

City of Wichita  
City Council Meeting  
June 6, 2017

**TO:** Mayor and City Council

**SUBJECT:** Ordinance Amending Section 5.20.040 and Creating Section 5.20.050 Relating to the Possession of Marijuana

**INITIATED BY:** Law Department

**AGENDA:** Unfinished Business

---

**Recommendation:** Place ordinance on first reading.

**Background:** This item was deferred from May 2, 2017 to allow for further review. On April 7, 2015, Wichita voters approved an ordinance reclassifying possession of small amounts of marijuana (less than 32 grams) and marijuana paraphernalia to a criminal infraction. The proposed ordinance reduced the maximum fine from \$2,500 to \$50. Following the approval of the proposed ordinance, the Kansas Supreme Court held that the petition process had failed to follow legal requirements and that the ordinance and election were void.

During the 2016 legislative session, the Kansas Legislature reduced penalties for first convictions of possession of marijuana from a Class A misdemeanor to a Class B misdemeanor. A conviction for possession of drug paraphernalia remains a Class A misdemeanor under state law.

State law also requires that a laboratory fee be assessed in cases where lab services are provided by the Regional Forensic Science Center or the Kansas Bureau of Investigation (KBI). The state statute is applicable to Municipal Courts. Currently, the lab fee is not included in the City Code.

Amendments to the City's ordinance are required to bring it into compliance with state law.

**Analysis:** The proposed amendments bring the City's ordinance into compliance with state law. Based on the 2015 referendum vote, it is the Council's intent to also enact an ordinance consistent with the spirit and intent of the ordinance approved by the Wichita voters, while remaining in compliance with the dictates of state law.

Consistent with state law, the penalty for a first conviction of possession of marijuana of any amount is reduced to a fine not to exceed \$1,000 and six months in jail. Previously, the maximum sentence for a misdemeanor conviction for possession of marijuana was a fine not to exceed \$2,500 and one year in jail. A third or subsequent conviction for possession of marijuana is a felony under state law.

In conjunction with the amendments, Wichita Police Department (WPD) Policy 307.12 was revised on December 28, 2016, to provide that, absent extenuating circumstances, individuals charged with possession of marijuana will not be arrested but will be given a Notice to Appear in Municipal Court.

The proposed ordinance codifies the policy to be utilized by WPD when individuals are arrested with a small quantity of marijuana (defined as less than 32 grams) or marijuana paraphernalia. Absent certain circumstances, the individual is not to be arrested, incarcerated, or required to post a bond.

Additionally, for individuals over the age of 21 years of age possessing a small amount of marijuana (less than 32 grams) who do not have a prior felony, a Class A misdemeanor, or possession of marijuana conviction, the ordinance establishes a presumption that the appropriate sentence is a fine of \$50 and all required court costs. The presumption is that the offender should not be incarcerated or required to complete counseling. It is estimated that 80 percent of the cases filed in Municipal Court for possession of marijuana are for “small amounts” as defined by the proposed ordinance. The ultimate disposition of the case and sentencing of the defendant is left to the court’s discretion.

The ordinance also codifies the state law requirement that a laboratory fee is to be assessed by the court if lab services are provided by the Regional Forensic Science Center or the KBI. If lab services are utilized, the state statute currently requires the defendant be assessed a \$400 testing fee, unless the defendant is indigent. Lab services are not required in all Municipal Court cases.

**Financial Considerations:** Currently, the Municipal Court collects approximately \$30,000 a year in fines for these violations. Passage of the ordinance will result an estimated loss in revenue of approximately \$20,000.

**Legal Considerations:** An ordinance has been drafted and approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council place the ordinance on first reading and authorize the necessary signatures.

**Attachments:** Delineated ordinance and clean ordinance.

ORDINANCE NO. 50-540

AN ORDINANCE AMENDING SECTION 5.26.040 AND CREATING SECTION 5.26.050 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO MARIJUANA PENALTIES AND REPEALING THE ORIGINAL OF 5.26.040.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 5.26.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Penalty.**

- (a) Except as provided in Subsection (b), a violation of the provisions of this chapter is a misdemeanor and, upon conviction, the sentence shall be a fine not to exceed two thousand five hundred dollars (\$2,500.00), and/or imprisonment of up to twelve (12) months in the Sedgwick County Jail.
- (b) A violation of Section 5.26.010 of the Code of the Wichita for the possession of marijuana, as defined by this chapter, is a misdemeanor and upon a first conviction, the sentence shall be a fine not to exceed one thousand dollars (\$1,000.00), and/or imprisonment of up to six (6) months in the Sedgwick County Jail. Upon a second conviction, the sentence shall be a fine not to exceed two thousand five hundred dollars (\$2,500.00), and/or imprisonment of up to twelve (12) months in the Sedgwick County Jail.

