ORDINANCE NUMBER: 2018-17

AN ORDINANCE AMENDING CHAPTER 42 OFFENSES AND MISCELLANEOUS PROVISIONS, ARTICLE III OFFENSES AGAINST PEACE AND PUBLIC SAFETY, ESTABLISHING A NEW DIVISION 3, POSSESSION OF MARIJUANA AND POSSESSION OR SALE OF DRUG PARAPHERNALIA

WHEREAS, the Village of Cherry Valley, Illinois ("Village") has adopted a Village Code of Ordinances ("Code"); and

WHEREAS, Chapter 42 of the Code governs Offenses and Miscellaneous Provisions; and

WHEREAS, the Village wishes to add an ordinance that prohibits the possession of marijuana and possession of drug paraphernalia; and

WHEREAS, the existing Chapter 42 does not have an express provision governing the possession of marijuana and possession or sale of drug paraphernalia; and

WHEREAS, the Village has determined it is in the best interest of the Village and its citizens to enact such amendment.

NOW THEREFORE, be it ordained by the President and Board of Trustees of the Village of Cherry Valley, Illinois as follows:

1. The above recitals are incorporated herein and made a part hereof.

2. That Chapter 42 of the Code of Ordinances is hereby amended to establish a new division III, Section 42-125 as follows:

   **Division 3 - Possession of marijuana and possession or sale of drug paraphernalia unlawful.**

   **Section 42-125 - Definitions.**

   (1) *Drug paraphernalia* means all equipment, products and materials of any kind, other than methamphetamine manufacturing materials as defined in section 10 of the Methamphetamine Control and Community Protection Act, which are intended to be used unlawfully 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 cannabis or a controlled substance in violation of the Cannabis Control Act (720 ILCS 550/1 et seq.), the Illinois Controlled Substances Act (720 ILCS 570/100 et seq.), or the Methamphetamine Control and Community Protection Act (720 ILCS 646/1 et seq.). It includes, but is not limited to:

   a. Kits intended to be used unlawfully in manufacturing, compounding, converting, producing, processing or preparing cannabis or a controlled substance;
b. Isomerization devices intended to be used unlawfully in increasing the potency of any species of plant which is cannabis or a controlled substance;

c. Testing equipment intended to be used unlawfully in a private home for identifying or analyzing the strength, effectiveness or purity of cannabis or controlled substances;

d. Diluents and adulterants intended to be used unlawfully for cutting cannabis or a controlled substance by private persons;

e. Objects intended to be used unlawfully in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, or hashish oil into the human body including, where applicable, the following items:

   i. Water pipes;
   ii. Carburetion tubes and devices;
   iii. Smoking and carburetion masks;
   iv. Miniature cocaine spoons, and cocaine vials;
   v. Carburetor pipes;
   vi. Electric pipes;
   vii. Air-driven pipes;
   viii. Chillum;
   ix. Bongs;
   x. Ice pipes or chillers.

f. Any item whose purpose, as announced or described by the seller, is for use in violation of this Act.

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- Statements by an owner or by anyone in control of the object concerning its use;
- Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
- The proximity of the object, in time and space, to a direct violation of the Controlled Substances Act;
- The proximity of the object to controlled substances;
- The existence of any residue of controlled substances on the object;
- 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, or should reasonably know, intend to use the object to facilitate a violation of the Controlled Substances Act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of the Controlled Substances Act shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
- Instructions, oral or written, provided with the object concerning its use;
- Descriptive materials accompanying the object which explain or depict its use;
- National and local advertising concerning its use;
- The manner in which the object is displayed for sale;
• 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 of tobacco products;
• Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
• The existence and scope of legitimate uses for the object in the community;
• Expert testimony concerning its use.

(2) Marijuna includes cannabis, hashish and other substances which are identified as including any parts of the plant Cannabis sativa, whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and any compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including tetrahydrocannabinol (THC) and other cannabinol derivatives, including its naturally occurring or synthetically produced ingredients, whether produced directly or indirectly by extraction, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

Section 42-126 - Possession of marijuana. It is unlawful for any person knowingly to possess marijuana/cannabis. Any person who violates this Section with respect to not more than 10 grams of any substance containing cannabis is guilty of a civil law violation punishable by a minimum fine of $100.00 and a maximum fine of $750.00.

