

AN ORDINANCE

of the Council of the City of Berkley, Michigan
Amending Chapter 82, Article VI, Division 3 Controlled Substances,
of the Berkley City Code to Modify and Supplement Definitions and
Prohibitions Relating to Drug Paraphernalia.

THE CITY OF BERKLEY ORDAINS:

SECTION 1: Division 3 of Article VI of Chapter 82 of the Berkley City Code shall be amended, as follows:

Sec. 82-236. - Definitions.

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

Cocaine spoon: A spoon with a bowl so small that the primary use for which it is reasonably adapted or designed is to hold or administer cocaine, and which is so small as to be unsuited for typical, lawful uses of a spoon. A cocaine spoon may or may not be merchandised on a chain and may or may not be labeled as a “cocaine” spoon or “coke” spoon.

Controlled substance: A drug, substance, or immediate precursor included in schedules 1 to 5 of part 72 of article 7 of the Public Health Code (MCL 333.7201 et seq.).

Marijuana or hashish pipe: A pipe characterized by a bowl which is so small that the primary use for which it is reasonably adapted or designed is the smoking of marijuana or hashish, rather than lawful smoking tobacco, and which may or may not be equipped with a screen.

Drug paraphernalia: All equipment, products and materials of any kind which are used, intended for use, or designed for use, implanting, 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. It includes, but is not limited to:

- (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) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;
- (c) Isomerization devices, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
- (d) Testing equipment used, intended for use, or designed for use in identifying, or analyzing the strength, effectiveness or purity of controlled substances;
- (e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- (f) Dilutants and adulterants such as quinine, hydrochloride, mannitol, minnite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;
- (g) Separation gins and sifters used or intended for use, or designed for use in removing twigs and seeds from, or otherwise cleaning or refining marijuana;
- (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use or designed for use in compounding controlled substances;
- (i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

- (j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
- (k) Hypodermic syringes, needles, other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
- (l) Objects used, intended for use, or designed for use in ingesting, 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 incarburetion masks;
 - (5) Roach clips, meaning objects used to hold material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
 - (6) Chamber pipes;
 - (7) Carburetor pipes;
 - (8) Electric pipes;
 - (9) Air-driven pipes;
 - (10) Chillums;
 - (11) Bongs; and
 - (12) Ice pipes and chillers.
- (m) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other legally 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 an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
 - (3) Direct or circumstantial evidence of the intent of the owner, or of anyone in control of the object, to deliver to persons whom he knows or has reason to believe intend to use the object to facilitate a violation of MCL 333.7101 et seq.;
 - (4) The proximity of the object to controlled substances;
 - (5) The existence of any residue of 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 who he knows or has reason to believe intend to use the object to facilitate a violation of this ordinance; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this ordinance should not prevent a finding that the object is intended for use, or designed 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) The existence and scope of legitimate use for the object in the community; and
 - (12) Expert testimony concerning its use.

Sec. 82-237. - Exempt persons.

The provisions of this article restricting the possession of controlled substances or hypodermic syringes, needles or other implements or instruments adapted to the use of such substances by means of subcutaneous injection or intracutaneous injection or any other manner or method of introduction of empty gelatin capsules shall not apply to common carriers or warehousemen or their employees engaged in the lawful transportation or storage of such substances, syringes, needles or capsules or to public officers or employees while engaged in the performance of their official duties nor to temporary incidental possession on the part of employees or agents of persons lawfully entitled to possession.

Sec. 82-238. - Possession or sale—Prohibited generally.

It shall be unlawful for any person to possess, sell, offer for sale, distribute, administer, dispense, prescribe or give away any controlled substance; provided, however, that nothing contained in this section shall be deemed to prohibit the possession, sale, offer for sale, distributing, administering, dispensing or prescribing of any controlled substance in the manner and under such circumstances provided in this article.

Sec. 82-239. - Same—Dispensing by authorized persons; drugs to be kept in the original package.

A manufacturer, wholesaler, apothecary, medical doctor, osteopathic physician, dentist, veterinarian, chiropodist, public or private hospital, sanitarium or institution maintained or conducted, in whole or in part, for the treatment of disability, disease, inebriety or drug addiction may purchase, receive, possess, sell, distribute, prescribe, administer or dispense a controlled substance, provided he or they shall have complied with all provisions as required by applicable federal and state laws. No medical doctor, osteopathic physician or other person specified in this section, in any manner authorized to prescribe controlled substances, shall prescribe such substances for his own use, nor shall any druggist honor such a prescription. All controlled substances obtained pursuant to this section shall be kept in the original package or container in which they were received, but this requirement shall not be construed to apply to any duly licensed medical doctor, osteopathic physician, dentists, veterinarian or chiropodist, or to any authorized person or persons acting directly under their supervision or control.

Sec. 82-240. - Fraud and deceit in sale or supply.

Any fraud, scheme, device, trick, deceit, misrepresentation, subterfuge or any other form of concealment for the purpose of obtaining money or any other thing of value by the sale, furnishing, supplying or giving away of any substance represented to be a controlled substance, when the substance may or may not be a controlled substance, shall be deemed a violation of this article.

