE ORDINANCE; PROVIDING FOR PROSCRIPTIONS RELATING TO THE POSSESSION, TRANSFER, OR USE OF DRUG PARAPHERNALIA; PROVIDING FOR PROSCRIPTIONS RELATING TO THE SALE OR DISPLAY OF DRUG PARAPHERNALIA; PROVIDING FOR PROSCRIPTIONS FOR THE MANUFACTURE, DELIVERY, OR ADVERTISEMENT OF DRUG PARAPHERNALIA; PROVIDING FOR PROSCRIPTIONS FOR THE SALE OF DRUG PARAPHERNALIA TO MINORS; PROVIDING FOR A PENALTY; AUTHORIZING THE COUNTY ATTORNEY TO SEEK INJUNCTIVE RELIEF; PROVIDING FOR AREAS EMBRACED; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE PINELLAS COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR OTHER MODIFICATIONS THAT MAY ARISE FROM REVIEW OF THE ORDINANCE AT THE PUBLIC HEARINGS AND WITH RESPONSIBLE AUTHORITIES.

WHEREAS, the United States Court of Appeals for the Eleventh Circuit, which has jurisdiction over the State of Florida, has affirmed a decision that prohibits merchants from selling, displaying or advertising drug paraphernalia where they have reason to know that the products will be used to ingest illegal drugs, *See, Free Enterprise v. Hollywood*, 673 F. 2d 1213 (11th Cir. 1982); and

WHEREAS, the appellate courts of the State of Florida have affirmed a decision that differentiates between child and adult regulations concerning abusive substances *See Barnes v. B.K. Credit Service Inc.*, 461 So. 2d 217, 219 (Fla. 1st DCA 1984); and

WHEREAS, Pinellas County, a charter county, possesses the power pursuant to Article VIII, Section 1(g), Florida Constitution and Section 125.01 (1), Florida Statutes, to exercise its police power to promote the safety and welfare of the inhabitants of Pinellas County; and

WHEREAS, Pinellas County is concerned about protecting its citizenry from the illegal use of drugs in their community; and

WHEREAS, pursuant to County Resolution 05-195, the Board of County Commissioners created a Drug Paraphernalia Abatement Task Force; and

WHEREAS, the Task Force over several months met with experts in the area of drug paraphernalia and heard from citizens, merchants, agency heads and law enforcement, regarding the scope and effects of drug paraphernalia, generally and specifically in Pinellas County; and

WHEREAS, the Task Force has issued a Report on its findings; and

WHEREAS, after review of the Report the Board of County Commissioners determines that a need exists to address the concerns discussed by the Task Force; and

WHEREAS, the sale of drug paraphernalia may increase the use of illegal drugs in Pinellas County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY THAT:

Section 1. Article IV of Chapter 86 of the Pinellas County Code is amended to add the following section:

DIVISION 2. Drug Paraphernalia.

Section 86-105. Legislative Intent.

The Board of County Commissioners of Pinellas County hereby determines that the findings of the Drug Paraphernalia Abatement Task Force, created by Resolution 05-195 are incorporated herein to provide legislative support for the enactment of this Division.

Section 2. Article IV of Chapter 86 of the Pinellas County Code is amended to add the following section:

Section 86-106. Definitions.

For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CANNABIS means all parts of the plant of the species *Cannabis sativa, L.*, including all varieties thereof, whether growing or not; the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds or 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; or the sterilized seed of the plant which is incapable of germination.

CLOSE PROXIMITY means within 1,000 feet on a straight line commencing at the property lines nearest to each other.

CONTROLLED SUBSTANCE means any drug or substance as described and defined in F.S. § 893.03, 893.035 or 893.036; which are adopted by reference.

DELIVER or **DELIVERY** means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

DRUG PARAPHERNALIA means all equipment, products and materials of any kind which are used in converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, inhaling or otherwise introducing into the human body a controlled substance in violation of § 86-109(b) below, as further defined and enumerated in the definition of the term INSTRUMENT herein.

INHALANTS are a diverse group of substances that include volatile solvents, gases, and nitrites that are sniffed, snorted, huffed, or bagged to produce intoxicating effects similar to alcohol. The gas used as a propellant in canned whipped cream and in small metallic containers called “whippets” (used to make whipped cream) is nitrous oxide or “laughing gas” – the same gas used by dentists for anesthesia.

