

Ordinance No. 902-2019 (As Amended)

Council Member Griffin

AN EMERGENCY ORDINANCE

To amend Sections 607.02 and 607.03 of the Codified Ordinances of Cleveland, Ohio, 1976, as enacted by Ordinance No. 834-03, passed June 10, 2003, and Section 607.18, enacted by Ordinance No. 2797-88, passed May 8, 1989, lowering the penalties for marihuana offenses.

WHEREAS, Ohio cities of Toledo, Dayton, Cincinnati, Athens, Bellaire, Logan, Newark, and Roseville have enacted ordinances that lowered the penalties for misdemeanor marihuana offenses, including possession of marihuana of 200 grams and/or 100 grams or less, to no fines or prison time; and

WHEREAS, this Council is compelled to lower the penalties for misdemeanor marihuana offenses to no fines or prison time in order to avoid unnecessary incarceration, economic burdens of fines, and uneven enforcement of marihuana charges against minorities; and

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That Sections 607.02 and 607.03 of the Codified Ordinances of Cleveland, Ohio, 1976, as enacted by Ordinance No. 834-03, passed June 10, 2003, and Section 607.18, enacted by Ordinance No. 2797-88, passed May 8, 1989, are amended as follows:

Section 607.02 Gift of Marihuana

(a) No person shall knowingly give or offer to make a gift of twenty (20) grams or less of marihuana.

(b) Whoever violates this section is guilty of trafficking in marihuana, a minor misdemeanor. ~~for the first offense and a misdemeanor of the third degree for any subsequent offense.~~ If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, the violation is a misdemeanor of the third degree. Persons convicted of violating this section shall not be fined, all court costs shall be suspended, and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed, except when the offense was committed in the vicinity of a school or in the vicinity of a juvenile.

Section 607.03 Drug Abuse: Controlled Substance Possession or Use

(a) No person shall knowingly obtain, possess, or use a controlled substance.

(b) This section does not apply to the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with RC Chapters 3719, 4715, 4723, 4729, 4731, and 4741;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C. 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act;

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(4) Any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(c) Whoever violates this section is guilty of drug abuse, and shall be sentenced as follows:

(1) If the drug involved is a compound, mixture, preparation or substance included in Schedule III, IV or V, and the amount of drug involved is less than the bulk amount, drug abuse is a misdemeanor of the third degree, and if the offender has previously been convicted of a drug abuse offense, drug abuse is a misdemeanor of the second degree;

(2) If the drug involved is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, and the amount is less than two hundred (200) grams drug abuse is a misdemeanor of the fourth degree, unless the amount of marihuana involved is less than one hundred (100) grams, in which case drug abuse is a minor misdemeanor. Persons convicted of violating this section shall not be fined, all court costs shall be suspended, and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed;

(3) If the drug involved is an anabolic steroid included in Schedule III, and the amount involved is less than the bulk amount, drug abuse is a misdemeanor of the third degree and, in lieu of sentencing an offender to a definite or indefinite term of imprisonment in a detention facility, the court may place the offender on conditional probation pursuant to division (F) of RC 2951.02, unless the offender previously has been convicted of a drug abuse offense, in which case drug abuse is a misdemeanor of the second degree.

(d) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license or other right or privilege, or made in connection with the person's appearance as a witness.

~~(e) No City of Cleveland police officer, or his or her agent, shall report the possession, use or giving away of marihuana to any other authority except the Cleveland Prosecutor's Office; and the City Prosecutor shall not refer any said report to any other authority for prosecution or for any other reason.~~

(e) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with a person's appearance as a witness.

(f) Should the State of Ohio enact lesser penalties than that set forth above, or entirely repeal penalties for the possession, use, or giving away of marihuana, then this ordinance, or the relevant portions thereof, shall be null and void.

Section 607.18 Penalty

Whoever violates any of the provisions of divisions (a), (b) or (c) of Section 607.17 is guilty of a misdemeanor of the second degree. If the offender has previously been convicted of a violation of divisions (a), (b) or (c) of Section 607.17, any subsequent violation of the same paragraph is a misdemeanor of the first degree. ~~If the drug involved is~~ **If the drug paraphernalia involved is used by a person, intended by a person for use, or designed for use in storing, containing, concealing, or injecting, ingesting, inhaling, or otherwise introducing into the human body; marihuana other than hashish a person convicted of violating Section 607.17(a) is** marihuana or a compound, mixture, preparation or substance containing marihuana other than hashish, persons convicted of violating Section 607.17 (a) are guilty of a minor misdemeanor and shall not be fined, all court costs shall be suspended, and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

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Section 2. That existing Sections 607.02 and 607.03 of the Codified Ordinances of Cleveland, Ohio, 1976, as enacted by Ordinance No. 834-03, passed June 10, 2003, and Section 607.18, enacted by Ordinance No. 2797-88, passed May 8, 1989, are repealed.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

jho 7-24-19 FOR: Council Member Griffin

Amendments to Ord. No.

THERE IS NO LEGAL OBJECTION TO THIS LEGISLATION IF AMENDED AS FOLLOWS:

1. In Section 1, at Section 607.03, strike division (e) in its entirety and insert "(e) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with a person's appearance as a witness."

2. In Section 1, at amended Section 607.18, line 5, after "of the first degree." strike "If the drug involved is" and insert "If the drug paraphernalia involved is used by a person, intended by a person for use, or designed for use in storing, containing, concealing, or injecting, ingesting, inhaling, or otherwise introducing into the human body"; in line 6, after "marihuana other than hashish" strike "persons convicted of violating Section 607.17(a) are" and insert "a person convicted of violating Section 607.17(a) is".

Date: _____ (Signed): _____

Stephanie Melnyk
Chief Assistant Director of Law

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REPORT

after second Reading

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READ FIRST TIME on JULY 24, 2019 **REPORTS**
and referred to **DIRECTORS of Public Safety, Finance, Law;**
COMMITTEES on Safety, Finance

CITY CLERK

READ SECOND TIME

January 27, 2020.

CITY CLERK

READ THIRD TIME

January 27, 2020.

PRESIDENT

CITY CLERK

APPROVED

MAYOR

Recorded Vol. **106** Page _____

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PASSAGE RECOMMENDED BY
COMMITTEE ON
SAFETY

FILED WITH COMMITTEE

PASSAGE RECOMMENDED BY
COMMITTEE ON
FINANCE

FILED WITH COMMITTEE
