

Effective Date: January 11, 2012

11/8/11
10/20/11

92-0-11

AN ORDINANCE

**Amending Certain Provisions of Title 8, Chapter 16 of the Evanston
Municipal Code entitled "Marijuana"**

WHEREAS, the City of Evanston (the "City") is a home-rule municipality in accordance with the Constitution of the State of Illinois of 1970; and

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

WHEREAS, the City is adopting this ordinance pursuant to its police powers pursuant to *Village of Winnetka v. Sinnett*, 272 Ill.App.143, 146-47 (1st Dist. 1933), and *Village of Mt. Prospect v. Malouf*, 103 Ill.App.2d 88, 91 (1st Dist. 1968); and

WHEREAS, the City is exercising its police powers concurrently with the State in that it seeks to penalize the same conduct that the State penalizes; and

WHEREAS, Article VII, Section (6)a of the Illinois Constitution of 1970, which states that the "powers and functions of home rule units shall be construed liberally," was written "with the intention that home rule units be given the broadest powers possible" *Scadron v. City of Des Plaines*, 153 Ill.2d 164; and

WHEREAS, the City seeks to exercise its home rule adjudication powers in accordance with the State home rule adjudication statute, 65 ILCS 5/1-2.1 *et seq.*; and

WHEREAS, previous legislation enacted to control or forbid cannabis use

has often unnecessarily and unrealistically drawn a large segment of our population within the criminal justice system without succeeding in deterring the expansion of cannabis use; and

WHEREAS, the problems created by cannabis use are often local in scope and best dealt with on a local level; and

WHEREAS, the City Council determines that it is in the best interests of the health and welfare of the citizens of the City, to establish an enforcement and penalty system which is responsive to the current state of knowledge concerning cannabis use and which directs the efforts of law enforcement agencies toward the prevention of commercial traffickers and large-scale purveyors of cannabis;

NOW BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the foregoing recitals are found as fact and incorporated herein by reference.

SECTION 2: That Title 8, Chapter 16 of the Evanston City Code of 1979, as amended, is hereby deleted in its entirety and replaced with the following:

8-16-1: - DEFINITION:

The word cannabis, when used in this Chapter, has the following definition:

CANNABIS: Marijuana, hashish and other substances which are identified as including any parts of the plant Cannabis Sativa, whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and any compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other cannabinol derivatives, including its naturally occurring or synthetically produced ingredients, whether produced directly or indirectly by extraction, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis; but shall not include

the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

8-16-2: - POSSESSION OF CANNABIS PROHIBITED:

It shall be unlawful for any person to knowingly possess cannabis within the limits of the City. This Chapter shall not be construed as conflicting with or limiting enforcement of the Illinois Cannabis Control Act, 720 ILCS 550/, as amended from time to time.

8-16-3: - POSSESSION OF LESS THAN 10 GRAMS; ADMINISTRATIVE ADJUDICATION; PENALTIES OR DISPOSITION:

(A) Any person who violates this Chapter by possessing not more than ten grams (10 g) of cannabis shall be issued a notice of violation. The notice of violation shall direct the individual to appear before the City's Division of Administrative Hearings for an administrative adjudication hearing.

(B) Any person appearing before the Division of Administrative Hearings and found to have violated Section 8-16-2 of this Chapter by possessing not more than ten grams (10 g) of cannabis shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each violation, and in the discretion of the Hearing Officer, may be referred to a suitable drug education, counseling, or rehabilitation program, or ordered to perform community service.

8-16-4: - POSSESSION OF MORE THAN 10 GRAMS; PENALTIES OR DISPOSITION:

Persons possessing more than ten grams (10 g) of cannabis and who are cited for violations of this Chapter will have such citations adjudicated in the Second Municipal District of the Circuit Court of Cook County. Any person found to have violated Section 8-16-2 of this Chapter by possessing more than ten grams (10 g) of cannabis shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each violation.

8-16-5: - ANNUAL REPORT:

The Chief of Police shall make an annual report and evaluation to the City Council of the disposition of all violations of this Chapter.

SECTION 3: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

SECTION 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: If any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.


SECTION 6: The findings and recitals herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Introduced: November 14, 2011

Approved:


Adopted: November 28, 2011


November 29, 2011


Elizabeth B. Tisdahl, Mayor

Attest:

Approved as to form:


Rodney Greene, City Clerk


W. Grant Farrar, Corporation Counsel