SUBSTITUTE ORDINANCE No. 5626

AN ORDINANCE TO AMEND CHAPTER 20 OF THE CITY OF MEMPHIS CODE OF ORDINANCES RELATIVE TO MISCELLANEOUS OFFENSES AND PROVISIONS BY ADDING SECTION 33 RELATIVE TO PURCHASE OR ACQUISITION OF MARIJUANA IN SMALL AMOUNTS FOR PERSONAL USAGE

WHEREAS, pursuant to Tennessee Code Annotated § 39-17-418(a) & (b) it is a misdemeanor for individuals to knowingly possess or casually exchange a small amount of marijuana not in excess of one-half ounce (the "Marijuana Misdemeanor Statute"); and,

WHEREAS, pursuant to the police powers of the City the City's legislative body is authorized to adopt ordinances to protect the health, safety and welfare of its inhabitants by prohibiting the commission of any offense deemed a threat to the health, safety and welfare of its inhabitants; and,

WHEREAS, the City Council has previously adopted ordinances regulating drug related activities and finds that knowingly purchasing or acquiring even a small amount of marijuana not in excess of one-half ounce (14.175 grams)for personal use or casual exchange facilitates the illegal trafficking of controlled substances; and,

WHEREAS, the City Council does not support or encourage the use of marijuana or any other controlled substance but finds that, when an individual's only offense is possession or casual

exchange of marijuana for personal use, criminal penalties imposed by state law and resulting criminal records for such an offense are disproportionate to the severity of the offense; and,

WHEREAS, the City Council finds that although State Misdemeanor Statutes define the offense and punishment for knowingly possessing or casually exchanging a small amount of marijuana not in excess of one-half ounce, the City should enforce in the municipal courts of the City its ordinances prohibiting the commission of any offense deemed a threat to the health, safety and welfare of its inhabitants when committed within the corporate jurisdiction of the City; and,

WHEREAS, it is the City Council's intent not to interfere with or prevent the State of Tennessee from commencing any lawful action against any person accused of violating the provisions of the Tennessee Controlled Drug Act related to casual marijuana usage.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS

SECTION 1. Chapter 20 of the City of Memphis Code of Ordinances is hereby amended by creating a new section to read as follows:

Sec. 20-33. Purchase or Acquisition of Marijuana in Certain Amounts for Personal Usage

Definitions. For the purposes of this ordinance, *marijuana* is defined as all dried leaves and flowers of the genus Cannabis, whether growing or not; Marijuana does not include the resin or oil extracted from any part of the plant or the mature stalks of the plant, fiber produced from the stalks, oil, seeds incapable of germination, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks.

(a) Except as lawfully prescribed by a licensed practitioner, it is a violation of this section for any person eighteen (18) years of age or older to knowingly purchase or acquire with intent to use a small amount of marijuana not in excess of one-half ounce (14.175 grams) or any tool that will be used in conjunction with the knowing possession, use or casual exchange of a small amount of marijuana as defined above, to include, but not necessarily to be limited to, bags, canisters, pill bottles, grinders, rolling papers, bowls, bongs, hookahs, bubblers, and roach clips. Possession of a small amount of marijuana not in excess of one-half ounce (14.175 grams) shall be evidence of a violation of this section.

(b) The purchase or other acquisition of marijuana facilitates the illegal trafficking of controlled substances and such acts within the City limits are hereby declared to be a public nuisance and offense against the City, subject to the penalties set forth in Section 1.8 of the Memphis City Code.

(c) Officers and patrolmen of the Memphis Police Department who have knowledge of a violation of this ordinance shall have the authority and discretion to issue a City of Memphis Ordinance Summons in lieu of any arrest or custody for the person(s) cited to appear before a City Court Judge within forty-eight (48) hours after issuance of the Ordinance Summons, excluding Saturdays, Sundays or legal holidays or other dates on which dates the City Courts are not open to plead guilty to the offense or to request a trial date.