Section 42-127 - Possession and/or sale of drug paraphernalia. It is unlawful for any person or business to use, or to possess with intent to use or sell, 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 in violation of the Controlled Substances Act. Any person who violates this section upon conviction shall be fined not less than $100.00 nor more than $750.00.

Section 42-128 - Manufacture or delivery of drug paraphernalia. It is unlawful for any person or business to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, drug paraphernalia, knowing, or under circumstances where one reasonably should know, 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 in violation of the Controlled Substances Act as amended. Any person who violates this section upon conviction shall be fined not less than $100.00 nor more than $750.00.

Section 42-129 - Advertisement of drug paraphernalia. It is unlawful for any person or business to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, 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 or business who violates this section upon conviction shall be fined not less than $100.00 nor more than $750.00.
Section 42-130 - Seizure of drug paraphernalia.

(1) Every device of drug paraphernalia, as defined by subsection (a) of this section, found in this Village is contraband, and shall be subject to seizure, confiscation and destruction by the Village.

(2) Every device of drug paraphernalia located in the Village shall be subject to seizure and forfeited as contraband to the Village.

(3) If, within 60 days after any seizure pursuant to this section, a person having any property interest in the seized property is charged with an offense, the court which renders judgment upon such charge shall, within 30 days after such judgment, conduct a forfeiture hearing to determine whether such property was contraband at the time of seizure. Such hearing shall be commenced by the written petition of the Village, including material allegations of the fact, the name and address of every person determined by the Village to have any property interest in the seized property, a representation that written notice of the date, time and place of such hearing has been mailed to every such person by certified mail at least ten days before such date, and a request for forfeiture. Every such person may appear as a party and present evidence at such hearing. The quantum of proof required shall be a preponderance of the evidence, and the burden of proof shall be on the Village. If the court determines that the seized property was contraband at the time of seizure, an order of forfeiture and disposition of the seized property shall be entered: a paraphernalia device shall be received by the chief of police, who shall effect its destruction, except that valuable parts thereof may be liquidated and the resultant money shall be deposited in the general fund of the Village wherein such seizure occurred; money and other things of value shall be received by the chief of police and, upon liquidation, shall be deposited in the general fund of the Village. Such order of forfeiture and disposition shall for the purposes of appeal, be a final order and judgment in a civil proceeding.

(4) If a seizure pursuant to subsection (f) of this section is not followed by a charge pursuant to subsection (f)(3) of this section, or if the prosecution of such charge is permanently terminated or indefinitely discontinued without any judgment of conviction or acquittal:

i. The Village Attorney may cause to be commenced an in rem proceeding for the forfeiture and destruction of a paraphernalia device, or for the forfeiture and deposit in the general fund of the Village of any seized money or other thing of value, or both, in the circuit court; and

ii. Any person having any property interest in such seized paraphernalia device, money or other thing of value may commence separate civil proceedings in the manner provided by law.

Section 42-131 - Limited exception.

(1) Any person or business in possession and/or engaging in the sale of cannabis or drug paraphernalia as authorized under the Illinois Compassionate Use of Medical Cannabis Pilot Program Act is exempted from the provisions of this article only if they are in strict compliance with all requirements of the act and are properly authorized by the Illinois Department of Public Health to use the cannabis and drug paraphernalia.

(2) The person or business in possession of cannabis or paraphernalia or selling cannabis must at all times have proper proof of compliance with the Illinois Compassionate Use of Medical Cannabis Pilot Program Act in order to be exempt under this section.
Section 3. All other provisions of Chapter 42 of the Code of Ordinances shall remain in effect as previously enacted except that those ordinances or parts thereof in conflict are hereby repealed.

Section 4. This Ordinance shall be in full force and effect after its passage, approval, and publication in pamphlet form as provided by law.

PASSED UPON MOTION BY: NANCY BELT

SECONDED BY: JEFF O’HARA

BY ROLL CALL VOTE THIS 20th DAY OF NOVEMBER, 2018

AS FOLLOWS:

VOTING “AYE”: NANCY BELT, JEFF FUSTIN, SALLY HOLLEMBEAK, JEFF O’HARA, DAVID SCHROEDER

VOTING “NAY”: NONE

ABSENT, ABSTAIN, OTHER: STEPHEN APPELL

APPROVED: NOVEMBER 20, 2018

ATTEST:

KATHY TRIMBLE, VILLAGE CLERK

JIM E. CLAEYSSEN, VILLAGE PRESIDENT