

ATTORNEY REVISION

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF ATHENS-CLARKE COUNTY, GEORGIA, WITH RESPECT TO **POSSESSION OF MARIJUANA**; AND FOR OTHER LAWFUL PURPOSES

WHEREAS, the Mayor and Commission of the Unified Government of Athens-Clarke County are authorized by the Charter of Athens-Clarke County to provide for the safety, health, peace, security, and general welfare of the community members and visitors of Athens-Clarke County; and

WHEREAS, the Unified Government is committed to creating a safer community by reducing crime, working to ensure the safety of its citizens, and fostering a relationship of trust and partnership within the community; and

WHEREAS, enactment of an ordinance concerning the offense of simple marijuana possession within Athens-Clarke County limits is intended to enhance public safety and eliminate costs by reducing the amount of time police officers spend in connection with the arrest, processing, and transportation of those accused of simple marijuana possession; and

WHEREAS, O.C.G.A. § 36-32-6 grants municipal courts concurrent jurisdiction “to try and dispose of cases where a person is charged with the possession of one ounce or less of marijuana if the offense occurred within the corporate limits of such municipality”; and

WHEREAS, enactment of an ordinance concerning the offense of simple marijuana possession is further intended to prevent people from entering the criminal justice system and avoiding the enduring stigma associated therewith.

NOW THEREFORE, the Mayor and Commission of Athens-Clarke County, Georgia, hereby ordains and orders that the Code of Ordinances of Athens-Clarke County shall be amended as follows:

SECTION 1

Section 3-2-25 entitled “*Reserved*” of the Code of Athens-Clarke County, Georgia is hereby deleted in its entirety and the following new section is inserted in lieu thereof:

“Sec. 3-2-25. Possession of Marijuana

- (a) It shall be unlawful for any person to possess or have under their control within the limits of Athens-Clarke County one (1) ounce or less of marijuana.
- (b) For the purposes of this section the term “marijuana” shall mean all parts of the plant of genus cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation or such plant, its seeds or resin; but shall not include samples as described in subparagraph (P) of paragraph (3) of O.C.G.A. § 16-13-25; and shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake, or the completely sterilized samples of seeds of the plant which are incapable of

- germination; and shall not include hemp or hemp products as defined in O.C.G.A. S 2-23-3 subparagraph (5) and (6).
- (c) Any person found guilty of violating this section shall be punished by a fine of \$35.00.”

SECTION 2

This ordinance shall take effect immediately after passage.

SECTION 3

If any section, subsection, subdivision, sentence, clause, phrase or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this ordinance shall be and remain in full force and effect.

SECTION 4

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 5

The Clerk of Commission, in consultation with the County Attorney, shall have the power to correct scrivener’s errors.

SO ORDERED AND ORDAINED this ___ day of _____, 2022.

**THE UNIFIED GOVERNMENT OF ATHENS-
CLARKE COUNTY, GEORGIA**

Kelly Girtz, Mayor

Attest: _____
Jean Spratlin, Clerk of Commission

Marijuana Possession Decriminalization Ordinance
Commission-Defined Option (CDO)

Athens-Clarke County Mayor and Commission
(Commissioners Houle, Parker, Denson)

August 2, 2022

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WHEREAS, enactment of an ordinance concerning the offense of simple marijuana possession within Athens-Clarke County limits is intended to enhance public safety and eliminate costs by reducing the amount of time police officers spend in connection with the arrest, processing, and transportation of those accused of simple marijuana possession; and

WHEREAS, the Mayor and Commission wish to discourage the use of criminal penalties regarding the offense of simple marijuana possession and provide for civil alternatives; and

WHEREAS, the Mayor and Commission find that enforcement of the State laws prohibiting simple marijuana possession has been inequitable and has fallen disproportionately on certain subsets of the population; and

WHEREAS, arrest and/or conviction for the State law offense of simple marijuana possession presents employment obstacles which marginalize broad swaths of the population; and

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(c) Any person found guilty of violating this section shall be punished by a fine of \$1.00.”

SECTION 2

Violation of this ordinance shall not constitute probable cause for violation of any other law.

SECTION 3

This ordinance shall take effect immediately after passage.

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GEORGIA
PUBLIC
DEFENDER
COUNCIL

WESTERN JUDICIAL CIRCUIT PUBLIC DEFENDER OFFICE

440 College Avenue • Suite 220 Athens, Georgia 30601 • Telephone 706-369-6440 • Facsimile 706-369-6444

John W. Donnelly
Circuit Public Defender

June 24, 2022

Dear Athens-Clarke County Commissioners:

I am writing regarding the pending local legislation concerning marijuana possession.

