

Item #3:

Ordinance Amending Village Code Re: Smoking Paraphernalia

VILLAGE OF LONG GROVE
ORDINANCE NO. 2014-__
AN ORDINANCE AMENDING TITLE 10 OF THE
VILLAGE CODE REGARDING DRUG PARAPHERNALIA

Adopted by the
President and Board of Trustees
of
the Village of Long Grove
this ____ day of July, 2014

Published in pamphlet form by direction
and authority of the Village of Long Grove,
Lake County, Illinois
this ____ day of July, 2014

VILLAGE OF LONG GROVE

ORDINANCE NO. 2014-__

**AN ORDINANCE AMENDING TITLE 10 OF THE
VILLAGE CODE REGARDING DRUG PARAPHERNALIA**

WHEREAS, the Illinois General Assembly has enacted the “Drug Paraphernalia Control Act,” 720 ILCS 600; and

WHEREAS, the Village of Long Grove desires to support the efforts of the State of Illinois in controlling and discouraging activities that would assist the illegal use of *cannabis* and other drugs; and

WHEREAS, the President and Board of Trustees of the Village have determined that it is in the best interests of the Village and its residents to amend the Village Code with regulations comparable to the Drug Paraphernalia Control Act;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, COUNTY OF LAKE, STATE OF ILLINOIS,
as follows:

Section 1: Recitals. The foregoing recitals are hereby adopted by the Village Board and incorporated into this resolution as if fully set forth.

Section 2: Amendment to Title 10 of the Village Code. Title 10, entitled “Police Regulations,” of the Long Grove Village Code is hereby amended by adding a new Chapter 13 to be entitled “Drug Paraphernalia,” which new Chapter 13 shall hereafter be and read as follows:

CHAPTER 13

Drug Paraphernalia

10-13-1 SALE AND POSSESSION OF DRUG PARAPHERNALIA.

A. Definitions. Whenever the following words or terms are used in this section they shall have the meanings ascribed to them below:

"Cannabis" means marijuana, hashish, and other substances which are identified as including any parts of the plant *Cannabis sativa*, whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and any compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other cannabinal derivatives, including its naturally occurring or synthetically produced ingredients, whether produced directly or indirectly by extraction, or independently by means of chemical synthesis; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

"Controlled substance" means a drug, substance, or immediate precursor as defined in Article II of the Illinois Controlled Substances Act, 720 ILCS 570/100 et seq.

"Deliver" means the actual constructive, or attempted transfer of possession, with or without consideration, whether or not there is an agency relationship.

"Drug paraphernalia" means all equipment, products, and materials of any kind which are peculiar to and marketed 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 cannabis or a controlled substance. This includes, but is not limited to:

1. Kits peculiar to and marketed for use in manufacturing, compounding, converting, producing, processing, or preparing cannabis or a controlled substance;
2. Isomerization devices peculiar to and marketed for use in increasing the potency of any species of plant which is cannabis or a controlled substance;
3. Testing equipment peculiar to and marketed for private home use in identifying or in analyzing the strength, effectiveness, or purity of cannabis or a controlled substance;
4. Diluents and adulterants peculiar to and marketed for cutting cannabis or a controlled substance by private persons;

5. Objects peculiar to and marketed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, or hashish oil into the human body including, where applicable, the following items:
 - a. Water pipes;
 - b. Carburetion tubes and devices;
 - c. Smoking and carburetion masks;
 - d. Miniature cocaine spoons and cocaine vials;
 - e. Carburetor pipes;
 - f. Electric pipes;
 - g. Air-driven pipes;
 - h. Chillums;
 - i. Bonges;
 - j. Ice pipes or chillers;
6. Any item whose purpose, as announced or described by the seller, is for use in violation of this section.

B. Sale or Delivery.

1. Any person who keeps for sale, offers for sale, sells, or delivers for any commercial consideration any item of drug paraphernalia may be fined up to seven hundred fifty dollars (\$750.00) for each such item.
2. Any store, place, or premises where any item of drug paraphernalia is kept for sale, offered for sale, sold, or delivered for any commercial consideration is declared to be a public nuisance, subject to the abatement procedures contained in Title 8 of this code.

