City of Carroll

Brad Burke, Chief of Police **Police Department**

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MEMO TO: Mike Pogge-Weaver, City Manager

FROM: Brad Burke, Chief of Police

DATE: March 4, 2021

SUBJECT: Carroll City Ordinance Chapter 43, Drug Paraphernalia, addition

UPDATE 3/4/21: As of this date I have not had any feedback since the last council meeting. During the last meeting I indicated there was some feedback but nothing that would persuade a change or removal of this ordinance.

UPDATE: As of this date, I have not had any feedback, negative or positive, in regards to the Drug Paraphernalia ordinance. First reading was completed at last council meeting.

After discussion at the last City Council meeting on January 24, 2021, the attached ordinance for Drug Paraphernalia was created. This is the same ordinance that was attached to the January 24, 2021, agenda with a few minor changes. The code section has been amended to Chapter 43 as the previous code was rearranged by the codification company who manages City of Carroll Ordinances. Also, after discussion with the City Attorney, a scheduled violation of $200.00 was added as the penalty for possession of drug paraphernalia. This fine amount matches the penalty of the Carroll County Ordinance No. 15 dealing with drug paraphernalia.

RECOMMENDATION: Council consideration and third reading and adoption of the ordinance addition, Chapter 43 Drug Paraphernalia, to the City of Carroll Code of Ordinances.

ORDINANCE NO._____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF CARROLL, IOWA, 2011, BY ADDING A NEW CHAPTER FOR DRUG PARAPHERNALIA

BE IT ENACTED by the City Council of the City of Carroll, Iowa:

SECTION 1. NEW CHAPTER

The Code of Ordinances of the City of Carroll, Iowa, is amended by adding a new chapter, Chapter 43, entitled DRUG PARAPHERNALIA, which is hereby adopted to read as follows:

43.01 PURPOSE. The purpose of this chapter is to prohibit the use, possession with intent to use, manufacture and delivery of drug paraphernalia as defined herein.

43.02 CONTROLLED SUBSTANCE DEFINED. The term "controlled substance" as used in this chapter is defined as the term "controlled substance" is defined in the Uniform Controlled Substances Act, Chapter 124 of the Code of Iowa, as it now exists or is hereafter amended.

43.03 DRUG PARAPHERNALIA DEFINED. The term "drug paraphernalia" as used in this chapter means all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, concealing, containing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substances Act, Chapter 124 of the Code of Iowa. It includes, but is not limited to:

1. Growing Kits. 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. Processing Kits. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
3. Isomerization Devices. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
4. Testing Equipment. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.
5. Scales. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
6. Diluents. Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose or lactose used, intended for use, or designed for use in cutting controlled substances.
7. Separators - Sifters. 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.

8. Mixing Devices. Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances.
9. Containers. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
10. Storage Containers. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.
11. Injecting Devices. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.

12. Ingesting-Inhaling Device. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing heroin, marijuana, cocaine, hashish, or hashish oil into the human body, such as:

A. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
B. Water pipes;
C. Carburetion tubes and devices;
D. Smoking and carburetion masks;
E. Roach clips, meaning objects used to hold burning materials, such as a marijuana cigarette that has become too small or too short to be held in the hand;
F. Miniature cocaine spoons and cocaine vials;
G. Chamber pipes;
H. Carburetor pipes;
I. Electric pipes;
J. Air driven pipes;
K. Chillums;
L. Bongs;
M. Ice pipes or chillers.

43.04 DETERMINING FACTORS: In determining whether an object is drug paraphernalia for the purpose of enforcing this chapter, the following factors should be considered in addition to all other logically relevant factors:
1. Statements. Statements by an owner or by anyone in control of the object concerning its use.
2. Prior Convictions. 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. Proximity To Violation. The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Substance Act, Chapter 124 of the Code of the Iowa.
4. Proximity To Substances. The proximity of the object to controlled substances.
5. Residue. The existence of any residue of controlled substances on the object.
6. Evidence of Intent. 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 or she knows, or should reasonably know, intend to use the object to facilitate a violation of the Uniform Controlled Substances Act, Chapter 124 of the Code of Iowa.

7. Innocence of an Owner. The innocence of an owner, or of anyone in control of the object, as to a direct violation of the Uniform Controlled Substances Act, Chapter 124 of the Code of the Iowa, should not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia.
8. Instructions. Instructions, oral or written, provided with the object concerning its use.
9. Descriptive Materials. Descriptive materials accompanying the object which explain or depict its use.
10. Advertising. National and local advertising concerning its use.

11. Displayed. The manner in which the object is possessed or displayed for sale, including its proximity to other objects commonly used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, concealing, containing, injecting, ingesting, inhaling, or otherwise introducing into the human body.
12. Licensed Distributor or Dealer. 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.
13. Sales Ratios. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise.
14. Legitimate Uses. The existence and scope of legitimate uses for the object in the community.
15. Expert Testimony. Expert testimony concerning its use.

43.05 POSSESSION OF DRUG PARAPHERNALIA. It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, conceal, contain, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substance Act, Chapter 124 of the Code of Iowa.

43.06 MANUFACTURE, DELIVERY OR OFFERING FOR SALE. It is unlawful for any person to deliver, possess with intent to deliver, manufacture with intent to deliver, or offer for sale drug paraphernalia, intending that the drug paraphernalia will be used, or knowing, or under circumstances where one reasonably should know that it will be used, or knowing that it is designed for use to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, conceal, contain, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Act, Chapter 124 of the Code of Iowa.

43.07 PENALTY. Any person violating any provision of this chapter shall be guilty of a simple misdemeanor and upon conviction thereof be subject to a scheduled fine of two hundred dollars ($200.00).

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

Passed and approved this _____ day of _____, 2021.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

_____
Eric P. Jensen, Mayor

ATTEST:

_____
Laura A. Schaefer, City Clerk

I certify that the foregoing was published as Ordinance No._____ on the _____day of _____, 2021.

_____
Laura A. Schaefer, City Clerk