

CITY OF HOBBS

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 9.28 OF THE HOBBS MUNICIPAL CODE
RELATED TO DRUGS AND DRUG PARAPHERNALIA

WHEREAS, during the First Regular Session of the 54th Legislature (2019), the New Mexico Legislature adopted Senate Bill (S.B.) 323, which amended NMSA 1978, § 30-31-25.1, to remove and/or change the criminalization of “paraphernalia” under New Mexico’s Controlled Substances Act (NMSA 1978, § 30-31-1 through 30-31-41); and

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WHEREAS, during the First Special Session of the 55th Legislature (2021), the New Mexico Legislature adopted House Bill (H.B.) 2, which amended NMSA 1978, § 30-31-23, to remove the criminalization of “marijuana” under New Mexico’s Controlled Substances Act (NMSA 1978, § 30-31-1 through 30-31-41) and also amended the definition of “paraphernalia” under NMSA 1978, § 30-31-2; and

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WHEREAS, the City of Hobbs seeks to amend Sections 9.28.010, 9.28.020, and add a Section 9.28.015 to Chapter 9.28 of the Hobbs Municipal Code which in its current state addresses both “paraphernalia” and “marijuana” in a manner that is contrary to S.B. 323 (2019) and H.B. 2 (2021); and

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that Chapter 9.28, is hereby amended as more specifically described as follows:

Chapter 9.28 DRUGS AND DRUG PARAPHERNALIA

9.28.010 ~~Paraphernalia—Use, possession, delivery and advertisement~~Definitions.

A. As used in this section, the following terms shall have the meanings respectively ascribed to them by this subsection:

"Controlled substance" means a drug, substance or immediate precursor listed in Schedules I through V of the State Controlled Substances Act or regulations adopted thereto (Sections 30-31-6 to 30-31-10 NMSA 1978). A copy of the Controlled Substances Act will be kept on file in the office of the City Clerk for public inspection or copying upon payment of a reasonable fee.

"Deliver" means the actual, constructive or attempted transfer from one (1) person to another of paraphernalia as defined herein.

~~"Marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. Such term does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.~~

"Paraphernalia" means, except as to use in accordance with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, 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, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens. It includes, but is not limited to:

1. 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, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens or from which a controlled substance, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens can be derived;
2. Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
3. Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
4. Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
5. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;

7. 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~~, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
8. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
9. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
10. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
11. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens into the human body; and
12. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing ~~marijuana~~, cocaine, ~~hashish or hashish oil~~, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens into the human body, such as:
 - 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, 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;~~
 - ~~fe.~~ Miniature cocaine spoons and cocaine vials;
 - ~~gf.~~ Chamber pipes;
 - ~~hg.~~ Carburetor pipes;
 - ~~ih.~~ Electric pipes;
 - ~~ji.~~ Air-driven pipes;
 - ~~kj.~~ Chilams;
 - ~~kl.~~ Bongs; and
 - ~~ml.~~ Ice pipes or chillers.

In determining whether an object is paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

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 State or Federal law relating to any controlled substance;~~
- ~~3.~~ The proximity of the object, in time and space, to a direct violation of laws relating to controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;

- 43. The proximity of the object to controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
- 54. The existence of any residue of controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens on the object;
- ~~6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of laws relating to controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this section shall not prevent a finding that the object is intended for use or designed for use as paraphernalia;~~
- 75. Instructions, oral or written, provided with the object concerning its use;
- 86. Descriptive materials accompanying the object which explain or depict its use;
- ~~9. National and local advertising concerning its use;~~
- 107. The manner in which the object is displayed for sale; and
- ~~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 distributor or dealer of tobacco products;~~
- ~~12. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;~~
- ~~13. The existence and scope of legitimate uses for the object in the community; and~~
- 148. Expert testimony concerning its use.

"Paraphernalia" shall not include hypodermic syringes or needles in the possession of a person who is required to give himself or herself injections of medicine prescribed by a physician while the person is under the care of such physician, or in the possession of a licensed physician, dentist, veterinarian, nurse, dealer in surgical and medical instruments and supplies, pharmacist or employee of a hospital, sanitarium or institution where such items are used for medical purposes by licensed medical professionals, or in the possession of an owner of livestock to be used for administering medical attention to such livestock.

"*Salvia divinorum*" means an herb belonging to the Lamiaceae family, genus *Salvia*, species *divinorum*, all parts of the plant presently classified as *Salvia divinorum* or *Salvinorum A*, whether growing or not, the seeds of the plant, an extract from a part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of that plant, its seeds or extracts.

