

ORDINANCE 23-____

AN ORDINANCE OF THE COUNTY OF PINELLAS, PROVIDING THAT THE PINELLAS COUNTY CODE BE AMENDED BY REVISING CHAPTER 86 OF SAID CODE; PROVIDING FOR REVISIONS TO SECTION 86-106 RELATED TO THE DEFINITIONS OF DRUG PARAPHERNALIA AND SPECIFICALLY EXCLUDE FENTANYL TESTING EQUIPMENT FROM THOSE DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREAS EMBRACED; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to County Resolution 05-195, the Board of County Commissioners created a Drug Paraphernalia Abatement Task Force in 2005; and

WHEREAS, after meeting with experts in the area of drug paraphernalia and hearing from citizens, merchants, agency heads and law enforcement, the Drug Paraphernalia Abatement Task Force issued a Report tending to show there was a need to address the growing drug use concerns in Pinellas County; and

WHEREAS, Pinellas County enacted a Drug Paraphernalia ordinance in 2006 in order to combat the spread of controlled substances as well as raise awareness for parents of minors of the existence of drug paraphernalia in places of business; and

WHEREAS, from time to time, it is necessary to update and clarify provisions of the Pinellas County Code to ensure definitions and references are current in relation to evolving state statutes; and

WHEREAS, Fentanyl has emerged as a major drug of concern within the illicit market and has driven an increasing surge in overdose-related deaths; and

WHEREAS, Pinellas County has seen an increase in overdose-related deaths with 597 total deaths recorded in 2022; and

WHEREAS, individuals can often be unaware of the presence of fentanyl resulting in severe risk of fentanyl poisoning, hospitalization, and death; and

WHEREAS, the Florida Legislature recently approved SB 164 relating to controlled substance testing and revising the term for “drug paraphernalia” to exclude certain narcotic-drug-testing products that are used to determine if a substance contains fentanyl in order to combat recent fentanyl trends; and

WHEREAS, it is in the best interest of the citizens of Pinellas County to have access to products that can be used to determine if a substance contains fentanyl in order to reduce the number of overdoses that occur in Pinellas County; and

WHEREAS, the Board of County Commissioners desires to amend Section 86-102 of the Pinellas County Code to be more in line with the recently amended State of Florida definition which allows for certain narcotic-drug-testing products to be excluded from the definition of “drug paraphernalia.”

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONER OF PINELLAS COUNTY, FLORIDA, that:

SECTION 1. Chapter 86, Section 86-106 of the Pinellas County Code is hereby amended as follows:

Sec. 86-106. Definitions.

For the purpose of this division, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Cannabis means all parts of the plant of the species *cannabis sativa, l.*, including all varieties thereof, whether growing or not; the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds or 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.

Close proximity means within 1,000 feet on a straight line commencing at the property lines nearest to each other.

Controlled substance means any drug or substance as described and defined in F.S. § 893.03, 893.035 or 893.036; which are adopted by reference.

Deliver or *delivery* means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

Drug paraphernalia means all equipment, products and materials of any kind which are used in converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, inhaling or otherwise introducing into the human body a controlled substance in violation of subsection 86-109(b) below, as further defined and enumerated in the definition of the term instrument herein, excluding narcotic-drug-testing products that are used to determine whether a controlled substance contains fentanyl as described in F.S. § 893.03(2)(b)9. or a controlled substance analog, as defined in F.S. § 893.0356, of fentanyl.

Inhalants are a diverse group of substances that include volatile solvents, gases, and nitrites that are sniffed, snorted, huffed, or bagged to produce intoxicating effects similar to alcohol. The gas used as a propellant in canned whipped cream and in small metallic containers called "whippets" (used to make whipped cream) is nitrous oxide or "laughing gas" — the same gas used by dentists for anesthesia.

