

Request For Board Action

REFERRED TO BOARD: August 1, 2016

AGENDA ITEM NO: 7

ORIGINATING DEPARTMENT: Police Department

SUBJECT: Consideration of an Ordinance Amending §6-2-5 and §4-14-1 of the Municipal Code of Antioch to Clarify the Definition of Unlawful Drug Paraphernalia.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The Police Department has requested a change to the definitions of drug paraphernalia due the two sections being extremely similar, but not identical, leading to the potential for confusion and legal arguments being made by persons accused of violations. The requested changes will bring the two definitions into parity to help ensure to the maximum extent possible under the law that the community is protected from the sale of such unlawful merchandise.

DOCUMENTS ATTACHED:

1. Ordinances

RECOMMENDED MOTIONS:

Move to Approve an Ordinance Amending §6-2-5 and §4-14-1 of the Municipal Code of Antioch to Clarify the Definition of Unlawful Drug Paraphernalia.

ORDINANCE 16 - _____

**AN ORDINANCE AMENDING TWO SECTIONS OF THE
MUNICIPAL CODE OF ANTIOCH TO CLARIFY THE
DEFINITION OF UNLAWFUL DRUG PARAPHERNALIA**

WHEREAS, the Village Municipal Code (Section 6-2-5 and subparts) has generally prohibited the possession and sale of drug paraphernalia for many years, and

WHEREAS, the Village Board adopted a comprehensive set of tobacco and vape regulations in the past year, which regulations also prohibit the commercial sale of drug paraphernalia (Section 4-14-1), and

WHEREAS, the definitions used in the two sections are extremely similar, but not identical, leading to the potential for confusion and legal arguments being made by persons accused of violations, and

WHEREAS, the Village Board wishes to bring the two definitions into parity to ensure to the maximum extent possible under the law that the community is protected from the sale of such unlawful merchandise,

NOW THEREFORE, BE IT ORDAINED by the Village of Antioch, Lake County, Illinois, as follows:

SECTION ONE: The definition of Drug Paraphernalia in Section 6-2-5-4 of the Antioch Municipal Code is hereby amended and shall hereafter read as follows (additions underlined, deletions ~~stricken~~):

DRUG PARAPHERNALIA: All equipment, products and materials of any kind which are ~~used~~ commonly used, may be 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 the controlled substances act.

1. Drug paraphernalia 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 cannabis or from which a controlled substance or cannabis can be derived;
 - b. Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substance or cannabis;
 - c. 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 cannabis;

- d. Testing equipment used, intended for use or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances or cannabis;
 - e. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances or cannabis;
 - f. Diluents and adulterants, such as quinine, hydrochloride, manitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or cannabis;
 - g. 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.
 - h. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or cannabis;
 - i. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances or cannabis;
 - j. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or cannabis;
 - k. 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, 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 and carburetion masks;
 - (5) Roach clips, which are 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;
 - (6) Chamber pipes;
 - (7) Carburetor pipes;
 - (8) Electric pipes;
 - (9) Air driven pipes;
 - (10) Chillums;
 - (11) Bongs;
 - (12) Ice pipes or chillers.
2. 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:
- a. Statements by an owner or by anyone in control of the object concerning its use;

- b. 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;
- c. The proximity of the object, in time and space, to a direct violation of this subsection;
- d. The proximity of the object to controlled substances;
- e. The existence of any residue of controlled substances on the object;
- f. 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 should reasonably know, intend to use the object to facilitate a violation of this subsection. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this subsection shall not prevent a finding that the object is intended for use or designed for use as drug paraphernalia;
- g. Instructions, oral or written, provided with the object concerning its use;
- h. Descriptive materials accompanying the object which explain or depict its use;
- i. National and local advertising concerning its use;
- j. The manner in which the object is displayed for sale;
- k. 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;
- l. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
- m. The existence and scope of legitimate uses for the object in the community; and
- n. Expert testimony concerning its use.

SECTION TWO: Section 4-14-1 of the Antioch Municipal Code is hereby amended and it shall hereafter read as follows (additions underlined, deletions ~~stricken~~):

DRUG PARAPHERNALIA: All equipment, products and materials of any kind which are ~~peculiar to and~~ commonly used, may be used or are marketed for use and 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 in violation of the "cannabis control act" or the "Illinois controlled substances act". It includes, but is not limited to:

- A. Kits peculiar to and marketed for use in manufacturing, compounding, converting, producing, processing or preparing cannabis or a controlled substance;
- B. Isomerization devices peculiar to and marketed for use in increasing the potency of any species of plant which is cannabis or a controlled substance;
- C. Testing equipment peculiar to and marketed for private home use in identifying or in analyzing the strength, effectiveness or purity of cannabis or controlled substances;

- D. Diluents and adulterants peculiar to and marketed for cutting cannabis or a controlled substance by private persons;
- E. 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:
1. Water pipes,
 2. Carburetion tubes and devices,
 3. Smoking and carburetion masks,
 4. Miniature cocaine spoons and cocaine vials,
 5. Carburetor pipes,
 6. Electric pipes,
 7. Air driven pipes,
 8. Chillums,
 9. Bongs, and
 10. Ice pipes or chillers.
- F. Any item whose purpose, as announced or described by the seller, is for use in violation of the "cannabis control act" or the "Illinois controlled substances act".

SECTION THREE: This Ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

PASSED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF ANTIOCH, ILLINOIS,
ON THIS ____ DAY OF _____, 2016.

ATTEST:

LAWRENCE M. HANSON, MAYOR

LORI K. ROMINE, VILLAGE CLERK