

**AN ORDINANCE AMENDING CHAPTER 7.72, ENTITLED “DRUG  
PARAPHERNALIA, MARIJUANA; PROHIBITIONS”, OF TITLE 7, ENTITLED  
“PUBLIC PEACE, SAFETY AND MORALS”, OF THE MUNICIPAL CODE  
OF THE VILLAGE OF WESTCHESTER, COOK COUNTY, ILLINOIS**

**WHEREAS**, the corporate authorities of the Village of Westchester have determined that it is proper, desirable and necessary in order to protect, preserve and promote public health, safety and welfare within the Village of Westchester to amend Chapter 7.72, entitled “Drug Paraphernalia, Marijuana; Prohibitions”, of Title 7, entitled “Public Peace, Safety and Morals” of the Village of Westchester Municipal Code, in order to reflect the decriminalization of marijuana by those persons legally qualified and registered with the Illinois Department of Public Health as a patient or a designated caregiver to possess medical cannabis, in order to ease the effects of debilitating medical conditions, as defined in 410 ILCS 130/5(k) of the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/1 *et. seq.*), and in order to exempt from seizure or forfeiture, items used in connection with inhaling or ingesting legal cannabis; and

**WHEREAS**, the corporate authorities of the Village of Westchester have determined that it is proper, desirable and necessary in order to protect, preserve and promote public health, safety and welfare within the Village of Westchester to amend Chapter 7.72, entitled “Drug Paraphernalia, Marijuana; Prohibitions”, of Title 7, entitled “Public Peace, Safety and Morals” of the Westchester Municipal Code in order to permit the sale of items used in connection with inhaling or ingesting cannabis at wholesale by a manufacturer.

**NOW, THEREFORE, BE IT ORDAINED** by the President and the Board of Trustees of the Village of Westchester, Cook County, Illinois, as follows:

**Section 1.** The facts and statements contained in the preambles to this Ordinance are found to be true and correct and hereby adopted as the findings of the corporate authorities of the Village of Westchester as if fully recited herein.

**Section 2.** Section 7.72.020, entitled “Sale, delivery to or possession of drug paraphernalia; penalty; public nuisance” of Chapter 7.72, entitled “Drug Paraphernalia, Marijuana; Prohibitions”, of Title 7, entitled “Public Peace, Safety and Morals”, of the Westchester Municipal Code is hereby amended as follows:

**7.72.020 – Sale, delivery to or possession of drug paraphernalia; penalty; public nuisance.**

- (a) It shall be unlawful for any person to knowingly possess an item of drug paraphernalia with the intent to use it in ingesting, inhaling or otherwise introducing cannabis or a controlled substance into the human body, or for the purpose of preparing cannabis or a controlled substance for that use. The provisions of this section shall not apply to persons legally authorized to possess hypodermic syringes or needles under the Hypodermic Syringes and Needles Act (720 ILCS 635/0.01 *et. seq.*) or authorized to possess cannabis paraphernalia in connection with the medical use of cannabis under the Illinois Compassionate Use of Medical Cannabis Pilot Program (410 ILCS 130/1 *et. seq.*).

In determining intent under this Section 7.72.020, the court, administrative hearing officer or other trier of fact may take into consideration the proximity of the cannabis or controlled substance to the drug paraphernalia or the presence of cannabis or controlled substance on or in the drug paraphernalia.

- (b) It shall be unlawful for any person to offer for retail sale or to sell at retail or to deliver for any commercial consideration any item of drug paraphernalia. The provisions of this Section shall not apply to the delivery of drug paraphernalia by a manufacturer of drug paraphernalia or to the sale at wholesale of drug paraphernalia by a manufacturer of drug paraphernalia.
- (c) Any store, place, or premises from which or in which any item of drug paraphernalia is kept for retail sale, or offered for retail sale, or delivered for any commercial consideration, except by a manufacturer thereof, is hereby declared to be a public nuisance.
- (d) The Village Attorney, upon direction of the Village President and Board of Trustees, may commence an action in the Circuit Court of Cook County to abate the public nuisance as described herein.

