

Bobbie Walthall

To: Tom Markus
Subject: RE: Ordinance 9568 (draft)

From: Tom Markus <tmarkus@lawrenceks.org>
Sent: Tuesday, February 12, 2019 8:56 AM
To: wilbur45@sunflower.com
Cc: City Commissioners Email <commissioners@lawrenceks.org>; Executive Staff <ExecutiveStaff@lawrenceks.org>
Subject: FW: Ordinance 9568 (draft)

Per your request.

From: Maria Garcia <mgarcia@lawrenceks.org>
Sent: Tuesday, February 12, 2019 8:41 AM
To: Tom Markus <tmarkus@lawrenceks.org>
Cc: Toni Wheeler <twheeler@lawrenceks.org>
Subject: RE: Ordinance 9568 (draft)

Tom,

Here are our answers to the questions posed by Mr. Wilbur. Please let me know if you have any questions.

- 1) The ordinance still allows for jail time. We should not be jailing people for possession of marijuana - ever. While I understand this circumstance is rare the only way to ensure it will not happen is to codify it.
 - a. State law sets the minimum required penalty for marijuana possession, and that penalty includes a fine and/or jail time. *See* K.S.A. 21-5706(c)(3)(A) (stating that the penalty for first-time marijuana possession is a Class B misdemeanor, then a Class A misdemeanor for a second offense. K.S.A. 21-6611 says that the penalty for a Class B misdemeanor is a fine of up to \$1,000 and can include jail time (up to 6 months under state law).

Under constitutional home rule power, cities in Kansas can be more restrictive than the state statute – meaning cities can set penalties *greater* than state law – but they cannot be less restrictive – meaning imposing penalties that are *less* than state law. The City would be unable to remove the possibility of jail time for a Class B misdemeanor because state law leaves the possibility open to the court’s discretion. However, the jail sentence is discretionary under state law, not mandatory, on a first-time marijuana conviction so the Municipal Court judge has discretion on whether to assign jail time and how much, as appropriate under a given set of facts.

- 2) The ordinance still calls out a drug abuse evaluation as a key component. As we discussed in October very few people who use marijuana have a dependency issue. This is a costly component and should be an option only for a repeat offense.
 - a. The proposed ordinance amends language for drug evaluations to say that the judge *may* order the evaluation in a given case. The judge is no longer required to order it under the proposed language. As you state in your email “very few people who use marijuana have a dependency issue,” meaning that some do. Allowing the court discretion to order an evaluation would address that small percentage of people who do have a dependency issue.

- 3) The \$50 fine is unnecessary. I would suggest reducing this a minimal amount such as \$25 or even \$5. There was great concern from the commission during the Oct meeting about financial burdens on those who can least afford it (see the first 2 items as well), so let's have an ordinance that reflects that concern.
 - a. The City Commission was interested in language from Wichita, Kansas, which sets a presumptive fine of \$50. The Commission will have an opportunity to discuss this number further at Tuesday’s meeting.



Maria Kaminska Garcia, Assistant City Attorney – mgarcia@lawrenceks.org
City Attorney's Office | [City of Lawrence, KS](http://CityofLawrenceKS.com)
P.O. Box 708, Lawrence, KS 66044
office (785) 832-3470 | fax (785) 832-3405

From: Toni Wheeler <twheeler@lawrenceks.org>
Sent: Monday, February 11, 2019 1:39 PM
To: Maria Garcia <mgarcia@lawrenceks.org>
Subject: FW: Ordinance 9568 (draft)

See below. Can you review? Let’s discuss before you answer. Thanks.

From: Tom Markus <tmarkus@lawrenceks.org>
Sent: Monday, February 11, 2019 12:39 PM
To: Toni Wheeler <twheeler@lawrenceks.org>
Cc: Diane Stoddard <dstoddard@lawrenceks.org>
Subject: Fwd: Ordinance 9568 (draft)

Can you respond to this?

Sent from my iPhone

Begin forwarded message:

From: Stuart Boley <sboley@lawrenceks.org>
Date: February 11, 2019 at 11:24:10 AM CST
To: Tom Markus <tmarkus@lawrenceks.org>
Subject: Fwd: Ordinance 9568 (draft)

Tom,

It's my understanding that under state law we are unable to remove the jail provision from our ordinance. Please let me know if I'm understanding this right, and if so, please provide an explanation of the situation to Patrick.