Instrument means a device designed for use or intended for use in ingesting, smoking, administering or preparing marijuana, cocaine, phencyclidine, opium or any derivative thereof,

or any other controlled substance. For purposes of this subsection, the phrase "intended for use" shall refer to the intent of the person selling, offering to sell, dispensing, giving away or displaying the instrument herein defined. In determining whether an item constitutes an "instrument," the following items shall be considered:

- (1) Whether a person or business establishment charged with violating this section is a licensed distributor or dealer of tobacco products by the state.
- (2) Expert testimony as to the principal use of the devices, articles or contrivances claimed to be instruments.
- (3) Evidence concerning the total business of a person or business establishment and the type of devices, articles, contrivances or items involved in the business.
- (4) National and local advertising concerning the use of the devices, articles or contrivances claimed to be instruments.
- (5) Evidence of advertising concerning the nature of the business establishment.
- (6) Devices within the meaning of this definition include, but are not limited to the following:
 - (a) 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;
 - (b) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
 - (c) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances, excluding narcotic-drug-testing products that are used to determine whether a controlled substance contains fentanyl as described in F.S. §893.03(2)(b)9. or a controlled substance analog, as defined in F.S. § 893.0356, of fentanyl;
 - (d) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
 - (e) 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;
 - (f) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;
 - (g) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;
 - (h) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;
 - (i) Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body;

- (j) 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 and devices;
 4. Smoking and carburetion masks;
 5. 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;
 6. Miniature cocaine spoons and cocaine vials;
 7. Chamber pipes;
 8. Carburetor pipes;
 9. Electric pipes;
 10. Air-driven pipes;
 11. Chillums;
 12. Bongs;
 13. Ice pipes or chillers;
 14. Cigarette papers or rollers designed for smoking any controlled substance.

Minor means any person who has not attained 18 years of age.

Patient means, as the case may be:

- (1) The individual for whom a drug is prescribed or to whom a drug is administered; or
- (2) The owner or the agent of the owner of the animal for which a drug is prescribed or to which a drug is administered.

Person means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

Pharmacist means an individual currently licensed by the Florida Health Department Board of Pharmacy, to practice the profession of pharmacy in this state.

Place of display means any museum, library, school or other similar public place upon which business is not transacted for a profit.

Practitioner means a physician (M.D. or D.O.), dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise authorized by law to administer and prescribe, use in teaching or chemical analysis, or conduct research with respect to a controlled substance in the course of professional practice and research.

Premises means a business establishment and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of patrons.

Premises open to minors means any business establishment which sells its wares or merchandise to minors or which permits minors to enter into its place of business.

Prescription drug means:

- (1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary or any supplement to any of them;
- (2) Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;
- (3) Substances (other than food) intended to affect the structure or any function of the body of man or animals;
- (4) Substances intended for use as a component of any article specified in subsections (1)—(3) hereinabove. It does not include devices or their components, parts or accessories;
- (5) Obtained by written order and, in cases of emergency, a telephone order, issued by a practitioner in good faith in the course of his professional practice to a pharmacist for a drug for a particular patient, which specifies the date of its issue, the name and address of the patient (and, if such drug is prescribed for an animal, the species of such animal), the name and quantity of the drug prescribed, the directions for use of such drug, and the signature of such practitioner.

Production includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

School means any public or private elementary, middle school or high school.

Simulated drugs and *simulated controlled substances* means any products which identify themselves by using a common name or slang term associated with a controlled substance or indicate by label or accompanying promotional material that the product simulates the effect of a controlled substance or drug.

Somnifacient and *stimulating* is the meaning attributable in standard medical lexicons.

SECTION 2. Severability. If any Section, Subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

SECTION 3. Areas Embraced. This Ordinance shall be effective in the incorporated as well as unincorporated areas of the County.

SECTION 4. Inclusion in Code. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pinellas County Code and that the sections of this Ordinance may be renumbered or re-lettered and the word “ordinance”

may be changed to section, article or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5. Filing of Ordinance; Effective Date. Pursuant to Section 125.66 Fla. Stat., a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners. This Ordinance shall become effective upon filing of the ordinance with the Department of State.

APPROVED AS TO FORM

By: Cody J. Ward
Office of the County Attorney