

TOWNSHIP OF EVERGREEN
MONTCALM COUNTY, MICHIGAN

Board member Edwards, supported by Board member Wagner, moved the adoption of the following ordinance:

ORDINANCE NO. 2
AN ORDINANCE TO REGULATE THE POSSESSION AND SALE OF DRUG PARAPHERNALIA

THIS ORDINANCE HAVING BEEN DETERMINED TO BE AN EMERGENCY, SHALL BECOME EFFECTIVE IMMEDIATELY UPON ITS ADOPTION.

THE TOWNSHIP OF EVERGREEN ORDAINS:

Section 1 Purpose.

The purpose of this ordinance is to prohibit the possession, delivery, sale, marketing and advertising of items, paraphernalia, accessories or things which are designed or marketed for use with controlled substances to protect the health, safety and welfare of the citizens of the Township and to discourage the use of controlled substances.

Section 2 Definitions

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- (1) Controlled substances means any drug, substance, or immediate precursor enumerated in schedule 1-5 of Sections 7201 to 7231 of the Public Health Code, 1978 PA 387 , as amended, MCL 333.7201 *et seq.*
- (2) Drug paraphernalia means any equipment, item, product or material, or combination of equipment, items, products, and materials, that are used, intended for use, or designed for use in planting, propagating, cultivation growing, harvesting, manufacturing, compounding, converting, producing processing, preparing, testing, analyzing, packaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, including, but not limited to, all of the following:
 - (a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a controlled substance or form which a controlled substance can be derived.
 - (b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

- (c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant that is a controlled substance.
- (d) Testing equipment used, intended for use, or designed for use in indentifying or in analyzing the strength, effectiveness or purity of controlled substances.
- (e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
- (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose used, intended for use, or designed for use in mixing with, diluting, or cutting controlled substances.
- (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.
- (i) Capsules, balloons, envelopes, or other containers used, intended for use, or designed for use in packaging small quantities of controlled substance.
- (j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.
- (k) Hypodermis syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
- (l) Objectives 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 the following:
 - (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.
 - (ii) Water pipes
 - (iii) Carburetion tubes and devices
 - (iv) Smoking and carburetion masks.
 - (v) Roach clips, meaning 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.
 - (vi) Miniature cocaine spoons and cocaine vials
 - (vii) Chamber pipes
 - (viii) Electric pipes
 - (ix) Air driven pipes
 - (x) Chillums
 - (xi) Bongs
 - (xii) Ice pipes or chillers
 - (xiii) Wire cigarette papers
- (m) A device, commonly known as a cocaine kit, that is specifically designed for used in ingesting, inhaling, or otherwise introducing controlled substances into the human body, and which consists of at least a razor blade and a mirror.

- (n) A device, commonly known as a bullet that is specifically designed to deliver a measured amount of a controlled substance to the user.
- (o) A device, commonly known as a snoter, which is specifically designed to carry a small amount of controlled substance to the user's nose.
- (p) A device, commonly known as an automotive safe, that is specifically designed to carry and conceal a controlled substance in an automobile, including, but not, limited to a can used for brake fluid, oil, or carburetor cleaner which contains a compartment for carrying and concealing controlled substances.

Section 3 Prohibitions

- (1) It is unlawful for any person to deliver, sell, market, or possess with intent to deliver, sell or market drug paraphernalia knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.
- (2) It is unlawful for any person to use or to process with intent to use drug paraphernalia to plant, propagate, cultivate, grow harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, inhale, or otherwise introduce into the human body a controlled substance.
- (3) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publications any advertisement, knowing or under circumstances where one reasonably should know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

Section 4 Exceptions.

The provisions of the Article shall not apply to:

- (1) Any person authorized by local, state, or federal law to manufacture, possess or distribute paraphernalia.
- (2) Any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, traditionally intended for the use with tobacco products, including any pipe, paper, or accessory.
- (3) Persons suffering from diabetes, asthma or any other medical condition requiring self-injection.

Section 5 Enforcement

- (1) The provisions of this Article shall be enforced by the Montcalm County Sheriff Department.

- (2) In determining whether an item constitutes drug paraphernalia under this Article, in addition to all other logically relevant factors, the following may be considered:
 - (a) Instructions, oral or written, provided with the item concerning its use.
 - (b) Descriptive materials accompanying the item which explain or depict its use.
 - (c) National and local advertising concerning its use.
 - (d) The manner in which the items is displayed for sale.
 - (e) Whether the owner, or anyone in control of the item, is a legitimate supplier of like related items to the community, such as a licensed distributor or dealer of tobacco products.
 - (f) Direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise.
 - (g) The existence and scope of legitimate uses of the item in the community.
 - (h) Expert testimony concerning its use.
 - (i) Statements by an owner or by anyone in control of the objects concerning its use.

Section 6 Penalties

- (1) A person who violates any provision of this Article is responsible for municipal civil infraction.
- (2) In addition to the penalty imposed by subsection (1) above, any drug paraphernalia sold or possessed in violation of this Article may be seized and forfeited to the Montcalm County Sheriff's Department.
- (3) In addition to the penalties provided by this Section, the District Court shall have the equitable jurisdiction to enforce any judgment, writ, or order necessary to enforce any provision of this Article, including, but not limited to, abatement of the violating condition or granting of any injunctive relief.

Section 6 Effective Date

To preserve the public peace, health, welfare and safety, it is necessary that this Ordinance become immediately operative. It is therefore, declared to be an emergency measure and shall take immediate effect upon its adoption by the Evergreen Township Board.

YEAS: BRAMAN, GREENHOE, EDWARDS, WAGNER, AND ROSS

NAYS: NONE

ABSTAIN: NONE

ABSENT: NONE

APPROVED: APRIL 6, 2010

TOWNSHIP OF EVERGREEN
MONTCALM COUNTY MICHIGAN

AMENDMENTS TO ORDINANCE NO. 2

Section 6 Penalties:

- (1) A person who violates any provision of this Article is responsible for municipal civil infraction, punishable by a fine of no more than \$100 plus costs. Each day shall be a separate violation enforceable as such.
- (4) In addition a violation of this ordinance shall be a nuisance per se and an action may be filed in Circuit Court to enforce any judgment, writ, or order necessary to enforce any provision of this Article, including, but not limited to, abatement of the violating condition or the granting of any injunctive relief.

I certify that the following amendments were adopted at a regular meeting of the Evergreen Township Board held on May 5, 2010.


KELLI J. GREENHOE, CLERK

INTRODUCED: MAY 5, 2010

ADOPTED: MAY 5, 2010

PUBLISHED: MAY 12, 2010

EFFECTIVE: MAY 12, 2010