

Amendments to Chapter 5.26 Marijuana Offenses

Law Department

June 6, 2017



Summary of Amendments to Ordinances

- Decrease the maximum fine on first offense for possession consistent with state law
- Add provision for assessment of laboratory fee under state law
- Create a presumptive penalty for first offense for possession
- Codify current Wichita Police Department policy on non-felony possession of marijuana

History

- 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. The Kansas Attorney General determined that it was invalid.
- On January 22, 2016, the Kansas Supreme Court held that the ordinance and election were procedurally void.

Legislative Amendments

- During the 2016 legislative session, the Kansas Legislature reduced the penalty for a first conviction for 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.

Amendments to City Ordinance

- Proposed amendment to 5.26.040 (b) would reduce the penalty for a first conviction to a Class B misdemeanor with a fine of up to \$1,000 and six months in custody.
- This is consistent with state law.
- A second conviction for possession is now a Class A misdemeanor with a maximum penalty of \$2,500 and one year in custody.

Amendments to City Ordinance

- Proposed amendment to 5.20.040 (c) will assess laboratory fees for any tests conducted by the Sedgwick County Regional Forensic Science Center or the KBI as part of the case.
- This applies only to convictions and diversions.
- Currently, the lab fees assessed are \$400.
- Lab results are not performed in every Municipal Court case.

Amendments to City Ordinance

- Creates a Presumptive Penalty of \$50 (5.26.050)
- Reflects the ordinance approved in 2015 City election
- States that a presumption that the appropriate sentence for individuals charged with small amounts of marijuana or marijuana paraphernalia is a fine not to exceed \$50 and all applicable court costs.
- Defines “small amounts” as not to exceed 32 grams

32 Grams of Marijuana



28 Grams of Marijuana



56 Grams of Marijuana

Presumption Requirements

The presumption applies if defendant is over the age of 21 years old and:

- has not been convicted of a felony in the previous 5 years;
- has not been convicted of a Class A misdemeanor in the previous 3 years;
- has not been found guilty of more than one prior conviction for misdemeanor marijuana possession in the previous 3 years; and
- has not been charged with a felony, criminal offense, or DUI arising from the same facts as the alleged marijuana offense.

Court's Discretion

- Ordinances make clear that the final disposition of any case is left to the discretion of the court.
- Per state law, treatment is required for offenders who are over 18 but less than 21 years of age.
- Treatment or an education class may be required as part of a diversion of any offense.

New City Ordinance for WPD Policy

- Absent exigent circumstances, the defendant is not to be arrested, incarcerated, or required to post a bond for a charge of simple possession of marijuana or marijuana paraphernalia.

New City Ordinance – WPD Policy 307.12

- 5.26.050 (d) and (e) codify WPD policy on non-arrests for some marijuana offenses:
 - if no arrest is required by state or federal law or a valid court order;
 - if amount of marijuana is less than 32 grams
 - if suspect can be properly identified; and
 - if the person has fewer than two prior misdemeanor convictions for possession of marijuana, a **Notice to Appear** in Municipal Court is given.

Summary of Changes

- Decrease the maximum fine on first offense for possession consistent with state law
- Add provision for assessment of laboratory fees under state law
- Create a presumptive penalty for first offense for possession
- Codify current Wichita Police Department policy on non-felony possession of marijuana

Recommendation/Action

- Place the ordinance on first reading and authorize all necessary signatures.

Questions
