

ORDINANCE NO. _____

Date Passed: November 27, 2017

**AN ORDINANCE AMENDING CHAPTER 66 OF THE MUNICIPAL CODE
REGARDING POSSESSION OF CANNABIS AND POSSESSION OF
DRUG PARAPHERNALIA**

WHEREAS, the City of Rochelle is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1, et. seq.; and

WHEREAS, the City has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs, and to protect the public health, safety, and welfare of its citizens; and

WHEREAS, the City of Rochelle has previously enacted an ordinance prohibiting the possession of drug paraphernalia and said ordinance is found at Chapter 66, Division 1, Section 66-403(k) of the City's Municipal Code; and

WHEREAS, on July 29, 2016, Illinois Governor Bruce Rauner signed into law SB 2228 which removed the criminal penalties for those found in possession of ten (10) grams or less of cannabis and provides that the possession of ten (10) grams or less of cannabis is a civil law violation punishable by a minimum fine of \$100 and a maximum fine of \$200; and

WHEREAS, SB 2228 further also provides that the penalty for possession of any drug paraphernalia seized during the arrest for the offense of possession of cannabis ten (10) grams or less shall be a civil law violation punishable by a minimum fine of \$100 and a maximum fine of \$200); and

WHEREAS, the City of Rochelle continues to believe that the possession of cannabis and drug paraphernalia should be prohibited in the City of Rochelle; and

WHEREAS, the City of Rochelle believes that the ordinance prohibiting the possession of drug paraphernalia should be modified, updated and amended to more closely comport with current Illinois State law and that prohibiting the possession of cannabis ten (10) grams or less consistent with Illinois law should be approved.

THEREFORE, BE IT ORDAINED by the City of Rochelle, Illinois, as follows:

Chapter 66, Division 1, Section 66-403(k) [Possession of Drug Paraphernalia] of the Municipal Code shall be repealed in its entirety and the following shall be enacted in its place. Additionally, Chapter 66, Division 1, is amended to add Section 66-403(l) [Possession of Cannabis ten (10) grams or less](additions and changes are in red):

(k) POSSESSION OF DRUG PARAPHERNALIA.

(1) Definitions. Drug paraphernalia is defined as all items, equipment, products and

materials of any kind which may be used unlawfully 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 cannabis or a controlled substance as defined by relevant Illinois state laws. It includes, but is not limited to, pipes, bongs, rolling paper and any item converted for the uses set forth above.

(2) Offense of Possession of Drug Paraphernalia. A person commits the offense of Possession of Drug Paraphernalia by knowingly possessing an item of drug paraphernalia unless permitted or authorized to do so pursuant to relevant Illinois state law. The offense of Possession of Drug Paraphernalia is classified as a civil law violation.

(3) Violation Penalties. Any person violating the Offense of Possession of Drug Paraphernalia, shall be subject to a mandatory fine of not less than One Hundred Dollars (\$100.00) or more than Two Hundred Dollars (\$200.00). In addition to any fine herein all court costs authorized by ordinance or statute for ordinance violations from time to time shall be imposed. These costs include, but are not limited to, Circuit Clerk Automation, Document Storage, Clerk fee, Court fee, Judicial Security, and E-Citation Fee.

(4) Exemptions. This section shall not apply to:

a. Items used in the preparation, compounding, packaging, labeling, or other use of cannabis or a controlled substance as an incident to lawful research, teaching, or chemical analysis and not for sale.

b. Items historically and customarily used in connection with the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, or inhaling of tobacco or any other lawful substance.

Items exempt under this subsection include, but are not limited to, garden hoes, rakes, sickles, baggies, tobacco pipes, and cigarette-rolling papers.

c. Items listed in subsection (1) which are used for decorative purposes, when such items have been rendered completely inoperable or incapable of being used for any illicit purpose prohibited by this act.

d. A person who is legally authorized to possess hypodermic syringes or needles under the Hypodermic Syringes and Needles Act.

e. In determining whether or not a particular item is exempt under this section, the trier of fact should consider, in addition to all other logically relevant factors, the following:

1. The general, usual, customary, and historical use to which the item involved has been put;

2. Expert evidence concerning the ordinary or customary use of the item and the effect of any peculiarity in the design or engineering of the device upon its functioning;

3. Any written instructions accompanying the delivery of the item concerning the purposes or uses to which the item can or may be put;

4. Any oral instructions provided by the seller of the item at the time and place of sale or commercial delivery;

5. Any national or local advertising concerning the design, purpose or use of the item involved, and the entire context in which such advertising occurs;

6. The manner, place and circumstances in which the item was displayed for sale, as well as any item or items displayed for sale or otherwise exhibited upon the premises where the sale was made;

7. 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; and

8. The existence and scope of legitimate uses for the object in the community.

(5) Seizure and forfeiture. All items of drug paraphernalia shall be seized and forfeited as contraband to the city.

(1) POSSESSION OF CANNABIS.

(1) Definitions. All terms and phrases used herein shall have the same meaning as ascribed to them in the Cannabis Control Act (720 ILCS 550/1 et seq.); except the term “person” is limited to natural persons who have attained the age of eighteen (18) years or more.

(2) Offense of Possession of Cannabis. A person commits the offense of Possession of Cannabis by knowingly possessing ten (10) grams or less of any substance containing cannabis unless permitted or authorized to do so pursuant to relevant state law. The offense of Possession of Cannabis ten (10) grams or less is classified as a civil law violation.

(3) Violations, penalties. Any person violating Subsection (2) shall be subject to a mandatory fine of not less than One Hundred Dollars (\$100.00) or more than Two Hundred Dollars (\$200.00). In addition to any fine herein all court costs authorized by ordinance or statute for ordinance violations from time to time shall be imposed. These costs include, but are not limited to, Circuit Clerk Automation, Document Storage, Clerk fee, Court fee, Judicial

Security, and E-Citation Fee.

BE IT FURTHER ORDAINED that this Ordinance shall become effective after its passage, approval and publication as provided by law and shall modify any inconsistent provisions in the municipal code prior to this date.

Passed and adopted by the City of Rochelle this _____ day of _____, 2017.

Mayor

Attest:

City Clerk