Sec. 82-241. - Hypodermic syringes, needles or similar implement—Possession prohibited; exceptions.

No person shall at any time have or possess a hypodermic syringe or needle or any other instrument or implement adapted for the use of controlled substances by subcutaneous injection or intracutaneous injection or any other manner or method of introduction and which is possessed for that purpose, unless such possession is authorized by the certificate of a licensed medical doctor or osteopathic physician issued within the period of one year; provided, however, that the prohibition contained in this section shall not apply to manufacturers, wholesalers, jobbers, licensed medical technicians, technologists, nurses, hospitals, research teaching institutions, clinical laboratories, medical doctors, osteopathic physicians, dentists, chiropodists, veterinarians, pharmacists and embalmers in the normal legal course of their respective business or profession, nor to persons suffering from diabetes, asthma or any other medical condition requiring self-injection.

Sec. 82-242. - Same—Furnishing.

- (a) It shall be unlawful for any person to sell, offer for sale, display, furnish, supply or give away any empty gelatin capsule, hypodermic syringe or needle, cocaine spoon, marijuana or hashish pipe, or any other instrument, implement or device of a design, shape or construction suited primarily for the administration or use of any narcotic or narcotic drug, marijuana, hashish or any other controlled substance.

- (b) The prohibition contained in this section shall not apply to manufacturers, wholesalers, jobbers, licensed medical technicians, technologists, nurses, hospitals, research teaching institutions, clinical laboratories, medical doctors, osteopathic physicians, dentists, chiroprodists, veterinarians, pharmacists and embalmers in the normal legal course of their respective businesses or professions.

Sec. 82-243. - Using fraud and deceit in obtaining.

Any fraud, deceit, misrepresentation, subterfuge, concealment of a material fact, or the use of a false name or the giving of a false address for the purpose of obtaining any controlled substance or any derivative, compound, preparation or mixture thereof, or hypodermic syringe or needle or other instrument or implement or empty gelatin capsules or false statement on any prescription blank shall be deemed a violation of this article. No person who shall have obtained the possession of any controlled substance, hypodermic syringes, needles or other instruments or implements adapted for the use of such substance or empty gelatin capsules pursuant to the terms of this article shall use the same or permit or authorize their use for any purpose other than that specifically authorized in the prescription or order by means of which such possession was obtained.

Sec. 82-244. - Commitment of addicts.

No person shall unlawfully use any controlled substances or their derivatives or barbituric acid or derivative or mixtures, compound or preparation thereof. Any such unlawful use shall be deemed a violation of this section. Any nonmedical habitual user of controlled substances, who shall make voluntary application to the judge of the district court may, upon the presentment of a certificate executed by a practicing physician in the state stating that he is a nonmedical habitual user of controlled substances, be committed, at the discretion of the court, to any correctional or charitable institution, hospital, sanitarium or institution authorized for the treatment of disease or inebriety of drug addiction. Whenever the medical officer or head of such institution shall certify to the committing judge or court that any person so committed has been sufficiently treated or gives any other reason which is deemed by such judge or court to be adequate and sufficient, the court may, in accordance with the terms of commitment, discharge the person so committed or return him to await further action of the court.

Sec. 82-245. - Loitering about places where controlled substances are illegally stored or kept.

No person shall knowingly loiter about, frequent or live in any building, apartment, store, automobile, boat, boathouse, airplane, or other place of any description whatsoever where controlled substances, hypodermic syringes, needles or other instruments or implements or empty gelatin capsules are used, sold, dispensed, furnished, given away, stored or kept illegally.

Sec. 82-246. – Drug Paraphernalia

- (a) It shall be unlawful for any person to deliver, possess with intent to deliver, manufacture with intent to deliver, sell, offer for sale, display, furnish, supply or give away any cocaine spoon, marijuana pipe, hashish pipe, or any other drug paraphernalia, knowing or intending or has reason to believe 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 substance in violation of MCL 333.7101 et seq.
- (b) It is unlawful for any person to use, or to possess with intent to use, any cocaine spoon, marijuana pipe, hashish pipe, or any other 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 MCL 333.7101 et seq.
- (c) Cocaine spoons, marijuana pipes, hashish pipes, and other drug paraphernalia are hereby declared to be contraband and forfeited to the city.

SECTION 2: Severability Clause

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 3: Penalty

All violations of this ordinance shall be misdemeanors and upon conviction thereof shall be punishable by a sentence of not more than ninety (90) days of confinement to jail or by a fine of not more than \$500, or both, in the court's discretion.

SECTION 4: Effective Date

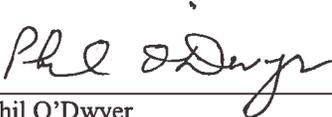
This Ordinance shall become effective 30 days following the date of adoption.

SECTION 5: Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

Introduced on the First Reading at the Regular City Council Meeting on Monday, June 5, 2017.

Passed on the Second Reading at the Regular City Council Meeting on Monday, June 19, 2017.



Phil O'Dwyer
Mayor

Attest: 

Phommady A. Boucher
City Clerk