

SUMMARY

I. Description of Item

This ordinance would rename and add a new Section to Chapter 24 of the Shelby County Code of Ordinances. It would make it a civil offense to possess or causally exchange marijuana paraphernalia or less than one half ounce (1/2) of marijuana in unincorporated Shelby County. Causal exchange is defined as a transfer of marijuana when no money is involved. This amendment would require renaming the Chapter now used to set forth traffic violations to also include this new provision. As this Chapter in one of the few in the Shelby County Code of Ordinances that re-establish civil violations and the penalties associated with their violations, it was selected for this amendment out of convenience rather than establishing a whole new chapter in the Code for this single provision.

This ordinance would be enforced by the Sheriff's Department. It would allow General Sessions Court, Division XIV (Environmental Court) to assess of civil penalty of no more than \$50 per violation of the provisions, and it would require the court to allow community service to be performed (up to 10 hours) in lieu of this fine.

II. Source and Amount of Funding

N/A

III. Communicate How the Ordinance Affects:

- A. Subawards - N/A
- B. Personnel - N/A
- C. Equipment - N/A
- D. Contracts - N/A

IV. Other Relevant Information.

As a new offense is being established for which a penalty can be imposed, 9 votes will be required for passage as provided in the Shelby County Charter in Section 2.06(C)(3)(d).

Item #: _____

Moved by: _____

Prepared By: R. Joseph Leibovich

Seconded by: _____

Reviewed By: Marcy Ingram

ORDINANCE NO. _____

AN ORDINANCE TO INSTITUTE A CIVIL PENALTY FOR THE KNOWING POSSESSION AND/OR CASUAL EXCHANGE OF MARIJUANA PARAPHERNALIA OR LESS THAN ONE HALF (1/2) AN OUNCE OF MARIJUANA. SPONSORED BY COMMISSIONER VAN TURNER AND COSPONSORED BY COMMISSIONER REGINALD MILTON.

WHEREAS, Tennessee Code Annotated §§ 39-17-418(a) & (b) make it a misdemeanor for individuals to knowingly possess or casually exchange an amount of marijuana not to exceed one half an ounce; and

WHEREAS, Tennessee Code Annotated § 39-17-425 makes it a misdemeanor for certain individuals to possess with the intent to use certain items to consume drugs, including marijuana; and

WHEREAS, The Shelby County Board of Commissioners finds that, when an individual's offenses are limited to the possession and/or casual exchange of one half (1/2) an ounce or less of marijuana and related paraphernalia, criminal penalties and criminal records are disproportionate to the severity of the offense; and

WHEREAS, The Memphis City Council on October 4, 2016 passed an ordinance providing for civil fines and/or community service for the possession and casual exchange of small amounts of marijuana; and

WHEREAS, The Shelby County Board of Commissioners finds that civil penalties and community service are more commensurate with the offenses of possession or casual exchange of one half (1/2) an ounce or less of marijuana when those are the only chargeable offenses; and

WHEREAS, This ordinance would impose a fine for its violation and therefore under the provisions of Section 2.06 (d) of the Shelby County Charter requires a two thirds (2/3) vote of the members of the Board of Commissioners for its adoption.

NOW, THEREFORE, BE IT ORDAINED, That the Shelby County Code of Ordinances be amended to change the name of Chapter 24 to read “MOTOR VEHICLES AND TRAFFIC OFFENSES; MARIJUANA OFFENSES.”

BE IT FURTHER ORDAINED, That Chapter 24, Article I, Section 24.1 of the Shelby County Code be amended to add the following definitions in the appropriate location in that Section:

“*Casual exchange* means an exchange not involving the transfer of money.”

“Marijuana” means all parts of the plant cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, including concentrates and oils, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances. The term “marijuana” does not include:

(A) Oil containing the substance cannabidiol, with less than nine-tenths of one percent (0.9%) of tetrahydrocannabinol, if:

(i) The bottle containing the oil is labeled by the manufacturer as containing cannabidiol in an amount less than nine-tenths of one percent (0.9%) of tetrahydrocannabinol; and

(ii) The person in possession of the oil retains:

(a) Proof of the legal order or recommendation from the issuing state; and

(b) Proof that the person or the person's immediate family member has been diagnosed with intractable seizures or epilepsy by a medical doctor or doctor of osteopathic medicine who is licensed to practice medicine in the state of Tennessee;

- (B) Cannabis oil containing the substance cannabidiol, with less than six tenths of one percent (0.6%) of tetrahydrocannabinol, including the necessary seeds and plants, when manufactured, processed, transferred, dispensed, or possessed by a four-year public or private institution of higher education certified by the drug enforcement administration located in the state as part of a clinical research study on the treatment of intractable seizures, cancer, or other diseases;
- (C) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil or cake, or the sterilized seeds of the plant which are incapable of germination; or
- (D) Industrial hemp as defined by Tennessee state law.”