"Synthetic cannabinoids" means any substance, presented under a variety of street names, whether described as tobacco, herbs, incense, spice or any blend thereof, regardless of whether the substance is marketed for the purpose of being smoked, which contains any one (1) or more of the following chemicals:

1. 1-[2-(4-(morpholinyl) ethyl)-3-(1-naphthoyl) indole, commonly known as JWH-200.
2. 1-butyl-3-(1-naphthoyl) indole; commonly known as JWH-073.
3. 1-hexyl-3-(1-naphthoyl) indole, commonly known as JWH-019.
4. 1-pentyl-3-(1-naphthoyl) indole, commonly known as JWH-018 and AM-678.
5. 1-pentyl-3-(2-methoxyphenylacetyl) indole, commonly known as JWH-250.
6. cannabicyclohexanol (CP 47, 497 and homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47, 497); and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;
7. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol), commonly known as HU-210;

8. dexanabinol, (6aS, 10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;
9. 1-pentyl-3-(4-chloro naphthoyl)indole, commonly known as JWH-398;
10. (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone, commonly known as JWH-015;
11. 5-(1,1-dimethylheptyl)-2-(3-hydroxy cyclohexyl)-phenol;
12. 1-(5-fluoropentyl)-3-(1-naphthoyl)indole, commonly known as AM-2201;
13. 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole, commonly known as AM-694;
14. 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole, commonly known as RCS-8, SR-18, BTM-8;
15. 1-(N-methylpiperdin-2-yl)methyl-2-methyl-3-(1-naphthoyl)-6-nitroindole, commonly known as AM-1221;
16. 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole, commonly known as JWH-081;
17. 1-pentyl-3-(2-chlorophenylacetyl)indole, commonly known as JWH-203;
18. 1-pentyl-3-[(4-methoxy)-benzoyl]indole, commonly known as RCS-4, SR-19, BTM-4, Eric-4, E-4, OBT-199;
19. 1-pentyl-3-(4-methyl-1-naphthoyl)indole, commonly known as JWH-122;
20. 2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo-1,4-benzooxazin-6-yl)-1-naphthalenylmethanone, commonly known as WIN-55, 212-2;
21. 3-(1,1-Dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran, commonly known as JWH-133;
22. 4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone and 1-pentyl-3-(4-ethylnaphthoyl)indole, commonly known as JWH-210;
23. 4-methoxyphenyl-[2-methyl-1-(2-morpholin-4-ylethyl)indol-3-yl]methanone, commonly known as Pravadoline, WIN-49,098;
24. 5-hydroxy-2-(3-hydroxypropyl)cyclohexyl-5-(2-methyloctan-2-yl)phenol, commonly known as CP-55,940;
25. (hydroxymethyl)-4-[2-hydroxy-4-(2-methyloctan-2-yl)phenyl]-1,2,3,4,4a,5,6,7,8,8a-decahydronaphthalen-2-ol, commonly known as CP-55,244);
26. ((1-5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone), commonly known as XLR11;
27. ((1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)-methanone), commonly known as UR-144;
28. [3-(3-carbamoylphenyl)phenyl] N-cyclohexylcarbamate, commonly known as URB 597, KDS-4103;
29. 6-methyl-2-[(4-methylphenyl)amino]-4H-3,1-benzoxazin-4-one, commonly known as URB 754;
30. 1-[(N-methylpiperidin-2-yl)methyl]-3-(2-iodobenzoyl)indole, commonly known as AM-2233;
31. (RS)-1-(4-Fluorophenyl)propan-2-amine, commonly known as 4-fluoroamphetamine;
32. 1-pentyl-8-quinolinyl ester-1H-indole-3-carboxylic acid, commonly known as PB-22;
33. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide, commonly known as 5F-ADBICA;
34. N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, commonly known as 5F-AKB48;

35. 1-(5-fluoropentyl)-8-quinolinyl ester-1H-indole-3-carboxylic acid, commonly known as 5F-PB-22;
36. N-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide, commonly known as ADB-FUBINACA;
37. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indole-3-carboxamide, commonly known as ADBICA;
38. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, commonly known as ADB-PINACA;
39. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, commonly known as 5F-ADB-PINACA;
40. (1s,3s)-adamantan-1-yl(1-pentyl-1H-indol-3-yl)methanone, commonly known as JWH-018 adamantyl;
41. naphthalen-1-yl(1-pentyl-1H-benzo[d]imidazol-2-yl)methanone, commonly known as JWH-018 benzimidazole;
42. 1-naphthalenyl(1-pentyl-1H-indazol-3-yl)-methanone, commonly known as JWH-018 indazole;
43. 1-pentyl-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-indole-3-carboxamide, commonly known as JWH-018 adamantyl carboxamide;
44. 1-(5-fluoropentyl)-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-indole-3-carboxamide, commonly known as STS-135.

