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## **AMENDMENT OF COUNTY ORDINANCE #6, DES MOINES COUNTY CRIMINAL CODE**

WHEREAS, the Board of Supervisors of Des Moines County, Iowa heretofore adopted on October 14, 1996 the "Des Moines County Criminal Code, Ordinance #6" and;

WHEREAS, following implementation of said Ordinance, the Board of Supervisors can envision a more efficient and responsive document if amendments are adopted; and

WHEREAS, the passage, adoption, and enforcement of the provisions hereinafter contained are deemed necessary for the general welfare and other public requirements.

NOW, THEREFORE BE IT RESOLVED, that the Des Moines County Criminal Code, Ordinance #6 be amended to as follows:

### **ORDINANCE #6**

Section One: Short title and Citation. This Ordinance shall be known and cited as the Des Moines County Criminal Code.

Section Two: Des Moines County Drug Paraphernalia Act, Ordinance 6A. The reference to prior County Ordinance #6 is hereby replaced with the specific language set out previously in prior County Ordinance #6 and updated accordingly.

Section Three: Simple Misdemeanor – Penalties Defined. A simple misdemeanor is punishable by a fine of not less than \$50.00 nor more than \$500.00 and/or up to thirty (30) days imprisonment, unless otherwise specified herein.

Section Four: Adoption of Ordinances. Des Moines County hereby adopts the following as the Des Moines County Criminal Code:

**COUNTY ORDINANCE #6A**  
**DRUG PARAPHERNALIA ACT**

Section One: Short Title and Citation. This Ordinance shall be known and cited as the Des Moines County Drug Paraphernalia Act.

Section Two: Definitions. The following words and phrases when used in this Act shall have the meaning respectively ascribed to them except where the context otherwise requires.

1. "Controlled substance" shall mean: any drug, substance, or immediate precursor enumerated, defined, or established pursuant to the provisions of Schedules I, II, III, IV and V of Division II of Chapter 124, Code Of Iowa (2001).
2. "Paraphernalia" shall mean:
  - a. The term "Drug Paraphernalia" means all equipment, products, and materials of any kind which are used or intended for use 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 a controlled substance listed in Schedules I through V of Division II of Chapter 124, Code of Iowa (2001). It includes, but is not limited to:
    - i. Kits used or intended for use in planting, propagating, cultivation, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
    - ii. Kits used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;
    - iii. Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;
    - iv. Testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness, or purity of a controlled substance;
    - v. Scales and balances used or intended for use in weighing or measuring a controlled substance;
    - vi. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used or intended for use in cutting a controlled substance;
    - vii. Separation gins and sifters used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
    - viii. Blenders, bowls, containers, spoons, and mixing devices used or intended for use in compounding a controlled substance;
    - ix. Capsules, balloons, envelopes, and other containers used or intended for use in packaging controlled substances;
    - x. Containers and other objects used or intended for use in storing or concealing controlled substances;
    - xi. Hypodermic syringes, needles, and other objects used or intended for use in parenterally injecting a controlled substance into the human body;

- xii. Objects used or intended for use in ingesting, inhaling, or otherwise introducing a controlled substance into the human body, such as:
  - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - b. Water pipes;
  - c. Carburetor tubes and devices;
  - d. Smoking and carburetion masks;
  - e. Chamber pipes;
  - f. Carburetor pipes;
  - g. Electric pipes;
  - h. Air-driven pipes;
  - i. Chillums;
  - j. Bongs;
  - k. Ice pipes or chillers.

Section Three: Factors to Consider. 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:

1. Statements by an owner or by anyone in possession or control of the object concerning its use or intended use;
2. Prior convictions, if any, of an owner or of anyone in possession or control of the object, under any State or federal law relating to any controlled substance, if consideration of such prior convictions is legally permissible;
3. The proximity of the object, in time and space, to a direct violation of Chapter 124 of the Iowa Code;
4. The proximity of the object to a controlled substance;
5. The existence of any residue of any controlled substance(s) on the object;
6. Direct or circumstantial evidence of the intent of an owner or of anyone in possession or control of the object, to deliver it to a person or persons whom he or she knows intends to use the object to facilitate a violation of Chapter 124 of the Iowa Code; the innocence of an owner or of anyone in possession or control of the object as to a direct violation of Chapter 124 of the Iowa Code shall not preclude a finding that the object is used or intended for use as drug paraphernalia.
7. Instructions, oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale, including its proximity to other objects commonly used or intended for use in planting, propagating, cultivation, 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 a controlled substance in violation of Chapter 124, Code of Iowa.

11. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
12. The existence and scope of legitimate uses for the object in the community;
13. Expert testimony concerning its use.

Section Four: Offenses and Penalties.

1. Possession of drug paraphernalia prohibited.

It is unlawful for any person to use, or to possess with the intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this Act. Any person who violates this section is guilty of a simple misdemeanor.

2. Manufacture or delivery of drug paraphernalia prohibited.

It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver 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, package, repackage, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this section is guilty of a simple misdemeanor.

Section Five. Additional Penalties and Remedies.

1. In addition to or in the alternative to the provisions of Section Four above, Des Moines County or an interested person may institute civil proceedings to obtain injunctive and/ or declaratory relief or such other orders of the court as are reasonable and proper to abate practices, conditions or circumstances found to be contrary to or prohibited by the provisions of this Ordinance.

Section Six. Drug Paraphernalia Forfeiture.

1. All drug paraphernalia defined by this Act shall be subject to forfeiture and may be seized and destroyed by Des Moines County. Such property shall not be subject to replevin.
2. Property subject to forfeiture under this Act may be seized by Des Moines County:
  - a. The seizure is incident to an arrest or a search pursuant to a search warrant;

- b. The property subject to a seizure has been the subject of a prior judgment in favor of Des Moines County in an injunction or forfeiture proceeding based upon this Act;
- c. The County has probable cause to believe that the property was used or is intended to be used in violation of this Act.

Section Seven. Construction.

This Act constitutes remedial legislation and is to be liberally construed to give effect to its purpose.

Section Eight. Severability.

It is the legislative intent that should any provision, section, clause, or sentence be held unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions, sections, clauses, or sentences, and to this end the provisions of this Act are severable.

**COUNTY ORDINANCE #6B**  
**IMPERSONATING A PUBLIC OFFICIAL**

Any person who falsely holds himself or herself out as or assumes to act as an elected or appointed officer, magistrate, peace officer, or person authorized to act on behalf of a governmental body, having no authority to do so, commits a simple misdemeanor.

**COUNTY ORDINANCE #6C**  
**INTERFERENCE WITH OFFICIAL ACTS**

A person who knowingly resists, obstructs, opposes, or impedes anyone known by the person to be an officer in the performance of any act which is within the scope of the officer's lawful duty or authority, or who knowingly resists, obstructs, opposes, or impedes the service or execution by an authorized person of any civil or criminal process or order of any court or administrative agency, commits a simple misdemeanor.

**COUNTY ORDINANCE #6D**  
**RESISTING ARREST**

A person who knowingly resists, opposes, impedes, obstructs, or interferes with a police or law enforcement officer who is attempting to make a lawful arrest, with or without a warrant, is guilty of a simple misdemeanor.

**COUNTY ORDINANCE #6E**  
**INDECENT EXPOSURE**

- A. A person who intentionally exposes any of his or her private parts in public to another person without the latter person's express or implied consent commits a simple misdemeanor.
- B. Definitions applicable to this section are as follows:
  - 1. "Private parts" means the pubic hairs, anus, vulva, genitals, penis, nipple(s) of the female breast(s), more than half of the female breast, or more than half of the buttocks.
  - 2. "In public" means in or on any street, sidewalk, park, governmental building, governmental land, or any other property where the person in lawful possession of the property has not given his or her assent to the exposure. "In public" also includes in any place that can be seen from the aforementioned areas.
  - 3. "Expose" means to allow a private part to be actually visible and not covered by opaque material.
- C. Regardless of the foregoing limitations, this section in no way prohibits participation in productions, performances, or exhibitions which, when taken as a whole, have serious literary, theatrical, or artistic value.