- (c) In addition to any other sentence authorized by this chapter, any person convicted of having violated the terms of this chapter, while under twenty-one (21) years of age, shall be ordered to submit to and complete a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee for such evaluation. If the judge finds that the person is indigent, the fee may be waived.
- (d) The municipal court judge shall order any person convicted of a charge alleging a violation of this chapter to pay the laboratory analysis fees specified in K.S.A. 28-176, and amendments thereto, as an additional cost provided that forensic laboratory services were rendered or administered in conjunction with the case. Any diversion agreement for a charge alleging a violation of this chapter shall also contain a provision requiring the defendant to pay such laboratory analysis fees provided that forensic laboratory services were rendered in conjunction with the case. Upon a finding that the defendant is indigent, such fee may be waived by the court.
- (e) Any person who is diverted on a charge alleging a violation of this chapter may be required by the prosecutor to obtain a drug abuse evaluation. Based upon the results of such evaluation, the offender may be required to attend a drug abuse education, counseling or treatment program as a condition of such diversion agreement.”

SECTION 2. Section 5.26.050 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Policies for Marijuana and Marijuana Paraphernalia Offenses.**

- (a) On April 7, 2015, citizens voted to adopt an ordinance reducing the penalties for possession of small quantities of marijuana and marijuana paraphernalia to a criminal infraction. Based on this vote, it is the Council’s intent to enact an ordinance consistent with the spirit and intent of the ordinance approved by the Wichita voters, while remaining in compliance with provisions and dictates of state law.
- (b) The purpose of this section is to ensure that individuals over the age of twenty-one (21) years of age, other than those excluded herein, possessing a small quantity of marijuana or who possess drug paraphernalia, as defined by the chapter, utilized to contain, store, use, ingest, smoke or inhale marijuana, are not arrested and suffer only a fine and/or community service and no other punishment or penalty for the possession of a small quantity of marijuana and/or marijuana paraphernalia. This section shall be liberally construed for the accomplishment of these purposes.
- (c) For the purposes of this section:
  - (1) A small quantity of marijuana means the possession of thirty (32) grams or less of marijuana as defined by this chapter;
  - (2) Class A misdemeanor means an offense for which the statutory penalty is a fine not to exceed two thousand five hundred dollars

(\$2,500.00), and/or imprisonment of up to twelve (12) months in jail.

- (3) Conviction includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance;
- (d) Unless the arrest of an individual is required by state or federal law, a valid court order, or the identity of the individual cannot be determined, when any Wichita police officer suspects any individual over the age of twenty-one (21) years of age, other than those excluded herein, of possession of a small quantity of marijuana or marijuana paraphernalia, that person shall not be required to post bond, suffer arrest, be taken into custody for any purpose or detained for any reason other than the issuance of a summons, suffer incarceration, suffer loss of driver's license, or any other punishment or penalty other than the issuance of a summons and, if found guilty, a fine of up to fifty (50) dollars and all applicable court costs and laboratory fees. There shall be a strong presumption that the proper disposition of any such case by the court is limited to the assessment of a fifty (50) dollar fine and all applicable court costs.
- (e) Subsection (d) shall not apply to persons:
  - (1) Who have been convicted of a felony within the preceding five (5) years;  
or

- (2) Who have been convicted of a Class A misdemeanor within the preceding three (3) years; or
  - (3) Who have been convicted in a state or municipal court of misdemeanor marijuana possession or marijuana paraphernalia on one or more prior occasions within the preceding three (3) years; or
  - (4) Who are arrested on suspicion of any felony, criminal misdemeanor or Driving Under the Influence of Alcohol and/or Drugs offense, other than possession of drug paraphernalia, arising from the same set of facts and circumstances as the alleged marijuana offense.
- (f) The provisions of this section are severable. If any provision of this section is declared invalid, that invalidity shall not affect other provisions of the section which can be given effect without the invalid provision.
- (g) The message of this section is that people should not use marijuana, but should also not lose opportunities for education and employment because of such use.”

SECTION 3. The original of Section 5.26.040 of the Code of the City of Wichita, Kansas is hereby repealed.

SECTION 4. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 13th day of June, 2017.

---

Jeff Longwell, Mayor

ATTEST:

---

Karen Sublett, City Clerk

Approved as to Form:

---

Jennifer L. Magaña  
City Attorney and Director of Law

First Published in *The Wichita Eagle* on \_\_\_\_\_

DELINEATED

05/30/17

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

AN ORDINANCE AMENDING SECTION 5.26.040 AND CREATING SECTION 5.26.050 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO MARIJUANA PENALTIES AND REPEALING THE ORIGINAL OF 5.26.040.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 5.26.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Penalty.**

- (a) Except as provided in Subsection (b), a violation of the provisions of this chapter is a misdemeanor and, upon conviction, the sentence shall be a fine not to exceed two thousand five hundred dollars (\$2,500.00), and/or imprisonment of up to twelve (12) months in the Sedgwick County Jail.
- (b) A violation of Section 5.26.010 of the Code of the Wichita for the possession of marijuana, as defined by this chapter, is a misdemeanor and upon a first conviction, the sentence shall be a fine not to exceed one thousand dollars (\$1,000.00), and/or imprisonment of up to six (6) months in the Sedgwick County Jail. Upon a second conviction, the sentence shall be a fine not to

exceed two thousand five hundred dollars (\$2,500.00), and/or imprisonment of up to twelve (12) months in the Sedgwick County Jail.