“*Marijuana paraphernalia* means all equipment, products and materials of any kind which are used, intended for use, or designed for use in storing, containing, ingesting, inhaling or otherwise introducing into the human body marijuana. “Marijuana paraphernalia” includes, but is not limited to:

Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, marijuana concentrates, or marijuana oil into the human body, such as:

- (i) Metal, acrylic, glass, stone, or plastic pipes with or without screens, permanent screens, or punctured metal bowls;
- (ii) Water pipes;
- (iii) Carburetion tubes and devices;
- (iv) Smoking and carburetion masks;
- (v) Chamber pipes;
- (vi) Carburetor pipes;
- (vii) Electric pipes;
- (viii) Chillums;
- (ix) Bongs; and
- (x) Ice pipes or chillers”

BE IT FURTHER ORDAINED, That Chapter 24 the Shelby County Code of Ordinances be amended by adding a new Section 24.32 entitled “Simple possession and casual exchange of marijuana of half an ounce or less”. Such Section shall read:

A. It is a violation of this Section for a person to knowingly possess or engage in a casual exchange of marijuana not in excess of one half ounce (14.175 grams).

B. Persons found in violation of this Section may be issued an ordinance summons by the Sheriff’s Office and, if found to have violated its provisions be subject to a civil penalty not to exceed fifty dollars (\$50.00) for each violation. The court shall, upon finding the defendant in violation of this subsection,

suspend the civil penalty imposed under this subsection if the person found liable agrees to, and does in fact perform, such community service as the court deems appropriate, up to ten (10) hours, with such community service overseen by Shelby County Government's Pre-Trial Services.

C. No violation of this Section shall be deemed to have occurred if the person obtained the marijuana directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice.

D. This Section does not apply when a casual exchange occurs in which an adult who is at least two (2) years older than a minor makes such exchange to the minor when the adult knows the individual is a minor. In such cases, state law applies.

BE IT FURTHER ORDAINED, That Chapter 24 the Shelby County Code of Ordinances be amended by adding a new Section 24.33 entitled "Marijuana paraphernalia". Such Section shall read:

A. It is a violation of this Section for a person to knowingly possess or engage in a casual exchange of marijuana paraphernalia.

B. Persons found in violation of this Section, and who are not in possession of more than one half ounce (14.175 grams) of marijuana may be issued an ordinance summons by the Sheriff's Office and, if found to have violated its provisions be subject to a civil penalty not to exceed fifty dollars (\$50.00) for each violation. The court shall, upon finding the defendant in violation of this subsection, suspend the civil penalty imposed under this subsection if the person found liable agrees to, and does in fact perform, such community service as the court deems appropriate, up to ten (10) hours, with such community service overseen by Shelby County Government's Pre-Trial Services. In the event a person is issued an ordinance summons pursuant to Section 24.32 of this Chapter, there shall be no additional civil penalty or additional community service required for a violation of this Section.

C. No violation of this Section shall be deemed to have occurred if the person possesses the marijuana paraphernalia for use with marijuana directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice.

D. In determining whether a particular object is drug paraphernalia as defined herein, the court or other authority making that determination shall, in addition to all other logically relevant factors, consider the following:

(1) Statements by the owner or anyone in control of the object concerning its use;

- (2) Prior convictions, if any, of the owner or of anyone in control of the object for violation of any state or federal law relating to controlled substances or controlled substance analogues;
 - (3) The existence of any residue of controlled substances or controlled substance analogues on the object;
 - (4) Instructions, oral or written, provided with the object concerning its use;
 - (5) Descriptive materials accompanying the object that explain or depict its use;
 - (6) The existence and scope of legitimate uses for the object in the community;
- and
- (8) Expert testimony concerning its use.

BE IT FURTHER ORDAINED that Chapter 24, Article II, Section 24.58 be amended so that a new subsection (b) be added that shall read:

(b) The general sessions court is hereby authorized to collect fines in an amount of no more than \$50.00 for violations of Section 24.32 or 24.33 of this Article.

and as a result of this amendment, the current subsections labeled (b) through (d) shall be relabeled (c) through (e).

BE IT FURTHER ORDAINED, That all ordinances that are not in conflict with this ordinance be and the same are continued in full force and effect, and all ordinances in conflict therewith be and the same are hereby repealed.

BE IT FURTHER ORDAINED, That, if any clause, section, paragraph, sentence or part of this ordinance shall be held or declared to be unconstitutional and void by a court of competent jurisdiction, it shall not affect the remaining parts of this ordinance, it being hereby declared to be the legislative intent of the County Commission to have passed the remainder of this Ordinance notwithstanding the part so held unconstitutional and void, if any.

BE IT FURTHER ORDAINED, That this ordinance shall take effect pursuant to Section 2.06 (C) of the Shelby County Charter.

County Mayor

Date: _____

ATTEST:

Clerk of County Commission

FIRST READING: _____

SECOND READING: _____

ADOPTED

THIRD READING: _____