

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 160962

Calling an election on April 4, 2017, for the purpose of establishing a maximum \$25.00 fine for the possession of 35 grams or less of marijuana, eliminating the possibility of jail for the possession of marijuana, and removing marijuana from the prohibition against paraphernalia; enacting the new provisions contingent upon voter approval; directing the City Clerk to provide notice of the election; and recognizing an accelerated effective date.

WHEREAS, a Committee of Petitioners has submitted an initiative petition seeking to establish new penalties for the possession or control of marijuana; and

WHEREAS, the City Clerk has certified 2,128 valid signatures, thus exceeding the 1,708 required by the City Charter for a successful initiative petition during the period August 1, 2015 through July 31, 2019; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

**Section 1. ELECTION CALLED.** That an election is called on April 4, 2017, for the purpose of submitting to the voters of Kansas City the question of establishing a maximum \$25.00 fine for the possession or control of 35 grams or less of marijuana, eliminating the possibility of incarceration for the possession or control of marijuana, and removing marijuana from the prohibition against paraphernalia.

**Section 2. BALLOT TITLE.** The ballot title shall be:

QUESTION 5  
(Initiative Petition)

*(Reduction of Penalties for Possession or Control of Marijuana and Paraphernalia)*

SHALL THE FOLLOWING BE APPROVED?

Shall the City of Kansas City limit the authorized punishment that can be imposed in the Municipal Court for the possession or control of 35 grams or less of marijuana to a maximum \$25 fine, eliminate jail as a potential punishment for the possession or control of marijuana, and remove marijuana from the prohibition against drug paraphernalia?

**Section 3. ELECTION NOTICE.** The Notice of Election shall read as follows:

NOTICE OF ELECTION  
CITY OF KANSAS CITY, MISSOURI

Notice is given to the qualified voters of the City of Kansas City, Missouri, that the City Council of the City has called a special election to be held in the City on April 4, 2017, commencing at 6:00 A.M. and

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closing at 7:00 P.M., on the questions contained in the following sample ballot:

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OFFICIAL BALLOT

CITY OF KANSAS CITY

SPECIAL ELECTION, APRIL 4, 2017

QUESTION 5  
(Initiative Petition)

*(Reduction of Penalties for Possession or Control of Marijuana and Paraphernalia)*

SHALL THE FOLLOWING BE APPROVED?

Shall the City of Kansas City limit the authorized punishment that can be imposed in the Municipal Court for the possession or control of 35 grams or less of marijuana to a maximum \$25 fine, eliminate jail as a potential punishment for the possession or control of marijuana, and remove marijuana from the prohibition against drug paraphernalia?

YES \_\_\_\_\_

NO \_\_\_\_\_

Instructions to voters will be supplied by the election authorities.

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A complete copy of Committee Substitute for Ordinance No. 160962, (as it may be amended) submitting this question to the electorate is on file in the Office of the City Clerk of Kansas City, Missouri, and is open for inspection and copying.

The election will be held at the following polling places in the City of Kansas City, Missouri: [insert list in last publication only]

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I hereby certify that the foregoing is the legal notice to be published pursuant to Section 115.127, RSMo, as amended.

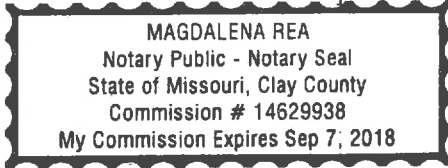
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Given under my hand and the official seal of Kansas City, Missouri, this 20 day of January, 2017.

(SEAL)

MARILYN SANDERS  
City Clerk of Kansas City, Missouri

Before me, a notary public, personally appeared Marilyn Sanders, to me known to be the City Clerk of Kansas City, Missouri, and the person who acknowledged to me that she executed the same for the purposes therein stated.

  
Notary Public

My Commission Expires: Sep 7, 2018

**Section 4. NOTICE TO ELECTION AUTHORITIES BY CITY CLERK.**

That following passage of this ordinance the City Clerk shall deliver certified copies of this ordinance and notice of election to the Clerk of Cass County, Board of Election Commissioners of Clay County, Board of Election Commissioners of Kansas City, and Board of Election Commissioners of Platte County, not later than January 24, 2017, which shall be the authority of each election authority of the City to submit the question to the electors of Kansas City and to give public notice as provided by law.

**Section 5. ENACTMENT OF ORDINANCE.** That contingent upon the approval of the voters, Section 50-10, Code of Ordinances, shall be amended to read as follows:

**Sec. 50-10. Possession or control of marijuana.**

(a) *Marijuana defined.* As used in this section "Marijuana" shall mean all parts of the plant genus Cannabis in any species or form thereof, including, but not limited to, Cannabis Sativa L., Cannabis Indica, Cannabis Americana, Cannabis Ruderalis, and Cannabis Gigantea, 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, 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.

(b) *Possession or control of Marijuana prohibited.* Except as authorized by law, it is unlawful for any person to possess or have under his or her control Marijuana.