- (c) In addition to any other sentence authorized by this chapter, any person convicted of having violated the terms of this chapter, while under twenty-one (21) years of age, shall be ordered to submit to and complete a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee for such evaluation. If the judge finds that the person is indigent, the fee may be waived.
- (d) The municipal court judge shall order any person convicted of a charge alleging a violation of this chapter to pay the laboratory analysis fees specified in K.S.A. 28-176, and amendments thereto, as an additional cost provided that forensic laboratory services were rendered or administered in conjunction with the case. Any diversion agreement for a charge alleging a violation of this chapter shall also contain a provision requiring the defendant to pay such laboratory analysis fees provided that forensic laboratory services were rendered in conjunction with the case. Upon a finding that the defendant is indigent, such fee may be waived by the court.
- (e) Any person who is diverted on a charge alleging a violation of this chapter may be required by the prosecutor to obtain a drug abuse evaluation. Based upon the results of such evaluation, the offender may be required to attend a drug abuse education, counseling or treatment program as a condition of such diversion agreement.”

SECTION 2. Section 5.26.050 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Policies for Marijuana and Marijuana Paraphernalia Offenses.**

- (a) On April 7, 2015, citizens voted to adopt an ordinance reducing the penalties for possession of small quantities of marijuana and marijuana paraphernalia to a criminal infraction. Based on this vote, it is the Council’s intent to enact an ordinance consistent with the spirit and intent of the ordinance approved by the Wichita voters, while remaining in compliance with provisions and dictates of state law.
- (b) The purpose of this section is to ensure that individuals over the age of twenty-one (21) years of age, other than those excluded herein, possessing a small quantity of marijuana or who possess drug paraphernalia, as defined by the chapter, utilized to contain, store, use, ingest, smoke or inhale marijuana, are not arrested and suffer only a fine and/or community service and no other punishment or penalty for the possession of a small quantity of marijuana and/or marijuana paraphernalia. This section shall be liberally construed for the accomplishment of these purposes.
- (c) For the purposes of this section:
  - (1) A small quantity of marijuana means the possession of thirty (32) grams or less of marijuana as defined by this chapter;
  - (2) Class A misdemeanor means an offense for which the statutory penalty is a fine not to exceed two thousand five hundred dollars

(\$2,500.00), and/or imprisonment of up to twelve (12) months in jail.

(3) Conviction includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance;

(d) Unless the arrest of an individual is required by state or federal law, a valid court order, or the identity of the individual cannot be determined, when any Wichita police officer suspects any individual over the age of twenty-one (21) years of age, other than those excluded herein, of possession of a small quantity of marijuana or marijuana paraphernalia, that person shall not be required to post bond, suffer arrest, be taken into custody for any purpose or detained for any reason other than the issuance of a summons, suffer incarceration, suffer loss of driver's license, or any other punishment or penalty other than the issuance of a summons and, if found guilty, a fine of up to fifty (50) dollars and all applicable court costs and laboratory fees. There shall be a strong presumption that the proper disposition of any such case by the court is limited to the assessment of a fifty (50) dollar fine and all applicable court costs.

(e) Subsection (d) shall not apply to persons:

(1) Who have been convicted of a felony within the preceding five (5) years;

or

- (2) Who have been convicted of a Class A misdemeanor within the preceding three (3) years; or
- (3) Who have been convicted in a state or municipal court of misdemeanor marijuana possession or marijuana paraphernalia on one or more prior occasions within the preceding three (3) years; or
- (4) Who are arrested on suspicion of any felony, criminal misdemeanor or Driving Under the Influence of Alcohol and/or Drugs offense, other than possession of drug paraphernalia, arising from the same set of facts and circumstances as the alleged marijuana offense.

(f) The provisions of this section are severable. If any provision of this section is declared invalid, that invalidity shall not affect other provisions of the section which can be given effect without the invalid provision.

(g) The message of this section is that people should not use marijuana, but should also not lose opportunities for education and employment because of such use.”

SECTION 3. The original of Section 5.26.040 of the Code of the City of Wichita, Kansas is hereby repealed.

SECTION 4. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

---

Jeff Longwell, Mayor

ATTEST:

---

Karen Sublett, City Clerk

Approved as to Form:

---

Jennifer L. Magaña  
City Attorney and Director of Law