

ORDINANCE NO. 41

AN ORDINANCE TO CREATE ORDINANCE NO. 41
OF THE TOWN OF OAKLAND
PROHIBITING THE SALE, POSSESSION, MANUFACTURE, AND DELIVERY
OF DRUG PARAPHERNALIA BY PERSONS UNDER THE AGE OF 18
IN THE TOWN OF OAKLAND

WHEREAS, the Town Board of the Town of Oakland has determined it is in the public interest to regulate and prohibit the sale, possession, manufacture, delivery and advertisement of drug paraphernalia in the Town of Oakland;

NOW, THEREFORE, the Town Board of the Town of Oakland DO ORDAIN as follows:

Section 1: Ordinance No. 41 of the Town of Oakland is hereby created to read as follows:

DRUG PARAPHERNALIA.

A. Definition. In this section "drug paraphernalia" 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, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance, as defined in Chapter 161, Wis. Stats., (1991-92 and any revisions thereto) in violation of this section. 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.
- (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.
- (4) 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 and balances used, intended for use or designed for use in weighing or measuring controlled substances.
- (6) Dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting 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, marijuana.
- (8) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances.
- (9) Capsules, balloons, envelopes or other containers used, intended for use or designed for use in packaging small quantities of controlled substances.
- (10) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances.
- (11) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, including but not limited to:
 - 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. Objects used to hold burning material, 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. Chilams.
- l. Bongs.
- m. Ice pipes or chillers.

B. Determination of Drug Paraphernalia. In determining whether an object is drug paraphernalia, the following shall be considered:

- (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 city, state or federal law relating to any controlled substance.
- (3) The proximity of the object in time and space to a direct violation of this section.
- (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 whom the person knows, or should reasonably know, intend to use the object to facilitate a violation of this section. The innocence of any owner or of anyone in control of the object as to a direct violation of this section shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia.
- (7) Oral or written instructions provided with the object concerning its use.
- (8) Descriptive materials accompanying the object which explain or depict its use.
- (9) National and local advertising concerning its use.
- (10) The manner in which the object is displayed for sale.
- (11) Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the

business enterprise.

(12) The existence and scope of legitimate uses for the object in the community.

(13) Expert testimony concerning its use.

C. Prohibited Activities.

(1) Possession of Drug Paraphernalia. No person under 18 years of age may use, or possess with intent to use, 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 this section.

(2) Manufacture, Sale or Delivery of Drug Paraphernalia. No person under 18 years of age may sell, deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing 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 this section.

(3) Delivery of Drug Paraphernalia to a Minor. Any person under 18 years of age who violates par. (2) by delivering drug paraphernalia to a person under 18 years of age is subject to referral to the appropriate county agency for disposition under sec. 48.344 (2e), Wis. Stats., in addition to any penalty hereunder.

(4) Exemption. This subsection does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with Chapter 161, Wis. Stats. This section does not prohibit the possession, manufacture or use of hypodermics, in accordance with Chapter 161, Wis. Stats.

D. Penalties.

(1) Any drug paraphernalia used in violation of this section shall be seized and forfeited to the Town of Oakland.

(2) Any person who violates sub. C(1), (2) or (3)

shall, upon conviction thereof, be subject to a forfeiture in an amount not to exceed \$500.00, together with costs, and, in addition, failure to pay any forfeiture imposed as a result of a violation of these provisions may result in the suspension of that person's driver's license for a period of up to five (5) years.

Section 2: All ordinances or parts of ordinances inconsistent with or contravening the provisions of this ordinance are hereby repealed.

The Town Board DO FURTHER ORDAIN that this Ordinance shall be effective following its adoption and publication.

Dated this 19 day of April, 1994.

TOWN OF OAKLAND, by:

Raymond Kisow
Raymond Kisow, Chairman

Attest:

Linda L. Dieckhoff
Linda Dieckhoff, Town Clerk

Passed: April 19, 1994

Vote:

Ayes: 3 Noes: 0

Published: April 28 1994.