C. Possession.

1. A fine not exceeding seven hundred fifty dollars (\$750.00) may be imposed on a person who knowingly possesses an item of drug paraphernalia with the intent to use it in ingesting, inhaling, or otherwise introducing cannabis or a controlled substance into the human body, or in preparing cannabis or a controlled substance for that use.

2. In determining intent under subsection 1, the proximity of the cannabis or controlled substances to drug paraphernalia, or the presence of cannabis or drug paraphernalia, may be considered.

D. Exempt Items.

1. This section shall not apply to:
 - a. Items marketed for use in the preparation, compounding, packaging, labeling, or other use of cannabis or a controlled substance as an incident to lawful research, teaching, or chemical analysis and not for sale; or
 - b. Items marketed for, or historically and customarily used in connection with the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, or inhaling of tobacco or any other lawful substance, including, but not limited to, garden hoses, rakes, sickles, baggies, tobacco pipes, and cigarette-rolling paper; or
 - c. Items listed in subsection 9.08.055(D)(1)(b) above that are marketed for decorative purposes, when such items have been rendered completely inoperable or incapable of being used for any illicit purpose prohibited by this section.
2. In determining whether or not a particular item is exempted under this subsection, the following factors may be considered:
 - a. The general, usual, customary, and historical use to which the item involved has been put;
 - b. Expert evidence concerning the ordinary or customary use of the item and the effect of any peculiarity in the design or engineering of the device upon its functioning;
 - c. Any written instructions accompanying the delivery of the item concerning the purposes or uses to which the item can or may be put;
 - d. Any oral instructions provided by the seller of the item at the usual time and place of sale or commercial delivery;
 - e. Any national or local advertising concerning the design, purpose, or use of the item involved and the entire context in which such advertising occurs;

- f. The manner, place, and circumstances in which the item was displayed for sale, as well as any item or items displayed for sale or otherwise exhibited upon the premises where the sale was made;
- g. 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; and
- h. The existence and scope of legitimate uses for the object in the community.

E. Forfeiture and Seizure of Property.

- 1. All drug paraphernalia is subject to forfeiture by the local law enforcement agency.
- 2. Property subject to forfeiture under this section may be seized by any peace officer upon process issued by any court having jurisdiction over the property. Pursuant to 720 ILCS 600/5, judgments in favor of the village in a forfeiture proceeding based upon this section against a person's specific property shall serve as process authorizing a police officer to seize such property without further process.
- 3. Pursuant to 720 ILCS 600/5, seizure may be made without process if there is probable cause to believe that the property is directly dangerous to health or safety and existing circumstances do not allow reasonable time for the officer to obtain lawful process.
- 4. The presence of items which are deemed to violate this section or are otherwise subject to its forfeiture provisions in an inventory shall not subject the entire inventory to seizure or forfeiture.
- 5. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the law enforcement department, subject only to the order and judgments of the circuit court having jurisdiction over the forfeiture proceedings. Property seized under this section may be placed under seal.
- 6. No disposition may be made of the property under seal until the validity of the seizure has been determined in the circuit court, unless such court upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the clerk of the court. The circuit court shall rule on the validity of the seizure within thirty (30) days after the seizure, unless a continuance is obtained by a person from whom the items were seized or a person who otherwise has standing to

complain, or by the village for good cause shown. In no event shall a continuance be granted to the village pursuant to the section extend beyond thirty (30) days. If judgment is entered in favor of the person from whom the property is seized, all seized property shall be returned immediately. Pursuant to 720 ILCS 66/5, appeals from orders of the circuit court shall be heard within sixty (60) days from the date judgment is entered. Judgments in favor of the person entitled to possession of the subject property shall serve as a mandate to the agency holding said property to return the same forthwith.

7. When property is forfeited under this section, the chief administrative officer of the seizing department or agency may retain it for official use, or forward it to the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency, for disposition.

F. Intent. It is the intent of the village that the provisions of this section shall be substantially in accordance with the requirements of the State Drug Paraphernalia Control Act, 720 ILCS 600/1 et seq.

Section 3: Effective Date. This Ordinance shall be in full force and effect upon its passage, approval, and publication in pamphlet form in the manner provided by law.

PASSED THIS ___ DAY OF JULY, 2014.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED THIS ___ DAY OF JULY, 2014.

Angela Underwood, Village President

ATTEST:

Heidi Locker-Scheer, Village Clerk