

## Chapter 149

### DRUGS AND DRUG PARAPHERNALIA

[HISTORY: Adopted by the Board of Trustees of the Village of Port Byron as indicated in article histories. Amendments noted where applicable.]

#### ARTICLE I

##### Possession of Cannabis

[Adopted 12-9-1996 by Ord. No. 96-9-12A (Title 4, Ch. 2, Art. 6, of the 1993 Code)]

##### § 149-1. Definitions.

For the purpose of this article, the following terms shall have the meanings ascribed to them in this section:

**CANNABIS** — Includes 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 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.

**PERSON** — Any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other entity.

##### § 149-2. Violations.

- A. It is unlawful for any person knowingly to possess any substance containing cannabis in an amount of 10 grams or less.
- B. It is unlawful for any person knowingly to use, smoke, inhale, ingest or inject any substance containing cannabis.

##### § 149-3. Violations and penalties.<sup>1</sup>

Any person who violates any provision of this article is guilty of a petty offense and, for the first offense, shall be fined \$100, \$200 for the second offense in a twelve-month

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<sup>1</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

period, and a maximum of \$750 for the third or subsequent offense in a twelve-month period.

**§ 149-4. Charging violation; prosecution.**

- A. By notice of violation. A law enforcement officer, upon establishing probable cause, may elect to charge a person with a violation of any provision of this article by delivering to that person a notice of violation charging that person with the violation.
- (1) The person so such charged has five working days to satisfy the violation by making payment of the appropriate fine established by this article to the Port Byron Village Clerk. If the fine is not paid to the Village Clerk within five business days after receipt of the notice of violation, the Village Clerk may:<sup>2</sup>
- (a) Forward copies of the notice of violation and all reports to the Village Attorney, who shall then file a local ordinance complaint with the Rock Island County Circuit Court charging that person with the violation and establishing a court date for trial; or
- (b) Forward copies of the notice of violation and all reports to the Rock Island County State's Attorney's Office and request a complaint be filed charging that person with a violation of the Illinois Cannabis Control Act.
- B. Charging under state statutes. A law enforcement officer, upon establishing probable cause, may elect to charge a person with a violation of the Illinois Cannabis Control Act. The officer shall forward copies of all reports to the Rock Island County State's Attorney's Office and request a complaint be filed charging that person with violation of the Act.

ARTICLE II

**Possession of Drug Paraphernalia**

[Adopted 12-9-1996 by Ord. No. 96-9-12B (Title 4, Ch. 2, Art. 6, of the 1993 Code)]

**§ 149-5. Definitions.**

For the purpose of this article, the following terms shall have the meanings ascribed to them in this section:

CANNABIS — Includes 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 cannabinal 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 combination of extraction and chemical synthesis, but shall not include the mature stalks of such plant,

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<sup>2</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

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.

**DRUG PARAPHERNALIA** — All equipment, products and materials of any kind which are peculiar to and marketed for use 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 in violation of the Cannabis Control Act (720 ILCS 550/1 et seq.), the Illinois Controlled Substances Act (720 ILCS 570/100 et seq.), or the Methamphetamine Control and Community Protection Act (720 ILCS 646/1 et seq.), or a synthetic drug product or misbranded drug in violation of the Illinois Food, Drug and Cosmetic Act (410 ILCS 620/1 et seq.). It includes but is not limited to:<sup>3</sup>

- A. Kits peculiar to and marketed for use in manufacturing, compounding, concerting, producing, processing or preparing cannabis or a controlled substance.
- B. Isomerization devices peculiar to and marketed for use in increasing the potency of any species of plant which is cannabis or a controlled substance.
- C. Testing equipment peculiar to and marketed for private home use in identifying or in analyzing the strength, effectiveness or purity of cannabis or controlled substances.
- D. Diluents and adulterants peculiar to and marketed for cutting cannabis or a controlled substance by private persons.
- E. Objects peculiar to and marketed for use in ingesting, inhaling or otherwise introducing cannabis, cocaine, hashish or hashish oil into the human body, including, where applicable, the following items:
  - (1) Water pipes;
  - (2) Carburetion tubes and devices;
  - (3) Smoking and carburetion masks;
  - (4) Miniature cocaine spoons and cocaine vials;
  - (5) Carburetor pipes;
  - (6) Electric pipes;
  - (7) Air-driven pipes;
  - (8) Chillums;
  - (9) Bongs; and

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<sup>3</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

(10) Ice pipes or chillers.