INSTRUMENT means a device designed for use or intended for use in ingesting, smoking, administering or preparing marijuana, cocaine, phencyclidine, opium or any derivative thereof, or any other controlled substance. For purposes of this subsection, the phrase “INTENDED FOR USE” shall refer to the intent of the person selling, offering to sell, dispensing, giving away or displaying the instrument herein defined. In determining whether an item constitutes an “instrument,” the following items shall be considered:

1) Whether a person or business establishment charged with violating this section is a licensed distributor or dealer of tobacco products by the state.

2) Expert testimony as to the principal use of the devices, articles or contrivances claimed to be instruments.

3) Evidence concerning the total business of a person or business establishment and the type of devices, articles, contrivances or items involved in the business.

4) National and local advertising concerning the use of the devices, articles or contrivances claimed to be instruments.

(5) Evidence of advertising concerning the nature of the business establishment.

(6) Devices within the meaning of this definition include, but are not limited to the following:

(a) 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 substance can be derived;

(b) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(c) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

(d) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;

(e) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

(f) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;

(g) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;

(h) Containers and other objects used, intended for use or designed or use in storing or concealing controlled substances;

(i) Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body;

(j) 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:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

2. Water pipes;

3. Carburetion tubes and devices;

4. Smoking and carburetion masks;

5. 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;

6. Miniature cocaine spoons and cocaine vials;

7. Chamber pipes;

8. Carburetor pipes;

9. Electric pipes;

10. Air-driven pipes;

11. Chillums;

12. Bongs;

13. Ice pipes or chillers;
14. Cigarette papers or rollers designed for smoking any controlled substance.

MINOR means any person who has not attained 18 years of age.

PATIENT means, as the case may be:

- (1) The individual for whom a drug is prescribed or to whom a drug is administered; or
- (2) The owner or the agent of the owner of the animal for which a drug is prescribed or to which a drug is administered.

PERSON means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

PHARMACIST means an individual currently licensed by the Florida Health Department Board of Pharmacy, to practice the profession of pharmacy in this state.

PLACE OF DISPLAY means any museum, library, school or other similar public place upon which business is not transacted for a profit.

PRACTITIONER means a physician (M.D. or D.O.), dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise authorized by law to administer and prescribe, use in teaching or chemical analysis, or conduct research with respect to a controlled substance in the course of professional practice and research.

PREMISES means a business establishment and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of patrons.

PREMISES OPEN TO MINORS means any business establishment which sells its wares or merchandise to minors or which permits minors to enter into its place of business.

PRESCRIPTION DRUG means:

- 1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary or any supplement to any of them;
- 2) Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;
- 3) Substances (other than food) intended to affect the structure or any function of the body of man or animals;

4) Substances intended for use as a component of any article specified in divisions (1) – (3) hereinabove. It does not include devices or their components, parts or accessories;

5) Obtained by written order and, in cases of emergency, a telephone order, issued by a practitioner in good faith in the course of his professional practice to a pharmacist for a drug for a particular patient, which specifies the date of its issue, the name and address of the patient (and, if such drug is prescribed for an animal, the species of such animal), the name and quantity of the drug prescribed, the directions for use of such drug, and the signature of such practitioner.

PRODUCTION includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

SCHOOL means any public or private elementary, middle school or high school.

SIMULATED DRUGS and **SIMULATED CONTROLLED SUBSTANCES** means any products which identify themselves by using a common name or slang term associated with a controlled substance or indicate by label or accompanying promotional material that the product simulates the effect of a controlled substance or drug.

SOMNIFACIENT and **STIMULATING** is the meaning attributable in standard medical lexicons.

Section 3. Article IV of Chapter 86 of the Pinellas County Code is amended to add the following section:

Section 86-107. Drug Paraphernalia; Sales or Display.

(a) ***Restrictions.***

(1) No owner, manager, proprietor or other person in charge of any place of business selling or displaying for the purpose of sale, any device, contrivance, instrument or paraphernalia, simulated drugs or simulated controlled substances, for smoking, injecting or consuming any controlled substance, as defined in § 86-106, other than prescription drugs and devices to ingest or inject prescription drugs, shall allow or permit any minor to be, remain in, enter or visit such business unless such minor person is accompanied by one of his or her parents or by his or her legal guardian.

(2) No owner, manager, proprietor or other person in charge of any place of business selling or displaying for the purpose of sale, any device, contrivance, instrument or paraphernalia, simulated drugs or simulated controlled substances, for smoking, injecting or consuming any controlled substance, as defined in § 86-106, other than prescription drugs and devices to ingest or inject prescription drugs, shall sell, offer for sale, or deliver such device, contrivance, instrument, paraphernalia, simulated drugs or simulated controlled substances, to any minor.