Thanks,

Stuart

Sent from my iPad

Begin forwarded message:

From: <wilbur45@sunflower.com>
Date: February 9, 2019 at 7:39:39 PM CST
To: <llarsen@lawrenceks.org>, <lsoden@lawrenceks.org>, <matthewjherbert@gmail.com>, <sboley@lawrenceks.org>, <jananda@lawrenceks.org>
Cc: <bjwalthall@lawrenceks.org>
Subject: Ordinance 9568 (draft)

Mayor Larsen and Commissioners,

After reviewing the draft version of Ordinance 9568 I have a few concerns:

- 1) The ordinance still allows for jail time. We should not be jailing people for possession of marijuana - ever. While I understand this circumstance is rare the only way to ensure it will not happen is to codify it.
 - a. State law sets the minimum required penalty for marijuana possession, and that penalty includes a fine and/or jail time. *See* K.S.A. 21-5706(c)(3)(A) (stating that the penalty for first-time marijuana possession is a Class B misdemeanor, then a Class A misdemeanor for a second offense. K.S.A. 21-6611 says that the penalty for a Class B misdemeanor is a fine of up to \$1,000 and can include jail time (up to 6 months under state law). Under constitutional home rule power, cities in Kansas can be more restrictive than the state statute – meaning cities can set

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discuss this number further at Tuesday's meeting.

I think it's reasonable for us to be at least as progressive as Wichita with our ordinance. The times are changing and they are changing fast. Let's at least try to keep up.

Thanks for your time!

Patrick Wilbur
521 Durham Court
785-727-0506

Bobbie Walthall

From: Kirsten Kuhn <douglascountylibertarians@gmail.com>
Sent: Monday, February 11, 2019 8:49 PM
To: Lisa Larsen; Jennifer Ananda; Leslie Soden; Matthew Herbert; Stuart Boley
Cc: Bobbie Walthall; rvalverde@ljworld.com
Subject: Work Session Correspondence 2/12/19

We will be addressing the Commission tomorrow evening regarding Ordinance 9568. Below you will find our statement.

First, I'd like to take a moment to tell you that we appreciate the commission moving this issue forward. Drug penalties across the nation are a significant driver in the expansion of the criminal justice apparatus, but we can only begin change in our own backyards. Although the city's number of 244 for municipal charges may seem like a small drop in the bucket, individual efforts on the part of communities like ours can add up. These 244 individuals are OUR people, and our local community CAN do its part to fight this injustice of mass incarceration. It is reassuring to me to know that you all are willing to work with the people and I appreciate you hearing our concerns.

A presumption of a lower fine, as well as a reduced maximum fine, is indeed progress, but it only goes so far when it applies solely to the first offense. State law does dictate a felony charge after 2 convictions, so we hope you will at least direct city staff to apply these changes to both 1st and 2nd offense in municipal code.

We are also vehemently opposed to the retention of language regarding potential jail time. This is clearly a nonviolent offense & it is not only immoral to remove someone from their community connections if they pose no danger to others, but it is counterproductive. Even a short time in jail can wreak havoc on an individual's life. KSA 21-6602 states, for class A & B nonperson misdemeanors, that the term of incarceration "shall be fixed by the court and shall not exceed" various time frames. This language allows for a presumption of zero jail time, while allowing still judges latitude for extreme cases.

Additionally, the change to a discretionary option for a drug evaluation is an improvement, but seems only to apply if the person chooses to pay the fine & acquire a conviction. For diversion, the judge will simply order the individual to the eval anyway. And with the recent change to the DSM-V, I am concerned about a differential referral rate for cannabis vs alcohol defendants. Legal trouble is now a diagnostic criterion for Cannabis Use Disorder, but no longer for Alcohol Use Disorder. Forcing evals for one substance over another will surely have consequences for who is referred and who is not. A person of limited resources should not have to worry their future life prospects based on their financial status and specific substance use now. This ordinance tells the people, "If you can pay, don't worry; but if you can't, you'll just have to take the conviction." This is NOT a message that Lawrencians support.

As to the financial impact on the city, we would remind you that in 2016, the city paid out \$756,938 to refer inmates to the county jail. What exact portion of this was related to marijuana, we cannot say, but it was certainly more than zero. Stops that were initially based on marijuana may result in higher level charges, and thus not be classified in a way that is helpful to this discussion. The city has an obligation to use taxpayer funds responsibly.