- F. Any item whose purpose, as announced or described by the seller or person in possession of, is for use in violation of this article.

PERSON — Any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other entity.

**§ 149-6. Possession of drug paraphernalia; violations and penalties.**

- A. A person who knowingly possesses an item of drug paraphernalia with the intent to use it ingesting, inhaling, or otherwise introducing cannabis or a controlled substance for that use is guilty of a petty offense, for which the court shall impose a minimum fine of \$250 in addition to other costs involved in the prosecution of the offense. This subsection does not apply to a person who is legally authorized to possess hypodermic syringes or needles under the Hypodermic Syringes and Needles Act (720 ILCS 635/1 et seq.). [Amended 11-1-1999 by Ord. No. 99-1-11A<sup>4</sup>]
- B. In determining intent under Subsection A, the trier of fact may take into consideration the proximity of the cannabis or controlled substance to drug paraphernalia or the presence of cannabis or a controlled substance on the drug paraphernalia.

**§ 149-7. Exempt items; determination.**

- A. This article shall not apply to:
- (1) Items marketed for use in 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; or
  - (2) 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. Items exempt under this subsection include, but are not limited to, garden hoes, rakes, sickles, baggies, tobacco pipes, and cigarette-rolling papers.
  - (3) Items listed in § 149-5 of this article 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 article.
  - (4) A person who is legally authorized to possess hypodermic syringes or needles under the Hypodermic Syringes and Needles Act (720 ILCS 635/1 et seq.).<sup>5</sup>

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<sup>4</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

<sup>5</sup>. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

- B. In determining whether or not a particular item is exempt under this subsection, the trier of fact should consider, in addition to all other logical 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 instruction found with or accompanying the delivery of the item concerning the purpose 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; and
  - (9) The presence of cannabis or a controlled substance on or in the object.

**§ 149-8. Forfeiture and seizure of property.**

- A. All drug paraphernalia is subject to forfeiture.
- (1) Property subject to forfeiture under this article may be seized by any peace officer who has probable cause or upon process issued by any court having jurisdiction over the property. Judgments in favor of the State in a criminal or forfeiture proceeding based upon this article against a person's specific property shall serve as process authorizing a law enforcement officer to seize such property without further process.
  - (2) Seizure by a law enforcement officer may be made without process if there is probable cause to believe that the property is in violation of this article or is directly dangerous to health or safety and existing circumstances do not allow reasonable time for the officer to obtain lawful process.
  - (3) The presence of items which are deemed violative of this article or are otherwise subject to its forfeiture provisions in an inventory shall not subject the entire inventory to seizure or forfeiture.

- B. Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the law enforcement agency, subject only to the order and judgments of the circuit court having jurisdiction over the forfeiture proceedings. When property is seized under this article, the law enforcement officer may place the property under seal or remove the property to a place designated by him.
- C. No disposition may be made of property under seal until:
  - (1) The person from whom the property was seized and who was served a notice of violation admits guilt to the charge by payment of the minimum fine to the Village Clerk; or
  - (2) The validity of the seizure has been determined in a circuit court.
- D. If judgment is entered in the favor of the person from whom the property is seized, all seized property shall be returned immediately.
- E. When property is forfeited under this article, the law enforcement officer may retain it for official use, transfer possession to another law enforcement agency for official use, or destroy it.

**§ 149-9. Charging violation; prosecution.**

- A. By notice of violation. A law enforcement officer, upon establishing probable cause, may elect to charge a person with a violation of any provision of this article by delivering to that person a notice of violation charging that person with the violation.
  - (1) The person so such charged has five working days to satisfy the violation by making payment of the appropriate fine established by this article to the Port Byron Village Clerk. If the fine is not paid to the Village Clerk within five business days after receipt of the notice of violation, the Village Clerk may:<sup>6</sup>
    - (a) Forward copies of the notice of violation and all reports to the Village Attorney, who shall then file a local ordinance complaint with the Rock Island County Circuit Court charging that person with the violation and establishing a court date for trial; or
    - (b) Forward copies of the notice of violation and all reports to the Rock Island County State's Attorney's Office and request a complaint be filed charging that person with a violation of the Illinois Drug Paraphernalia Control Act.
- B. Charging under state statutes. A law enforcement officer, upon establishing probable cause, may elect to charge a person with a violation of the Illinois Drug Paraphernalia Control Act. The officer shall forward copies of all reports to the Rock Island County State's Attorney's Office and request a complaint be filed charging that person with violation of the Act.

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<sup>6</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).