"Synthetic hallucinogens" means any substance, presented under a variety of street names, regardless of whether the substance is marketed for the purpose of human consumption, which contains any one (1) or more of the following chemicals:

1. 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, commonly known as 25I-NBOMe.

"Synthetic stimulants" means any substance, presented under a variety of street names, whether described as bath salts, plant food, room odorizer, or any blend thereof, regardless of whether the substance is marketed for the purpose of human consumption, which contains any one (1) or more of the following chemicals:

1. 3,4-methylenedioxyethcathinone, commonly known as methylone;
2. 3,4-methylenedioxypropylone, commonly known as MDPV;
3. 4-methylmethcathinone, commonly known as mephedrone;
4. 4-methoxymethcathinone;
5. 3-fluoromethcathinone;
6. 4-fluoromethcathinone;
7. 2-ethylamino-1-phenyl-propan-1-one;
8. 3',4'-methylenedioxy- α -pyrrolidinobutiophenone;
9. 3',4'-methylenedioxy- α -pyrrolidinopropiophenone;
10. 3,4-methylenedioxyethcathinone;
11. 4-ethyl-methcathinone;
12. 4'-methyl- α -pyrrolidinobutiophenone;
13. 4'-methoxy- α -pyrrolidinopropiophenone;
14. 4'-methyl- α -pyrrolidinopropiophenone;

15. 4-methyl-ethylcathinone;
16. 5,6-methylenedioxy-2-aminoindane;
17. alpha-methylamino-butyrophenone;
18. alpha-pyrrolidinobutiophenone;
19. alpha-pyrrolidinopropiophenone;
20. alpha-pyrrolidinovalerophenone;
21. beta-Keto-ethylbenzodioxolylbutanamine;
22. beta-Keto-ethylbenzodioxolylpentanamine;
23. beta-keto-N-methyl-3,4-benzodioxolybutanamine;
24. naphthylpyrovalerone; and
25. N,N-dimethylcathinone.

9.28.015 Possession, delivery or manufacture of drug paraphernalia prohibited; exceptions.

B.A. It is unlawful for any person to use, or to possess with intent to use, 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. The provisions of this subsection do not apply to a person who is in possession of hypodermic syringes or needles at the time the person is directly and immediately engaged in a harm reduction program, as provided in the State of New Mexico Harm Reduction Act.

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C.B. It is unlawful for any person to deliver, possess with intent to deliver or manufacture with intent to deliver 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. The provisions of this subsection do not apply to:

1. department of health employees or their designees while they are directly and immediately engaged in activities related to the harm reduction program authorized by the Harm Reduction Act; or
2. the sale or distribution of hypodermic syringes and needles by pharmacists licensed pursuant to the State of New Mexico Pharmacy Act.

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~~**D.** It is unlawful for any person to place in any newspaper, magazine, handbill or other publication 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 paraphernalia.~~

E.C. Any person found guilty of violating this section shall be punished by a fine of up to five hundred dollars (\$500.00) or a jail sentence of not more than ninety (90) days, or both such fine and imprisonment. A person who violates the provisions of Subsection A of this section shall be issued a penalty assessment and is subject to a fine of fifty dollars (\$50.00). A person who violates the provisions of Subsection B of this section is guilty of a misdemeanor. Pursuant to Chapter 31 NMSA 1978, payment of a fine pursuant to a penalty assessment citation as contemplated in this section shall not be considered a criminal conviction.

F.D. Paraphernalia, as defined herein, shall be subject to summary forfeiture and shall be destroyed as provided by law in the same manner as controlled substances.

(Prior code § 19-58.1)

(Ord. No. 1042, 4-4-2011; Ord. No. 1059, 2-4-2013 ; Ord. No. 1066, 5-6-2013 ; Ord. No. 1076 , 7-7-2014)

~~9.28.020 Possessing one ounce or less of marijuana.~~

- ~~A. It is unlawful for any person intentionally to possess one (1) ounce or less of marijuana, as defined in Subsection 9.28.010(A).~~
- ~~B. Any person who violates this section shall be punished by a fine of not less than fifty dollars (50.00) or more than one hundred dollars (\$100.00) and by imprisonment for not more than fifteen (15) days, or both, for the first offense.~~
- ~~C. Any person who violates this section shall be punished by a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00), and by imprisonment for not more than ninety (90) days, or both, for the second or subsequent offenses.~~

~~(Ord. 869 § 3 (part), 2001; Ord. 849, 1998; prior code § 19-58.3~~

~~(Ord. No. 1042, 4-4-2011; Ord. No. 1059, 2-4-2013 ; Ord. No. 1066, 5-6-2013)~~

PASSED, ADOPTED AND APPROVED this ____ day of _____, 2021.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk