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ITEM # 31  
DATE 10-13-09

## COUNCIL ACTION FORM

**SUBJECT: CITY DRUG PARAPHERNALIA ORDINANCE**

**BACKGROUND:**

The Story County Prevention Policy Board sent a letter to the Mayor and City Council requesting the City of Ames review City ordinance Section 17.23 on Dope Paraphernalia. This letter was referred to staff at the July 14, 2009, City Council meeting.

The letter included a proposed ordinance for consideration. The proposal has been reviewed by the Legal Department and the Police Department. In general, the proposed ordinance is much broader in scope than the current City ordinance and better reflects the current trade in illicit substances.

The current City ordinance is dated in that it prohibits *the sale or gift of empty gelatin capsules, hypodermic syringe or needle, cocaine spoon, marijuana or hashish pipe or any other instrument, implement ...designed for the administration or use of any controlled substance...* (See attached Sec. 17.23. DOPE PARAPHERNALIA). Drug use trends and techniques evolve over time. In the case of drug paraphernalia, devices to weigh or store drugs have become at least as common as some of the items currently listed in the ordinance. **The proposed ordinance provides a much more comprehensive list of potential paraphernalia than either the current city ordinance or the state code. This specificity would generally be advantageous to the public in understanding what is prohibited while also assisting the court in the interpretation of the ordinance.** Examples of some of these items are shown in the attached photos.

**One concern about a paraphernalia ordinance is whether there are items with legitimate uses that might somehow lead to charges under the ordinance. In the case of the proposed ordinance, this is addressed by specifically enumerating the factors to be considered when making this decision. These include statements by the user of the items, prior history of use and the proximity (in space and time) to controlled substance violations, manner of display, expert testimony, and several similarly relevant factors.** The specificity of these factors mitigates against arbitrary or unfair application of the ordinance. For example, the attached photos show some storage devices that could be used for legitimate purposes. Prosecuting the use of these items would require a strong case tying the use of the items to the illicit use of controlled substances.

The State ordinance covering drug paraphernalia is similar in scope to the proposed ordinance. State law is based on a "model ordinance" and the proposed Municipal Code

would follow this same general approach. As such, it apparently works successfully in prosecutions occurring in other areas of the state. The Code of Iowa language is attached. Penalties in the current ordinance are a municipal infraction with a first offense cost of \$50 and subsequent offenses charged at \$100. **The proposed ordinance increases the minimum civil penalty to \$500. This is considerably higher than other items in Chapter 17 of the Municipal Code.** The level of penalty typically follows the perceived severity of the violation and escalates with repeated offenses.

The impact of implementing this new ordinance would likely have an effect in two areas. The first area to be affected would be sales of new items determined to be drug paraphernalia. With the clearer definitions provided in the new ordinance, we would anticipate most vendors to voluntarily remove these items from sale. Enforcement actions could be pursued if the ordinance did not have the desired deterrent effect. The second area of impact would be directly on those involved in drug use or drug transactions. Individuals involved in using these items for illicit purposes would be subject to prosecution. The current ordinance is so dated, it has been of little use.

**In summary, the proposed ordinance would include more of the items associated with illicit drug use while also being more consistent with the State code. As proposed, the ordinance includes penalties that are well beyond the current ordinance and those of the other offenses in Chapter 17. The rationale for more severe penalties is presumably the potential for greater deterrence.**

Photos of items seized in association with drug charges are attached, along with the letter that was referred by Council, text of the proposed ordinance, the City's current ordinance, and the current state law.

#### **ALTERNATIVES:**

1. Direct staff to draft a new Drug Paraphernalia Ordinance to replace City Ordinance 17.23, including a penalty structure consistent with other offenses in this section with escalating penalties for repeat offenses.
2. Direct staff to draft a new Drug Paraphernalia Ordinance to replace City Ordinance 17.23. Develop a penalty structure consistent with the recommendation of the Prevention Policy Committee with first offenses having a fine of \$500.
3. Make no change to the current city Dope Paraphernalia Ordinance.

#### **MANAGER'S RECOMMENDED ACTION:**

The types of drug paraphernalia have evolved considerably since the Ames City Ordinance was first developed. Updating this ordinance would provide much clearer direction on what constitutes prohibited drug paraphernalia. Since this offense is not markedly different from other offenses in this section, it is recommended that the penalty structure be maintained.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby directing staff to draft a new Drug Paraphernalia Ordinance to replace City Ordinance 17.23 including a penalty structure consistent with other offenses in this section with escalating penalties for repeat offenses.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY REPEALING SECTION 17.23 AND ENACTING A NEW SECTION 17.23 THEREOF, FOR THE PURPOSE OF PROVIDING DEFINITIONS OF WHAT CONSTITUTES PROHIBITED DRUG PARAPHERNALIA; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ENACTED, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by repealing Section 17.23 and enacting a new Section 17.23 as follows:

**“Sec. 17.23 DRUG PARAPHERNALIA**

**(1) PURPOSE.**

The following provisions are enacted with the intent to prohibit the use, possession with intent to use, manufacture, sale and delivery of drug paraphernalia as defined herein.

**(2) DEFINITIONS.**

(a) **Controlled substance** as used in this chapter shall incorporate the definition of the term "controlled substance" in the Uniform Controlled Substances Act, Chapter 124 of the Iowa Code, as it now exists or is hereafter amended. It shall also include any controlled substance analog.

(b) **Drug paraphernalia** as used in this chapter shall mean all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, concealing, containing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substances Act, Chapter 124 of the Iowa Code.

(i) Drug paraphernalia includes, but is not limited to:

(a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from 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 identifying 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 or lactose, used, intended for use, or designed for use in 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 and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.

(j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.

(k) Injecting devices, hypodermic syringes, needles and other objects used,

intended for use, or designed for use in parenterally injecting controlled substances into the human body.

(1) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substances Act, Chapter 124 of the Iowa Code, such as:

- (1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (2) Water pipes;
- (3) Carburetion tubes and devices;
- (4) Smoking and carburetion masks;
- (5) 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)
- (6) Miniature cocaine spoons and cocaine vials;
- (7) Chamber pipes;
- (8) Carburetor pipes;
- (9) Electric pipes;
- (10) Air-driven pipes;
- (11) Chillums;
- (12) Bongs;
- (13) Ice pipes or chillers.

(ii) In determining whether an object is drug paraphernalia for the purpose of enforcing this chapter, the following factors should be considered in addition to all other logically relevant factors:

(a) Statements by an owner or by anyone in control of the object concerning its use;

(1) Prior convictions, if any, of an owner, or of anyone in control of the object under any state or federal law relating to any controlled substance;

(2) The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Substances Act, Chapter 124 of the Iowa Code;

(3) The proximity of the object to controlled substances;  
The existence of any residue of controlled substances on the object;

(4) Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object, to deliver or sell it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of the Uniform Controlled Substances Act, Chapter 124 of the Iowa Code;

(5) The innocence of an owner, or of anyone in control of the object, as to a direct violation of the Uniform Controlled Substances Act, Chapter 124 of the Iowa Code, should not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;

(6) Instructions, oral or written, provided with the object concerning its use;

(7) Descriptive materials accompanying the object which explain or depict its use;

(8) National and local advertising concerning its use;

(9) Displayed. The manner in which the object is displayed for sale or presentation, including its proximity to other objects commonly used or intended for use in planting, propagating, cultivation, 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 a controlled substance in violation of Chapter 124, Code of Iowa (2005).

(10) 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;

(11) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(12) The existence and scope of legitimate uses for the object in the community;

(13) Expert testimony concerning its use.

Person as used in this chapter shall mean an individual, corporation, business, trust, estate, partnership or association, or any other legal entity.

(3) **POSSESSION OF DRUG PARAPHERNALIA.**

It is unlawful for any person to use, or to possess 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, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Act, Chapter 124 of the Iowa Code.

(4) **MANUFACTURE, SALE, OR DELIVERY OF DRUG PARAPHERNALIA.**

It is unlawful for any person to sell, deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, intending that the drug paraphernalia will be used, or knowing, or under circumstances where one reasonably should know that it will be used, or knowing that it is designed for use 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 in violation of the Uniform Controlled Substances Act, Chapter 124 of the Iowa Code.

(5) **PENALTIES.**

(a) Any person who possesses, sells, delivers, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, commits a municipal infraction punishable by a penalty of \$50 for a person's first violation and \$100 for each repeat violation.

(b) Alternatively, a violation of this section can be charged by a peace officer of the City as a simple misdemeanor.

(6) **NUISANCE.**

In addition to the above, or in lieu thereof, violation off this article shall constitute a nuisance which may be abated in the manner provided in Iowa Code 364.12(3)(h) or 331.384(2) by injunction in the Iowa District Court or by the nuisance abatement proceedings as set forth in this."

Section Two. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Three. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Diane R. Voss, City Clerk  
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Ann H. Campbell, Mayor