

# YAMHILL COUNTY CODE

## TITLE 4: PUBLIC PEACE, MORALS, AND WELFARE

### Chapter 4.15: Yamhill County Drug Code

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#### LEGISLATIVE HISTORY

##### **4.15.01 Definitions.**

- a) A “**controlled substance**” means a drug or its immediate precursor classified in Schedules I through V under the Federal Controlled Substances Act, 21 U.S.C. Sections 811 to 812, as modified under ORS 475.035. For purposes of this ordinance, a “controlled substance” also includes marijuana as defined in this section.
- b) “**Deliver**” or “**delivery**” means the actual, constructive, or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship.
- c) The term “**drug paraphernalia**” means 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 in violation of the laws of this state. It includes, but is not limited to:
  - (i) 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;
  - (ii) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
  - (iii) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
  - (iv) Testing equipment used, intended for use, or designed, for use in weighing or measuring controlled substances;
  - (v) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

- (vi) Diluents and adulterants such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
- (vii) 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;
- (viii) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (ix) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- (x) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
- (xi) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
- (xii) Objects used, intended for use, or designed for use in ingesting inhaling or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body 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, pipes, devices or masks;
  4. Roach clips, meaning objects used to hold burning material such as marijuana cigarette, that has become too small or too short to be held in the hand;
  5. Miniature cocaine spoons and cocaine vials;
  6. Chamber pipes;
  7. Electric pipes;
  8. Air-driver pipes;
  9. Chillums;
  10. Bongs;
  11. Ice pipes and chillers.
- d) **“Marijuana”** means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, 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 (except the resin extracted therefrom), fiber oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- e) **“OMMA”** means the Oregon Medical Marijuana Act (“the Act”) of 1998 as approved by the voters of the State of Oregon as Ballot Measure 67 on November 3, 1997, or the Act as it may be subsequently amended by the People or the Legislature.

[ADOPTED VIA ORDINANCE NO. 594 eff 09/27/95; AMENDED VIA ORDINANCE NO. 666 eff 01/28/99]

**4.15.02 Factors Considered in Determining Paraphernalia.** In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

- a) Statements by an owner or by anyone in control of the object concerning its use;
- b) Prior convictions, if any, of an owner or of anyone in control of the object, under any municipal, state, tribal or federal law relating to any controlled substance;
- c) The proximity of the object in time and space to a direct violation of this chapter of the State Uniform Controlled Substances Act;
- d) The proximity of the object to controlled substances;
- e) The existence of any residue of controlled substances on the object;
- f) 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 knows intends to use the object to facilitate a violation of municipal or state law; the innocence of an owner, or of anyone in control of the object, as to a violation of this law or state law shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;

- g) Instructions, oral or written, provided with the object concerning its use;
  - h) Descriptive materials accompanying the object which explain or depict its use;
  - i) National and local advertising concerning its use;
  - j) The manner in which the object is displayed for sale;
  - k) 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 or tobacco products;
  - l) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
  - m) The existence and scope of legitimate uses for the object in the community;
  - n) Expert testimony concerning its use.
- [ADOPTED VIA ORDINANCE NO. 594 eff 09/27/95]

#### **4.15.03 Offenses and Penalties; Affirmative Defense.**

- a) Possession of Drug Paraphernalia. It is unlawful within the unincorporated area of Yamhill County or within the city limits of any city whose governing body has consented to the application of this ordinance 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 unless the controlled substance is possessed under prescription of a licensed medical practitioner authorized to prescribe or dispense drugs in the State of Oregon. Any person who violates this subsection is guilty of an infraction and upon conviction may be fined not more than \$500. Upon conviction, a law enforcement agency shall destroy any drug paraphernalia seized as evidence to support the conviction.
- b) Manufacture or Delivery of Drug Paraphernalia. It is unlawful within the unincorporated area of Yamhill County or within the city limits of any city whose governing body has consented to the application of this ordinance for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing 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 unless the controlled substance is possessed under prescription of a licensed medical practitioner authorized to prescribe or dispense drugs in the State of Oregon. Any person who violates this subsection is guilty of an infraction and upon conviction may be fined not more than \$500. Upon conviction, a law enforcement agency shall destroy any drug paraphernalia seized as evidence to support the conviction.
- c) Advertisement of Drug Paraphernalia. It is unlawful within the unincorporated area of Yamhill County or within the city limits of any city whose governing body has consented to the application of this ordinance for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of an infraction and upon conviction may be fined not more than \$500.
- d) Possession of Marijuana in County Park or within 1,000 Feet of County Park. Possession of Marijuana in County Park or within 1,000 Feet of County Park. It is unlawful within the unincorporated area of Yamhill County or within the city limits of any city whose governing body has consented to the application of this ordinance for any person to possess less than one avoirdupois ounce of marijuana within a county park or within 1,000 feet from the boundary of any county park. A “county park” is any park owned or leased by Yamhill County, Oregon and designated as a county park. Any person who violates this subsection is guilty of an infraction and upon conviction may be fined not more than \$500.
- e) Possession of Less than One Ounce of Marijuana Seed. It is unlawful within the unincorporated area of Yamhill County or within the city limits of any city whose governing body has consented to the application of this ordinance for any person knowingly or intentionally to possess less than one avoirdupois ounce of seed of marijuana.
- f) Affirmative Defenses.