(d) Officers and patrolmen of the Memphis Police Department who have knowledge of the possession by any person of a small amount of marijuana not in excess of one-half ounce (14.175 grams) , which is evidence of a violation of this ordinance, shall have the authority and discretion to issue the ordinance summons required by this Ordinance in lieu of any other citation, arrest or continued custody of such person as may be authorized by any other law.

(e) Schedule of violations and penalties:

(1) The Memphis City courts, who by Section 251 of the City's Charter has original and exclusive jurisdiction of all violations of the City's ordinances, may, assess a fine not in excess of fifty dollars ($50.00)together with court costs, all as authorized in Section 1-8 of the Memphis City Code.

(2) The judges of the Memphis City Courts are authorized to approve agreements with any person pleading guilty to a violation of this Section pursuant to which the fine imposed under this ordinance will be waived if the person so charged agrees to and does in fact perform such community service as the court deems appropriate, up to:

a. For a first offense: ten (10) hours;

b. For a second offense: twenty (20) hours;

c. For a third offense: thirty (30) hours;

d. For a fourth offense: forty (40) hours.

Upon completion of any public service ordered by the Court, the fine authorized by this section shall be waived and all public records relating to the offense shall be removed from the official court records, except that the City Court Clerk shall keep a confidential record for the internal use by the City Court Judges that may be accessed only by the Defendant, the Judges and Prosecutors of the City Court and used only to determine the availability of a waiver of future fines or to

determine the appropriate amount of community service available on subsequent offenses.

(f) Reporting:

In furtherance of the City Council's objective stated above to minimize the imposition of criminal penalties disproportionate to the severity of the personal use of small amounts of marijuana:

a. The Director of Police Services is hereby directed to report on an annual basis for City Council review, no later than delivery of the Administration's proposed operating budget or the fourth Tuesday in April, whichever date is sooner in a given year.

b. Report shall include, but not necessarily be limited to, data from the current fiscal year thus far as follows:

1. Number of citations or summons issued in pursuance of this Section.

2. Revenue collected by the citations or summons issued in pursuance of this Section

3. Gender and racial breakdowns of individuals issued citations or summons pursuant to this Section

4. Number of criminal misdemeanor charges under Tennessee Code Annotated § 39-17-418(a) & (b) initiated by MPD

5. Breakdown of revenues generated from the criminal misdemeanor charges under Tennessee Code Annotated § 39-17-418(a) & (b) that was returned to the City's Drug Enforcement Special Revenue Fund

6. Gender and race breakdowns of individuals charged with misdemeanors under Tennessee Code Annotated § 39-17-418(a) & (b) initiated by MPD

7. For all required data elements, a year-over-year comparison and long term trend lines will also be provided, unless such data does not exist, as in the case of subsections (f)(1)b.1-3 in the first year after the passage of this ordinance.

(g) Nothing in this section is intended to interfere with or prohibit the State of Tennessee from commencing any prosecution of violation of the Tennessee Controlled Drug Act.

(h) Nothing in this section shall be construed to require any City government agency or office, or any employer, to permit or accommodate the use, consumption, possession, transfer, transportation, sale or growing of marijuana in the workplace or to affect the ability of any such agency, office or employer to establish and enforce policies restricting the use of marijuana by employees.

(i) Nothing in this section shall be construed to permit driving under the influence of marijuana or driving while impaired by use or ingestion of marijuana or to modify or affect

the construction or application of any provision of this Code related to driving under the influence of marijuana or driving while impaired by marijuana.

(j) Nothing in this section shall be construed to prohibit any person, business, corporation, organization or other entity, or City government agency or office, who or which occupies, owns or controls any real property, from prohibiting or regulations the possession, consumption, use, display, transfer, distribution, sale, transportation or growing of marijuana on or in that property.

SECTION 2. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS that the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 3. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS that this Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

Sponsors: Berlin Boyd,

Councilman

Martavius Jones,

Councilman