We trust that you will consider our concerns seriously. Drug policy reform is coming, and there is no reason to delay action now. It is my hope that this Commission will continue its dialogue in support of all levels of criminal justice

reform. Our citizens deserve a community free from harassment and the threat of imprisonment or financial ruin over nonviolent offenses, and the five of you are in a unique position to drive this forward.

I appreciate your time and consideration.

Kirsten Kuhn

Douglas County Libertarians

February 11, 2019

Mayor Lisa Larsen
City of Lawrence
Lawrence, KS 66044

Dear Mayor Larsen:

In reviewing the proposed ordinance on the possession of marijuana as drafted by the City Attorney's office, I would like to offer the following talking points:

1. The fine proposed is the same as Wichita. Lawrence is not Wichita! If the city commission wish to send a message to the Legislature, a fine of \$25, **or less – perhaps \$5**, would be more appropriate.
2. For some reason, the ordinance continues the outdated language about a drug abuse evaluation. The judge, or prosecutor, already have this discretion, it doesn't need to be repeated here.
3. The revision does not address the ordinance on paraphernalia which is still subject to the \$200 fine. I suggest that since paraphernalia is sold openly at 9th and Massachusetts (one of the top tourist destinations in Kansas!) that the fine be lowered to \$0 and that ordinance be rewritten.
4. There is language in the draft about a second conviction with increasing the fine to \$200. This is unnecessary. The offence is not cumulative, for example, as it would be in drinking and driving.
5. There is no language in the draft concerning the presumptive jail sentence. We learned at the last session that a 90-day sentence is imposed and suspended if all requirements are met. This is excessive and as we saw, lands people in jail. I would suggest that we **add** language that the jail sentence should be no more than zero days.

Thank you for your consideration of these items. As you may already know, there are several bills pending in the legislature concerning medical use of marijuana, including an amendment to provide a defense to prosecution for persons arrested for marijuana possession in the state that I've been discussing with legislators and seems to have gotten some traction. I think we should lower the penalties as much as possible so we don't need to revisit this in the near future.

All the best to you,

Laura Ann Green

Bobbie Walthall

From: Tresa McAlhaney <tresamcalhaney@gmail.com>
Sent: Monday, February 11, 2019 11:25 AM
To: Lisa Larsen; Jennifer Ananda; Leslie Soden; Stuart Boley; Matthew Herbert
Cc: Bobbie Walthall
Subject: Ordinance 9568 Marijuana Possession Penalties

Mayor Larsen and Commissioners,

I have concerns about the drafted Ordinance 9568.

1. The fines are still too high. The city can and should recoup its costs for processing law breakers, but there should be no punitive fine involved in marijuana or paraphernalia possession. This includes the substance abuse evaluation and treatment. It makes sense to give a judge the opportunity to direct a citizen toward treatment at the time of a law infraction if it is clearly warranted, but the wording of the ordinance feels like it doesn't provide enough protection for the citizen and still allows a judge to effectively bring financial ruin to people with lower income through fines and treatment costs.

2. The ordinance should pertain to all legal adults, not just those age 21 and older. The original ordinance was created to protect college students' access to federal student aid, so why not include legal adults of all ages? We know alcohol and marijuana are not similar substances and it seems arbitrary and immoral to draw a line creating categories of adult ages who are protected or not under the ordinance.

3. The Ordinance should have more protection for repeat offenders. It does allow for prosecutorial and judicial discretion, but the points listed in the draft would quickly add up against the favor of a citizen who doesn't have a perfectly clean record. It is important to bring marijuana possession as fully out of the law-breaking section of our city's code as possible.

The wording of the draft still feels punitive and threatening. I would like to see more protection for the citizen revised into the ordinance. The draft shows incremental changes, but we have the opportunity here to protect our citizens as fully as possible while we wait for federal and state law to evolve to reflect the will of the majority of citizens who are in favor of marijuana decriminalization. Lawrence has served in the past and continues to lead the state of Kansas today, being an example of what compassionate and moral government looks like. I would like to see our ordinance reflect the modern culture and be even more progressive than the one in Wichita, which is years old already. We can do better!

Thank you for your consideration on this matter and for your service to our community,
Tresa McAlhaney

Bobbie Walthall

From: wilbur45@sunflower.com
Sent: Saturday, February 9, 2019 7:40 PM
To: Lisa Larsen; Leslie Soden; Matthew Herbert; Stuart Boley; Jennifer Ananda
Cc: Bobbie Walthall
Subject: Ordinance 9568 (draft)

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Patrick Wilbur
521 Durham Court
785-727-0506