**COUNTY ORDINANCE #6F**  
**FIREWORKS**

- A. "Fireworks" means and includes any explosive composition, or combination of explosive substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and includes blank cartridges, firecrackers, torpedoes, skyrockets, roman candles, or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or other device containing any explosive substance. "Fireworks" does not include goldstar-producing sparklers on wires which contain no magnesium or chlorate or perchlorate, nor flitter sparklers in paper tubes that do not exceed one-eighth of an inch in diameter, nor toy snakes which contain no mercury nor caps used in cap pistols. Any person who sells, uses, explodes or possesses any fireworks commits a simple misdemeanor.
- B. However, this section shall have no applicability if a permit is obtained as required by law, or the sale, use or explosion of fireworks is otherwise specifically exempted from state or local permit requirements.

**COUNTY ORDINANCE #6G**  
**DISORDERLY CONDUCT**

A person commits a simple misdemeanor when the person does any of the following:

- A. Engages in fighting or violent behavior in any public place or in or near any lawful assembly of persons. Provided, that participants in athletic contests may engage in conduct which is reasonably related to the sport.
- B. Makes loud and raucous noise in the vicinity of any residence or public place which causes unreasonable stress to the occupants thereof.
- C. Directs abusive epithets or makes any threatening gesture which the person knows or reasonably should know is likely to provoke a violent reaction by another, including, but not limited to, spitting on the person or property of another, calling a person slanderous or vile names, or intentionally antagonizing another by use of scurrilous or "fighting" words.
- D. Intentionally and without express or implied consent of the person in lawful possession of the property, urinates or defecates upon or in any public street or highway, public place, or the tangible property of another.
- E. Disturbs, without lawful authority or lawful color of authority, any lawful assembly or meeting of persons by conduct intended to disrupt the meeting or assembly.
- F. By words or action, initiates or circulates a report or warning of fire, epidemic, or other catastrophe knowing such report to be false, or such warning to be baseless.
- G. Knowingly and publicly uses the United States flag in such a manner as to show disrespect for the flag as a symbol of the United States, with the intent or reasonable expectation that such use will provoke or encourage another to commit a public offense.
- H. Obstructs any street, sidewalk, highway, or other public way without authority or justification, with the intent to prevent or hinder its lawful use by others.

**COUNTY ORDINANCE 6H**  
**ENTERING OR ATTEMPTING TO ENTER A GAMBLING FACILITY**

- A. It shall be unlawful for any person under the age of twenty-one (21) years to enter or attempt to enter a gambling facility licensed to operate gambling games pursuant to Chapter 99F of the Code of Iowa (2001) unless said person is exempted from this Section as set out in Section B herein. As used in this Section, the term "gambling facility" shall include and be defined as those areas where gambling games are conducted in a gambling facility licensed to operate gambling games pursuant to Chapter 99F of the Code of Iowa.
- B. Exemptions: Persons of the age of eighteen (18) years or older are permitted to enter a gambling facility if:

1. they are employed by the operator of the gambling facility and are on-duty at the time that they are in the gambling facility; or
2. they are employed by a vendor of the gambling facility and are strictly entering the facility to deliver goods or other wares ordered by the facility; or
3. they are employed by any mail carrier service and are entering the gambling facility to deliver mail, packages, or other postal products; or
4. they are employed by a law enforcement agency and are entering the gambling facility to conduct an investigation or are otherwise responding to a call for assistance at the gambling facility.

SEVERABILITY.

1. If any section, paragraph, clause, or provision of this entire Ordinance, including 6A through 6H shall be held invalid, the invalidity of such section, paragraph, clause, or provision shall not effect the remaining provisions of this Ordinance.

REPEALER.

1. All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

COUNTY ORDINANCE #6 IS, IN ITS ENTIRETY, including 6A through 6H herein, is hereby approved, amended, effective, and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

DES MOINES COUNTY BOARD OF SUPERVISORS

\_\_\_\_\_  
Benjamin D. Diewold, Chair

\_\_\_\_\_  
Timothy E. Hoschek, Vice-Chair

\_\_\_\_\_  
David A. Miller, Member

ATTEST:

\_\_\_\_\_  
Carol Copeland, Des Moines County Auditor

1<sup>st</sup> Reading \_\_\_\_\_, 2001

2<sup>nd</sup> Reading \_\_\_\_\_, 2001

3<sup>rd</sup> Reading \_\_\_\_\_, 2001