- (i) Except as provided in subsection (v), it is an affirmative defense to a prosecution under Section 4.15.03(a) that the person possessing drug paraphernalia establishes that the drug paraphernalia was used or intended to be used solely to:
  - 1. ingest marijuana as a valid medical use in accordance with the OMMA, or where the defendant is a “caregiver” within the meaning of the OMMA, or
  - 2. the drug paraphernalia was possessed on behalf of a person entitled to use marijuana in accordance with the OMMA.
- (ii) Except as provided in subsection (v), it is an affirmative defense to a prosecution under Section 4.15.03(d) that the person possessing less than one ounce of marijuana in a county park possesses the marijuana solely to:
  - 1. be ingested as a valid medical use in accordance with the OMMA, or
  - 2. where the defendant is a “caregiver” within the meaning of the OMMA, the marijuana was possessed on behalf of a person entitled to use marijuana in accordance with the OMMA.
- (iii) It is an affirmative defense to a prosecution under Section 4.15.03(e) that the person possessing the marijuana seeds possessed them solely to manufacture marijuana for a person entitled to ingest marijuana as a valid medical use in accordance with the OMMA.
- (iv) It is an affirmative defense to a prosecution under Section 4.15.03(e) of this ordinance if the marijuana seed is incapable of germination.
- (v) No affirmative defense is available under this section if the person engaged in the prohibited conduct in a public place as the term is defined in ORS 161.015(10), 1997 replacement part, or in public view.
- (vi) When an affirmative defense described in subsections (i) or (ii) is raised at a trial, the defendant has the burden of proving the defense by a preponderance of the evidence.

[ADOPTED VIA ORDINANCE NO. 594 eff 09/27/95; AMENDED VIA ORDINANCE NO. 636 eff 02/04/1998; AMENDED VIA ORDINANCE NO. 666 eff 01/28/99]

**4.15.04 Nuisance, Seizure of Paraphernalia.** Drug paraphernalia are declared to be a public nuisance. Any peace officer shall summarily seize any such paraphernalia and shall deliver it to the sheriff who shall hold it subject to the order of the court.

[ADOPTED VIA ORDINANCE NO. 594 eff 09/27/95]

**4.15.05 Infraction Procedure; Jurisdiction; Venue; Prosecution.**

- a) Infraction Procedure. A violation of subsection (a), (b), (c), (d) or (e) of Section 3 is an infraction. Citations shall be issued and court procedures followed that are in accord with ORS 153.110 to 153.310 and 153.990, 1993 replacement part.
- b) Jurisdiction. Jurisdiction for infractions arising under this ordinance is vested as provided in ORS 153.220, 1993 replacement part.
- c) Venue. An action for an infraction arising under this ordinance shall be commenced in Yamhill County, including any offense committed on any body of water located in or adjacent to Yamhill County.
- d) Prosecution. At any trial involving an infraction arising under this ordinance only, the prosecuting attorney may aid in preparing evidence and obtaining witnesses but shall not appear unless counsel for the defendant appears. As used in this subsection, the “prosecuting attorney” includes the district attorney, a city attorney, or the county counsel.

[ADOPTED VIA ORDINANCE NO. 594 eff 09/27/95; AMENDED VIA ORDINANCE NO. 636 eff 02/04/1998]

**4.15.06 Severability Clause.** All sections, subsections and paragraphs of this ordinance are severable. If any section, subsection or paragraph is ruled invalid for any reason by the court of last resort, the other portions of this ordinance shall be unaffected.

[ADOPTED VIA ORDINANCE NO. 594 eff 09/27/95]

<b>LEGISLATIVE HISTORY</b>
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Adopted via Ordinance No. 594 on 06/28/95, effective 09/27/95

Amended via Ordinance No. 636 on 11/06/1997, effective 02/04/1998

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