(3) No place of business that sells, offers for sale or delivers any of the above referenced devices, contrivances, instruments, simulated drugs or simulated controlled substances or paraphernalia shall be located in close proximity to any public or private elementary, middle school or high school, as defined in § 86-106. The Board of County Commissioners has determined that a one-year amortization period for nonconforming uses is reasonable in that the premises affected by this article are readily adaptable to conforming uses.

(b) ***Exceptions to Restrictions.***

(1) Minors may be allowed on the premises of any place of business described in division (a)(1) provided that the devices, contrivances, instruments, paraphernalia, simulated drugs or simulated controlled substances are kept, displayed, offered for sale, sold or delivered, in a part of the premises that are not open to view by minors or to which minors do not have access. Each entrance to such part of the premises shall have a sign posted in letters not less than three inches tall, excluding minors from the area unless accompanied by a parent or legal guardian.

(2) Nothing in this section shall prohibit the display of any devices, contrivances, instruments, paraphernalia, simulated drugs or simulated controlled substances at a place of display, as defined in § 86-106.

Section 4. Article IV of Chapter 86 of the Pinellas County Code is amended to add the following section:

Section 86-108. Drug Paraphernalia; Possession, Manufacture and/or Delivery, Advertisement.

(a) *Possession.* It shall be unlawful for any person to use or 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 substance in violation of this section.

(b) *Manufacture or delivery of.* 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 or otherwise introduce into the human body a controlled substance in violation of this section.

(c) *Advertisement.* 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.

Section 5. Article IV of Chapter 86 of the Pinellas County Code is amended to add the following section:

Section 86-109. Possession, Transfer or Use Prohibited.

(a) As used in this section, the phrase “*CHEMICAL SUBSTANCE CONTAINING A SOLVENT* or *CHEMICAL COMPOUND HAVING THE PROPERTY OF RELEASING TOXIC VAPORS OR FUMES*” shall include, but not be limited to, any glue, cement, cleaning fluid, paint thinner, lacquer or lacquer thinner, or other adhesive or solvent containing one or more of the following chemical compounds: acetone, benzene, butyl alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methylethyl ketone, pentachlorophenol, petroleum ether, toluene, trichlorethylene or amyl acetate.

(b) *Inhalation of fumes prohibited.* It shall be unlawful for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system, to intentionally smell, to ingest or inhale the fumes from any chemical substance containing a solvent or chemical compound having the property of releasing toxic vapors or fumes; however, nothing in this division shall be interpreted as applying to the inhalation of any anesthesia for medical or dental purposes.

(c) *Possession or transfer for unlawful purpose prohibited.* It shall be unlawful for the purpose of violating division (b) above, to use or possess for the purpose of so using, any chemical substance containing a solvent or chemical compound having the property of releasing toxic vapors or fumes. No person shall sell, offer to sell, or give to any other person, or obtain for any other person, any chemical substance containing a chemical compound having the property of releasing toxic vapors, fumes, or other inhalants, if he has reasonable cause to suspect that the product sold, offered for sale, or obtained, will be used for any purpose set forth in division (b) above.

Section 6. Article IV of Chapter 86 of the Pinellas County Code is amended to add the following section:

Section 86-110. Penalty.

Violations of this ordinances shall be prosecuted in the same manner as misdemeanors and shall be prosecuted in the name of the state in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and upon conviction shall be punished by a fine not to exceed \$500 or by imprisonment in the county jail not to exceed 60 days or by both such fine and imprisonment or by injunctive relief on behalf of the County.

Section 7. Severability.

In the event that any court having jurisdiction over any case arising under this section determines that any subsection or other provision of this section is invalid for any reason, the remaining subsections or other provisions shall continue to be in full force and effect, and towards that end the Board of County Commissioners declares this section and its subsections and other provisions to be severable.

Section 8. Effective Date.

Pursuant to Section 125.66(2), Florida Statutes, a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners. This Ordinance shall become effective upon filing of the Ordinance with the Department of State.

Section 9. Areas Embraced.

Section 86-107(a)(3) shall be effective only in the unincorporated area of the County, otherwise, pursuant to Section 2.01 of the Pinellas County Charter, this Ordinance shall be effective in the incorporated as well as unincorporated areas of the County.

Section 10. Codification.

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pinellas County Code; and that the sections of this Ordinance may be renumbered or re-lettered, and the word “ordinance” may be changed to “section”, “article” or such other appropriate word or phrase in order to accomplish such intentions.

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