

CHARTER TOWNSHIP OF WEST BLOOMFIELD

ORDINANCE NO. 64

POSSESSION OF MARIHUANA

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES CHAPTER 15, OFFENSES, ARTICLE VII, OFFENSES AGAINST PUBLIC MORALS, DIVISION 2, DRUGS AND CHEMICALS, SECTION 15-221 TITLED CONTROLLED SUBSTANCES AND SECTION 15-222 TITLED POSSESSION OF CONTROLLED SUBSTANCE PARAPHERNALIA.

THE CHARTER TOWNSHIP OF WEST BLOOMFIELD ORDAINS:

The Code of Ordinances for the Charter Township of West Bloomfield is hereby amended to revise Chapter 15, Offenses, Article VII, Offenses Against Public Morals, Division 2, Drugs and Chemicals, Section 15-221 titled Controlled Substances, and Section 15-222 titled Possession of Controlled Substance Paraphernalia to read as follows:

Sec. 15-221. - Controlled substances.

(a) Except as authorized by the Uniform Controlled Substances Act, as adopted by the State as Article 7 of the Public Health Code (MCL 333.7101, *et seq.*), as amended, and the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018 (MCL 333.27951 through 333.27967, effective Dec. 6, 2018), referred to as the Marihuana Act, as approved by the electors of the State of Michigan, a person shall not manufacture, deliver, use or possess a controlled substance as defined by the Uniform Controlled Substances Act

i. Prohibited Conduct.

Pursuant to Section 4 of the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951, *et seq.*, the following acts are not authorized by law:

- (1) operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana;
- (2) transfer of marihuana or marihuana accessories to a person under the age of 21;
- (3) any person under the age of 21 to possess, consume, purchase or otherwise obtain, cultivate, process, transport, or sell marihuana;
- (4) separation of plant resin by butane extraction or another method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within the curtilage of any residential structure;
- (5) consuming marihuana in a public place or smoking marihuana where prohibited by the person who owns, occupies, or manages the property, except that for purposes of this subdivision a public place does not include

an area designated for consumption within a municipality that has authorized consumption in designated areas that are not accessible to persons under 21 years of age;

- (6) cultivating marihuana plants if the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids or outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area;
- (7) consuming marihuana while operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat, or smoking marihuana within the passenger area of a vehicle upon a public way;
- (8) possessing marihuana accessories or possessing or consuming marihuana on the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility; or
- (9) possessing more than 2.5 ounces of marihuana within a person's place of residence unless the excess marihuana is stored in a container or area equipped with locks or other functioning security devices that restrict access to the contents of the container or area.

ii. Permissible Conduct

Notwithstanding any other law or provision of this ordinance, and except as otherwise provided in Section 15-221(a)(i) of this ordinance, the following acts by a person 21 years of age or older are not unlawful, are not an offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or penalty in any manner, are not grounds for search or inspection, and are not grounds to deny any other right or privilege:

- (1) except as permitted by subdivision (b), possessing, using or consuming, internally possessing, purchasing, transporting, or processing 2.5 ounces or less of marihuana, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate;
- (2) within the person's residence, possessing, storing, and processing not more than 10 ounces of marihuana and any marihuana produced by marihuana plants cultivated on the premises and cultivating not more than 12 marihuana plants for personal use, provided that no more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once;
- (3) assisting another person who is 21 years of age or older in any of the acts described in this section;
- (4) giving away or otherwise transferring without remuneration up to 2.5 ounces of marihuana, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate, to a person 21 years of age or older, as long as the transfer is not advertised or promoted to the public;