**Section 3.** Section 7.72.030, entitled “Exceptions; determination”, of Chapter 7.72, entitled “Drug Paraphernalia, Marijuana; Prohibitions”, of Title 7, entitled “Public Peace, Safety and Morals”, of the Westchester Municipal Code is hereby amended as follows:

**7.72.030 – Exceptions; determination.**

Section 7.72.020 shall not apply to:

- (a) Items marked for use in the preparation, compounding, packaging, labeling, or other use of cannabis or a controlled substance as an incident to lawful research, teaching, chemical analysis and not for sale, or authorized under the Illinois Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/1 *et. seq.*); or
- (b) Items marketed for, or 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.
- (c) Items exempt under this Section 7.72.030 include, but are not limited to, garden hoes, rakes, sickles, baggies, tobacco pipes, and cigarette-rolling papers.
- (d) Items listed in Section 7.72.010(d)(5) of this section which are marketed for decorative purposes, when such items have been rendered completely inoperable or incapable of being used for any illicit purpose prohibited by this chapter, state of federal law.
- (e) Items sold at wholesale or delivered by a manufacturer.
- (f) In determining whether or not a particular item is exempt under this subsection, the court or administrative hearing officer 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;
- (8) The existence and scope of legitimate uses for the object in the community.
- (9) All reasonable and common-sense inferences shall be drawn in favor of the legitimacy of any transaction or item suspect under the provisions of this section.

**Section 4.** Section 7.72.040, entitled “Possession, use or delivery of cannabis”, of Chapter 7.72, entitled “Drug Paraphernalia, Marijuana; Prohibitions”, of Title 7, entitled “Public Peace, Safety and Morals”, of the Westchester Municipal Code is hereby amended as follows:

**7.72.040 – Possession, use or delivery of cannabis.**

It shall be unlawful for any person knowingly to possess, use or deliver any substance containing cannabis, except as authorized under the Illinois Compassionate Use of Medical Cannabis Pilot Program (410 ILCS 130/1 *et. seq.*). This Section shall apply only to possession, use or delivery of such substance in an amount not exceeding thirty grams.

**Section 5.** Section 7.72.050, entitled “Seizure and forfeiture”, of Chapter 7.72, entitled “Drug Paraphernalia, Marijuana; Prohibitions”, of Title 7, entitled “Public Peace, Safety and Morals”, of the Westchester Municipal Code is hereby amended as follows:

**7.72.050 – Seizure and forfeiture.**

Any drug paraphernalia or substance containing cannabis that is the subject of a violation of this chapter shall be subject to seizure and subject to forfeiture upon a finding of guilty or finding of liable of any person for a violation of this chapter. Upon appropriate order of court or administrative hearing officer said drug paraphernalia and/or substance containing cannabis shall be destroyed.

The provisions of this Section 7.72.050 shall not apply to any cannabis, cannabis paraphernalia, illegal property, or interest in legal property that is possessed, owned, or used in connection with the medical use of cannabis as allowed under the Illinois Compassionate Use of

Medical Cannabis Pilot Program Act (410 ILCS 130/1 *et. seq.*), or acts incidental to that use. The Illinois Compassionate Use of Medical Cannabis Pilot Program Act does not prevent the seizure or forfeiture of cannabis exceeding the amounts allowed under the Act, nor does it prevent seizure or forfeiture if the basis for the action is unrelated to the cannabis that is possessed, manufactured, transferred, or used under the Illinois Compassionate Use of Medical Cannabis Pilot Program Act.

**Section 6.** Any ordinance or portion of any ordinance in conflict with the provisions of this Ordinance is repealed solely to the extent of such conflict.

**Section 7.** Severability – Should any provision or portion of this Ordinance be declared void or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance not so declared shall remain in full force and effect.

**Section 8.** This Ordinance shall be in full force and effect ten (10) days after its passage, approval and publication in the manner provided by law.

**ADOPTED** this 10<sup>th</sup> day of May, 2016, pursuant to a roll call vote as follows:

Angelo A. Calcagno	<u>Aye</u>	Celestine Reda	<u>Aye</u>
Carl C. Celestino	<u>Aye</u>	Nick Steker	<u>Aye</u>
Frank Perry	<u>Aye</u>	Tom Yurkovich	<u>Aye</u>

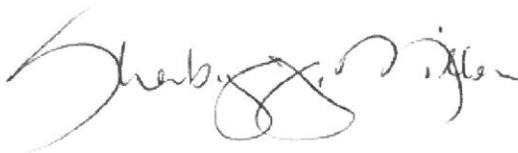
President Pulia Aye

**APPROVED** this 10<sup>th</sup> day of May, 2016.



Sam D. Pulia, Village President

ATTEST:



Sherby J. Miller, Village Clerk