

**8.18 Possession of Controlled Substances; Manufactured or Delivery of Drug Paraphernalia**

(1) Marijuana, Possession and Use Prohibited.

(a) Definition. "Marijuana" means all parts of the plant cannabis sativa L. whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, sale, derivative, mixture or preparation of the plant, its seeds, or resin.

(b) Possession. Delivery and Use Prohibited. It shall be unlawful for any person to possess, deliver, sell or use marijuana or a marijuana derivative in the Village. This section shall include, but not be limited to those persons who possess, deliver, sell or use marijuana or a marijuana derivative in any amount and include those persons who are charged under this section for a first offense.

(c) Exception. This section shall not apply to a person who has obtained or possesses marijuana directly from or pursuant to a valid prescription or order of a practitioner licensed to administer a controlled substance and while acting in the course of his professional practice. However, the burden of proof to prove such exception shall be on the person claiming it.

(d) PENALTIES. Any person who violates any subsection of Section 8.18(1) shall, upon conviction, be subject to a forfeiture of not more than \$500.00, together with costs of prosecution and may be ordered to pay restitution and complete community service. Any person who violates any subsection of Section 8.18(1) may also have his or her driving privileges suspended or revoked in accordance with section 971.50 Wisconsin Statutes.

(2) Drug Paraphernalia, Possession and Use Prohibited.

(a) Drug paraphernalia defined. In this section "drug paraphernalia" means all equipment, products, and material of any kind which are used, primarily intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, selling, distributing, delivering, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introduced into the human body, a controlled substance, as defined in chapter 961 Wis. Stats., in violation of this section. "Drug Paraphernalia" includes, but is not limited to:

1. Kits used, primarily 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;
2. Kits used, primarily intended for use, or designed for use in manufacturing, selling, distributing, delivering, compounded, converting, producing, processing, or preparing controlled substances;

3. Isomerization devices used, primarily intended for use or designed for use in increasing the potency of any species of a plant which is a controlled substance;
4. Testing equipment used, primarily intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;
5. Scales and balances used, primarily intended for use, or designed for use in weighing or measuring controlled substances;
6. Diluents and adulterants such as quinine, hydrochloride, mannitol, mannite, dextrose, and lactose used, primarily intended for use, or designed for use in cutting controlled substances;
7. Separation gins and sifters used, primarily intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;
8. Blenders, bowls, containers, spoons, and mixing devices used, primarily intended for use, or designed for use in compounding controlled substances;
9. Capsules, balloons, envelopes or other containers used, primarily intended for use, or designed for use in packaging small quantities of controlled substances;
10. Containers and other objects used, primarily intended for use, or designed for use in storing or concealing controlled substances;
11. Objects used, primarily intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body including but not limited to:
  - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - b. Water pipes;
  - c. Carburetion tubes and devices;
  - d. Smoking and carburetion masks;
  - e. Roach clips, defined as 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;
  - f. Miniature cocaine spoons and cocaine vials;
  - g. Chamber pipes;
  - h. Carburetor pipes;
  - i. Electric pipes;
  - j. Air-driven pipes;
  - k. Chilams;
  - l. Bongs;
  - m. Ice pipes or chillers.
12. "Drug Paraphernalia" excludes:

(a) Hypodermic syringes, needles, and other objects used or primarily intended for use in parenterally injecting substances in the human body.

(b) Any items including pipes, papers, and accessories that are designed for use or primarily intended for use with tobacco products.

13. “Primarily” means chiefly or mainly.

(b) Determination of drug paraphernalia. In determining whether an object is drug paraphernalia, the following shall be considered without limitation of such other consideration a court may deem relevant:

1. Statements by an owner or by anyone in control of the object concerning its use;
2. Prior convictions, if any, of an owner or of anyone in control of the object under any municipal, state, or federal law relating to any controlled substance;
3. The proximity of the object in time and space to a direct violation of this section;
4. The proximity of the object to controlled substances;
5. The existence of any residue of controlled substance on the object;
6. Direct or circumstantial evidence of the primary intent of an owner or of anyone in control of the object to deliver it to persons whom the person knows or should reasonably know primary intent to use the object to facilitate a violation of this section. The innocence of an owner or of anyone in control of this object as to a direct violation of this section shall not prevent a finding that the object is primarily intended for use or designed for use as drug paraphernalia;
7. Oral or written instructions provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale;
11. 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 dealer or distributor of tobacco products.
12. The existence and a scope of legitimate uses for the object in the community;
13. Expert testimony concerning its use.

(c) Prohibited activities:

1. Possession of Drug Paraphernalia. No person may use or possess with primary 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 this section. Possession of drug paraphernalia shall give rise to a rebuttable presumption of prohibited use.

2. Manufacture, Sale, or Delivery of Drug Paraphernalia. No person may sell, deliver, possess with primary intent to deliver or manufacture with primary intent to deliver drug paraphernalia, knowing 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 in violation of this section.

3. Delivery of Drug Paraphernalia to a Minor. Any person 18 years of age or over who violates Subsection 2 of this section by delivering drug paraphernalia to a person under 18 years of age is guilty of a special offense.

4. Advertisement of Drug Paraphernalia. No person may place in any newspaper, magazine, handbill, or other publication, or upon any outdoor billboard or sign any advertisement knowing that the purpose of the advertisement in whole or in part is to promote the sale of objects designed or primarily intended for use as drug paraphernalia.

5. Exemption.

a. This subsection does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with chapter 961 Wis. Stats.

b. This section does not prohibit the possession, manufacture, or use of hypodermics in accordance with chapter 961 Wis. Stats.

c. This ordinance does not prohibit the possession of controlled substances and/or drug paraphernalia as defined by this ordinance by police personnel of the Village of Elkhart Lake in the course of employment for evidentiary, educational or demonstration purposes.

(d) PENALTIES.

1. Any drug paraphernalia used or possessed in violation of this ordinance shall be seized and forfeited to the Village of Elkhart Lake.

2. Any person who violates Subsections 1, 2, or 4 of Section 8.18(2)(B) shall, upon conviction, be subject to a forfeiture of not more than \$500.00, together with costs of prosecution and may be ordered to pay restitution and complete community service. Any person who violates subsections 1, 2, or 4 of Section 8.18(2)(B) may also have his or her driving privileges suspended or revoked in accordance with section 961.50 Wis. Stats.

3. Any person who violates subsection 3 of section 8.18(2)(B) shall, upon conviction, be subjected to a forfeiture of not more than \$1,000.00 together with costs of prosecution and may be ordered to pay restitution and complete community service. Any person who violates Subsection 3 of Section 8.18(2)(B) may also have his or her driving privileges suspended or revoked in accordance with section 961.50 Wis. Stats.