- (5) except as otherwise provided in Section 15-221(a)(i) of this ordinance, the use, manufacture, possession, and purchase of marihuana accessories by a person 21 years of age or older and the distribution or sale of marihuana accessories to a person 21 years of age or older is authorized, is not unlawful, is not an offense, is not grounds for seizing or forfeiting property, is not grounds for arrest, prosecution, or penalty in any manner, and is not grounds to deny any other right or privilege;
- (6) except as prohibited by Section 13.5-16 of this Code, a marihuana grower or an agent acting on behalf of a marihuana grower who is 21 years of age or older, cultivating not more than the number of marihuana plants authorized by the state license class; possessing, packaging, storing, or testing marihuana; acquiring marihuana seeds or seedlings from a person who is 21 years of age or older; selling or otherwise transferring, purchasing or otherwise obtaining, or transporting marihuana to or from a marihuana establishment; or receiving compensation for goods or services;
- (7) except as prohibited by Section 13.5-16 of this Code, a marihuana processor or agent acting on behalf of a marihuana processor who is 21 years of age or older, possessing, processing, packaging, storing, or testing marihuana; selling or otherwise transferring, purchasing or otherwise obtaining, or transporting marihuana to or from a marihuana establishment; or receiving compensation for goods or services;
- (8) except as prohibited by Section 13.5-16 of this Code, a marihuana secure transporter or an agent acting on behalf of a marihuana secure transporter who is 21 years of age or older, possessing or storing marihuana; transporting marihuana to or from a marihuana establishment; or receiving compensation for services;
- (9) except as prohibited by Section 13.5-16 of this Code, a marihuana safety compliance facility or an agent acting on behalf of a marihuana safety compliance facility who is 21 years of age or older, testing, possessing, repackaging, or storing marihuana; transferring, obtaining, or transporting marihuana to or from a marihuana establishment; or receiving compensation for services;
- (10) except as prohibited by Section 13.5-16 of this Code, a marihuana retailer or an agent acting on behalf of a marihuana retailer who is 21 years of age or older, possessing, storing, or testing marihuana; selling or otherwise transferring, purchasing or otherwise obtaining, or transporting marihuana to or from a marihuana establishment; selling or otherwise transferring marihuana to a person 21 years of age or older; or receiving compensation for goods or services;

- (11) except as prohibited by Section 13.5-16 of this Code, a marihuana microbusiness or an agent acting on behalf of a marihuana microbusiness who is 21 years of age or older, cultivating not more than 150 marihuana plants; possessing, processing, packaging, storing, or testing marihuana from marihuana plants cultivated on the premises; selling or otherwise transferring marihuana cultivated or processed on the premises to a person 21 years of age or older; or receiving compensation for goods or services;
- (12) leasing or otherwise allowing the use of property owned, occupied, or managed for activities allowed under the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951, *et seq.*;
- (13) enrolling or employing a person who engages in marihuana-related activities allowed under the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951, *et seq.*;
- (14) possessing, cultivating, processing, obtaining, transferring, or transporting industrial hemp;
- (15) except as prohibited under Section 13.5-16 of this Code, providing professional services to prospective or licensed marihuana establishments related to activity under the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951, *et seq.*

iii. Violations and Penalties

A person who commits any of the following acts, and is not otherwise authorized by this ordinance or the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951, *et seq.*, to conduct such activities, may be punished only as provided in this section and is not subject to any other form of punishment or disqualification, unless the person consents to another disposition authorized by law:

- (1) except for a person who engaged in conduct described in Sections 15-221(a)(i)(1), 15-221(a)(i)(2), 15-221(a)(i)(3), 15-221(a)(i)(4), 15-221(a)(i)(7), or 15-221(a)(i)(8), a person who possesses not more than the amount of marihuana allowed by Section 15-221(a)(ii) cultivates not more than the amount of marihuana allowed by Section 15-221(a)(ii), delivers without receiving any remuneration to a person who is at least 21 years of age not more than the amount of marihuana allowed by Section 15-221(a)(ii), or possesses with intent to deliver not more than the amount of marihuana allowed by Section 15-221(a)(ii), is responsible for a civil infraction and may be punished by a fine of not more than \$100 and forfeiture of the marihuana.
- (2) except for a person who engaged in conduct described in Section 15-221(a)(i), a person who possesses not more than twice the amount of marihuana allowed by Section 15-221(a)(ii)(1), cultivates not more than twice the amount of marihuana allowed by Section 15-221(a)(ii)(2), delivers without receiving any remuneration to a person who is at least 21

years of age not more than twice the amount of marihuana allowed by Section 15-221(a)(ii)(4), or possesses with intent to deliver not more than twice the amount of marihuana allowed by Section 15-221(a)(ii):

