

ORDINANCE NO. O-2019-69

**AN ORDINANCE AMENDING ARTICLE II "DRUG PARAPHERNALIA" SUB-SECTIONS 42-46
AND 42-47 OF CHAPTER 42 "OFFENSES AND MISCELLANEOUS PROVISIONS"
OF THE WHEATON CITY CODE**

WHEREAS, as the Mayor and City Council of the City of Wheaton, an Illinois the home rule unit of government, as provided in Article 7, Section 6 of the Illinois Constitution 1970, has authority to adopt ordinances and promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety and welfare of its citizens so long as said ordinances, rules and regulations are not inconsistent with home rule preemption; and

WHEREAS, the Illinois general assembly has passed, and Governor Pritzker has signed the Cannabis Regulation Tax Act for 410 ILCS 705/1 et seq., hereinafter referred to as the "Cannabis Act", approved June 25, 2019 and effective January 1, 2020; and

WHEREAS, the Cannabis Act and other related legislation has recently been amended by the legislature and signed into law by Governor Pritzker; and

WHEREAS, the Cannabis Act legalizes the possession and adult use cannabis with certain restrictions; and

WHEREAS, the Mayor and Wheaton City Council desire to enact an ordinance to update its codes to comply with the Cannabis Act, as amended, including its restrictions; and

WHEREAS, in the exercise in its home rule authority, the City of Wheaton has found and determined that amending the Wheaton City code to make all regulations regarding adult cannabis use and possession and the prohibition of use under certain circumstances and the prohibition for the possession of cannabis by minors, and the cultivation of marijuana subject to the option of prosecution by local ordinance violation citations.

NOW THEREFORE BE ORDAINED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, in the exercise of its home rule powers that:

SECTION 1: The recitals set forth above are incorporated here in their entirety as it fully set forth.

SECTION 2: That Article II "Drug Paraphernalia," of Chapter 42 of the Wheaton City Code and, Sections 42-46 "Definitions" and 42-47 "Prohibitions; Exceptions," of Article II, are hereby repealed and rescinded in their entirety and replaced with a new Article II to be entitled CANNABIS, CONTROLLED SUBSTANCES, PARAPHERNALIA, and new Sections 42-46 and 42-47 to be respectively titled "Definitions" and "Prohibitions; exceptions" which shall read as follows:

1. ARTICLE II. CANNABIS, CONTROLLED SUBSTANCES, PARAPHERNALIA

Sec. 42-46. Definitions.

The following words, terms and phrases when used in this Article shall have the meaning described to them in this section except when the context clearly indicates a different meaning:

Cannabis: the term cannabis shall have the same meaning as described to it in Section 3 of the Cannabis Control Act, 720 ILCS 550/1 et seq. and as maybe amended, as if that definition is incorporated herein as a fully set forth.

Controlled substances: means any drug or substance recited in the Illinois Controlled Substances Act, 720 ILCS 570/100 et seq.

Paraphernalia: the term "drug paraphernalia" shall have the same meaning as described to it in Section (d) of the Drug Paraphernalia Control Act 720 ILCS 600/1 et seq. as amended as if that definition was fully incorporated herein by reference.

Public Place: shall have the same meaning as described to it in Section (9) of the Cannabis Act under 410 ILCS 705/10-35 as amended as if that definition was fully incorporated herein by reference.

Sec. 42-47. Prohibitions; exceptions

(a) **Unlawful Possession of Cannabis**: a person commits the offense of unlawful possession of cannabis by possessing any amount of cannabis or any substance containing cannabis:

- i.) if the person is under 21 years; or
- ii.) if the person possesses any amount of cannabis or any substance containing cannabis beyond the cumulative limits set forth for Illinois residents and non-residents under 410 ILCS 705/10-10; or
- iii.) if the person has a valid medical cannabis prescription but possesses more than 5 cannabis plants; or
- iv.) if the person possesses any cannabis plants without a valid medical prescription or valid State cannabis business license; or
- v.) if the person possesses any amount of cannabis or any substance containing cannabis in a "public place"; or
- vi.) if the person possesses any amount of cannabis or any substance containing cannabis in a motor vehicle on or about the public way, unless the cannabis is reasonably secured, sealed, and inaccessible in the vehicle; or

vii.) if the person possesses any amount of cannabis or any substance containing cannabis in a motor vehicle on property that the person does not own or lease, unless the cannabis is reasonably secured, sealed, and inaccessible in the vehicle; or

viii.) if the person is in violation of any other limitation set forth under 410 ILCS 705/10-35 unless permitted or authorized to do so pursuant to the Cannabis Control Act (720 ILCS 550/1 et seq.), the Cannabis Regulation and Tax Act (410 ILCS 705/1 et seq.) or the Compassionate Use of Medical Cannabis Program (410 ILCS 130/1 et seq.), as amended.

(b) **Unlawful Use of Cannabis:** a person commits the offense of unlawful use of cannabis by using cannabis or any substance containing cannabis:

i.) in a "public place" or;

ii.) in any motor vehicle on or about any public way or;

iii.) in violation of any limitation set forth under 410 ILCS 705/10-35 unless permitted or authorized to do so pursuant to the Cannabis Control Act (720 ILCS 550/1 et seq.), the Cannabis Regulation and Tax Act (410 ILCS 705/1 et seq.) or the Compassionate Use of Medical Cannabis Program (410 ILCS 130/1 et seq.), as amended.

(c) **Unlawful Possession Drug Paraphernalia:** A person commits the offense of unlawful possession of drug paraphernalia by knowingly possessing drug paraphernalia with the intent to use it in ingesting, inhaling, or otherwise introducing cannabis or a controlled substance into the human body or prepare for cannabis or a controlled substance for that use, unless permitted or authorized to do so pursuant to the Drug Paraphernalia Control Act (720 ILCS 600/1 et seq.), the Cannabis Regulation and Tax Act (410 ILCS 705/1 et seq.) or the Compassionate Use of Medical Cannabis Program (410 ILCS 130/1 et seq.) as amended respectfully.

(d) The prohibitions contained in this section do not apply to licensed medical technicians, nurses, physicians, hospitals, research teaching institutions, clinical laboratories, licensed medical doctors, osteopathic physicians, dentists, veterinarians, pharmacists, or embalmers in their normal course of their respective businesses or professions; or the common carriers or the employees engaged in the lawful transportation of the foregoing; or the public officers or employees engaged in the performance of their official duties; or the persons suffering from a medical condition and who have a prescription to use cannabis or controlled substances and or a device primarily adapted or designed for the administration of those drugs.

Section 3. If a court of competent jurisdiction sets aside any portion of this Ordinance as unconstitutional or unlawful, it shall not affect the validity of the remainder of the Ordinance.

Section 4. All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 5. This ordinance shall become effective from and after its passage, approval, and publication in the manner prescribed by law.



Mayor

ATTEST:



City Clerk

Ayes:

Roll Call Vote:

- Councilwoman Fitch
- Mayor Sues
- Councilwoman Robbins
- Councilman Rutledge
- Councilman Zaruba
- Councilman Barbier
- Councilwoman Bray-Parker

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: December 16, 2019

Published: December 17, 2019