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- (c) *Penalty.*
- (1) *Possession or control of 35 grams or less of Marijuana.* A fine of no more than \$25.00.
- (2) *Possession or control of more than 35 grams of Marijuana.* A fine of no more than \$500.00.
- (3) *Consideration of weight.* When considering the amount of Marijuana possessed or controlled, the weight of the means to ingest the Marijuana will be disregarded, therefore, the total weight of an edible substance shall not be added to the weight of the Marijuana used in making the edible substance.
- (4) *Referrals by prosecutor.* Absent exigent circumstances, the municipal prosecuting attorney shall not refer the matter to any other prosecutor, agency, or office.
- (5) *Retroactivity.* This provision shall apply to all cases pending on the effective date of this ordinance.
- (6) *Classification.* Subject to Section 50-10(c)(4), all offenses covered under this section shall be treated and classified as city ordinance violations.
- (7) *Diversion appropriate.* The Council finds that, absent special circumstances, the City's diversion program is an appropriate resolution of said charges.

**Section 6. ENACTMENT OF ORDINANCE.** That contingent upon the approval of the voters, Section 50-201, Code of Ordinances, shall be amended to read as follows:

**Sec. 50-201. Drug paraphernalia.**

(a) Definitions. As used in this section, the following terms shall have the meanings given in this subsection:

- (1) Controlled substance means any drug, substance or immediate precursor, other than Marijuana, in schedules I through V listed in RSMo 195.005—195.425, as amended.
- (2) Drugs means:
  - a. Substances, other than Marijuana, recognized as drugs in the official United States pharmacopoeia, official homeopathic

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pharmacopoeia of the United States or official national formulary, or any supplement to any of them;

- b. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals;
- c. Substances, other than food, intended to affect the structure or any function of the body of humans or animals; and
- d. Substances intended for use as a component of any article specified in subsection (a)(2)a, b or c of this section.

It does not include devices or their components, parts or accessories.

(3) Drug paraphernalia.

- a. Drug paraphernalia means all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or imitation controlled substance, as defined in RSMo 195.010(22), in violation of RSMo 195.005—195.425, as amended. 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 substance can be derived.
  - 2. Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or imitation controlled 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 substance or imitation controlled substance.
  - 4. Testing equipment used, intended for use or designed for use in identifying, or in analyzing the strength, effectiveness or purity of, controlled substances or imitation controlled substances.

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5. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances or imitation controlled substances.
6. Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or imitation controlled 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 a controlled substance.
8. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or imitation controlled substances.
9. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances or imitation controlled substances.
10. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or imitation controlled substances.
11. Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances or imitation controlled substances into the human body.
12. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing a controlled substance 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. Carburetion tubes and devices.
  - iii. Water pipes.
  - iv. Smoking and carburetion masks.

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- v. Roach clips, meaning objects used to hold burning material containing a controlled substance, that has become too small or too short to be held in the hand.
  - 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.
- b. 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:
- 1. Statements by an owner or by anyone in control of the object concerning its use.
  - 2. Prior convictions, if any, of any owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance or imitation controlled substance.
  - 3. The proximity of the object, in time and space, to a direct violation of RSMo 195.005—195.425, as amended.
  - 4. The proximity of the object to controlled substances or imitation controlled substances.
  - 5. The existence of any residue, other than marijuana residue, or controlled substances or imitation controlled substances on the object.
  - 6. 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 knows intend to use the object to facilitate a

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violation of RSMo 195.005—195.425, as amended; the innocence of an owner, or of anyone in control of the object, as to a direct violation of such statutes shall not prevent a finding that the object is intended for use as drug paraphernalia.

7. Instructions, oral or written, provided with the object concerning its use.
  8. Descriptive materials accompanying the object which explain or depict its use.
  9. National or local advertising concerning its use.
  10. The manner in which the object is displayed for sale.
  11. 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.
  12. Direct or circumstantial evidence of the ratio of sales of the objects to the total sales of the business enterprise.
  13. The existence and scope of legitimate uses for the object in the community.
  14. Expert testimony concerning its use.
- (4) Person means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, joint venture or association, or any other legal or commercial entity.
  - (5) Place of display means any museum, library, school or other similar public place upon which business is not transacted for a profit.

(b) Sale, distribution, display, advertisement, possession and use prohibited; declaration of nuisance.

- (1) It is unlawful for any person, knowing the drug-related nature of the object, to sell, lend, rent, lease, give, exchange or otherwise distribute to any person any drug paraphernalia.
- (2) It is unlawful for any person, knowing the drug-related nature of the object, to display for sale or possess with the intent to distribute any drug paraphernalia.



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- (3) It is unlawful for any person to use, or to possess with intent to use, any 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 statute or ordinance.
- (4) 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.
- (5) The display of any drug paraphernalia at a place of display for educational or scientific purposes shall not be unlawful.
- (6) Any person found guilty of violation of this section shall be punished by imprisonment at the municipal correctional institution for not less than 15 days and not more than six months, or by a fine of not less than \$100.00 and not more than \$500.00, or by both such fine and imprisonment.
- (7) In addition to any penalty authorized by this section, a violation of this section is hereby deemed and declared to be a nuisance.

**Section 7. ACCELERATED EFFECTIVE DATE RECOGNIZED.** This ordinance, providing for the submission of a question to the people of Kansas City, Missouri, is hereby recognized to be an ordinance with an accelerated effective date within the meaning of Section 503(a)(3)(A) of the City Charter because it calls an election and provides for the submission of a proposal to the people; and as such shall become effective immediately following approval by the Mayor, or five days after passage if no action is taken by the Mayor to approve or veto the ordinance.

Approved as to form:



Authenticated as Passed

  
Sly James, Mayor

  
Marilyn Sanders, City Clerk

JAN 19 2017

Date Passed



Cecilia Abbott  
City Attorney