- (a) for a first violation, is responsible for a civil infraction and may be punished by a fine of not more than \$500 and forfeiture of the marihuana;
 - (b) for a second violation, is responsible for a civil infraction and may be punished by a fine of not more than \$1,000 and forfeiture of the marihuana;
 - (c) for a third or subsequent violation, is guilty of a misdemeanor and may be punished by a fine of not more than \$2,000 and forfeiture of the marihuana.
- (3) except for a person who engaged in conduct described by Section 15-221(a)(i)(1), 15-221(a)(i)(4), or 15-221(a)(i)(7), a person under 21 years of age who possesses not more than 2.5 ounces of marihuana or who cultivates not more than 12 marihuana plants:
- (a) for a first violation, is responsible for a civil infraction and may be punished as follows:
 - (i) if the person is less than 18 years of age, by a fine of not more than \$100 or community service, forfeiture of the marihuana, and completion of 4 hours of drug education or counseling; or
 - (ii) if the person is at least 18 years of age, by a fine of not more than \$100 and forfeiture of the marihuana.
 - (b) for a second violation, is responsible for a civil infraction and may be punished as follows:
 - (i) if the person is less than 18 years of age, by a fine of not more than \$500 or community service, forfeiture of the marihuana, and completion of 8 hours of drug education or counseling; or
 - (ii) if the person is at least 18 years of age, by a fine of not more than \$500 and forfeiture of the marihuana.
- (4) except for a person who engaged in conduct described in Section 15-221(a)(i), a person who possesses more than twice the amount of marihuana allowed by Section 15-221(a)(ii)(1), cultivates more than twice the amount of marihuana allowed by Section 15-221(a)(ii)(2), or delivers without receiving any remuneration to a person who is at least 21 years of age more than twice the amount of marihuana allowed by Section 15-221(a)(ii)(4), shall be responsible for a misdemeanor, but shall not be subject to imprisonment unless the violation was habitual, willful, and for a commercial purpose or the violation involved violence.

Should any Section, subdivision, sentence, clause, or phrase of this Ordinance be declared by the Courts to be invalid, it shall not affect the validity of the remainder of the Ordinance or any part other than the part invalidated. It is further declared that such provisions would have been adopted independently of the provision found to be invalid. Should any procedural aspect of this Article be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Article.

(b) When a person who has not been previously convicted of an offense under the Uniform Controlled Substances Act as adopted by the State, or the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, referred to as the Marihuana Act, as approved by the electors of the State of Michigan or any statute of the United States or any other state, or any ordinance relating to controlled substances, pleads guilty to or is found guilty of possessing or using a controlled substance, the court, without entering a judgment of guilt with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions. Upon violation of a term or condition the court may enter an adjudication of guilt and proceed as otherwise provided by law. Upon fulfillment of the terms and conditions, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this article or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed by state law for second or subsequent convictions under the Uniform Controlled Substances Act, or the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, referred to as the Marihuana Act, as approved by the electors of the State of Michigan. There may be only one (1) discharge and dismissal under this section and other ordinance or state law as to an individual. The records and identifications division of the police department shall retain a nonpublic record of an arrest and discharge or dismissal under this section. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action involving the use of a controlled substance has already once utilized the probation without judgment of guilt provisions in this section.

(c) If an individual is convicted of a violation of this section, the court as part of the sentence, during the period of confinement or the period of probation, or both, may require the individual to attend a course of instruction or rehabilitation program on the medical, psychological and social effects of the misuse of drugs. The court may order the individual to pay a fee for the instruction or program. Failure to complete the instruction or program shall be considered a violation of the terms of probation.

Sec. 15-222. - Possession of controlled substance paraphernalia.

It shall be unlawful for any person or persons to possess tools and implements suited particularly to the abuse of controlled substances in violation of the Uniform Controlled Substances Act, as adopted by the State as Article 7 of the Public Health Code (MCL 333.7101, *et seq.*), as amended, and the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, referred to as the Marihuana Act, as approved by the electors of the State of Michigan, including, but not limited to a hypodermic needle, distilling implement, hash pipes of any description, or mechanical closing devices of any description, under such circumstances that they appear to have been adapted, designed or used for the abuse of controlled substances, and such person or persons knowing the same to be adapted and designed for the purpose of the abuse of controlled substances with the intent to use or employ the paraphernalia for such abuse.

CERTIFICATION

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

I, Deborah Binder, the duly elected Clerk for the Charter Township of West Bloomfield, Oakland County, Michigan, do hereby certify that the foregoing is a true and complete copy of the Ordinance adopted by the Township Board for the Charter Township of West Bloomfield at a meeting held on the 23rd day of March, 2020, the original of which is on file in the Office of the Township Clerk.

I affix my official signature/seal this 23rd day of March, 2020.

By: Deborah Binder
Deborah Binder, Clerk

INTRODUCED: 02-24-2020
ADOPTED: 03-23-2020
EFFECTIVE: 03-25-2020
PUBLISHED: 03-25-2020

5903260_1