As I understand it, one proposal is to add language stating that, while the possession of marijuana will violate a county ordinance, such conduct should not be used by police as grounds for a more generalized search of their person or property.

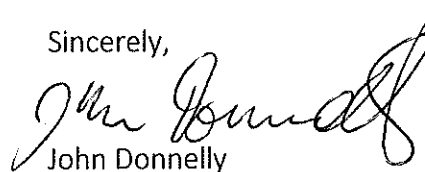
For a variety of reasons, many poorly understood, the jail remains full and the criminal courts stay busy, mostly with low-income residents. One prominent area of scrutiny in a criminal case concerns police searches of an arrestee's clothing, bag or car. To do our job properly, we routinely assert our clients' constitutional rights to be free from improper government intrusion and inspection of their property. In this spirit, I support inclusion of language in the marijuana ordinance stating that a violation of the ordinance shall not be considered probable cause for violation of any other law.

There is precedent. The same language appears in the State criminal code so it has already been considered and approved by the Georgia legislature. The code section making failure to use a seatbelt a traffic offense contains the exact language. O.C.G.A. §40-8-76.1.

Including this language doesn't direct a police officer to ignore some evidence of a separate crime, if that evidence is readily observable in the course of issuing a citation. Nor does the language violate the separation of powers. Any question over the existence of "probable cause" would still need to be litigated in a courtroom and ruled on by the presiding judge.

The language seems primarily to be a policy statement in furtherance of minimizing the state's involvement in people's lives who possess marijuana.

Sincerely,



John Donnelly

JD/jm

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**THE UNIFIED GOVERNMENT OF ATHENS-
CLARKE COUNTY, GEORGIA**

Kelly Girtz, Mayor

Attest: _____
Jean Spratlin, Clerk of Commission

Legislative Review Committee Commission Report

SUBJECT: LRC Report: Possession of Marijuana Local Ordinance

DATE: June 14, 2022

PURPOSE: This report provides the Mayor and Commission with a recommendation from the Legislative Review Committee regarding marijuana penalty options that could be embedded in local ordinance as an alternative to state charges.

HISTORY:

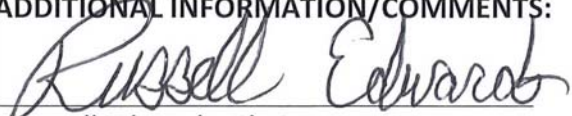
1. On February 1, 2022, Mayor Girtz assigned to the Legislative Review Committee (LRC) the topic, "Examine marijuana penalty options that could be embedded in local ordinance as an alternative to state charges."
2. The LRC discussed this topic at its February 3, 2022, meeting and requested staff provide information on what other municipalities in Georgia have done regarding misdemeanor marijuana possession charges in local ordinance as well as data from the Athens-Clarke County Police Department (ACCPD) on arrests and simple possession charges.
3. At the March 3, 2022, meeting, the LRC reviewed a comparative analysis of nine municipalities within Georgia and data from ACCPD. Solicitor General C.R. Chisholm shared an overview of pros and cons for adopting a local marijuana ordinance. He shared that, under the State of Georgia's 2019 Georgia Hemp Farming Act, misdemeanor marijuana cases are not currently prosecutable, because ACCGov does not have the testing capability required to distinguish between hemp and marijuana. Circuit Public Defender John Donnelly also shared his thoughts with the Committee and expressed support for a local misdemeanor marijuana ordinance.
4. At the May 12, 2022, meeting, the LRC continued discussion of the topic. The committee voted to request staff to bring back to the Committee an ordinance draft that considers Section III of the City of Tybee ordinance, the definition of marijuana used in the City of Doraville ordinance, and sets the penalty at \$1. The motion passed 3-2, with Commissioner Thornton and Commissioner Wright opposed.
5. At the June 9, 2022, meeting, the LRC reviewed the draft possession of marijuana ordinance. The Committee voted unanimously to remove section 1 - item d and the word "young" from the recitals section in the draft ordinance. The Committee also agreed to modify the word "his" to "their" in section 1 – item a.

The Committee voted unanimously to recommend the draft ordinance to the full Mayor and Commission with the understanding that a CDO might come forward.

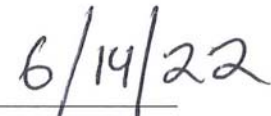
RECOMMENDATIONS:

The Legislative Review Committee recommends adopting the ordinance for misdemeanor marijuana possession, as outlined in **Attachment #1**.

ADDITIONAL INFORMATION/COMMENTS:



Russell Edwards, Chair
Legislative Review Committee



Date:

ATTACHMENTS:

Attachment #1: Possession of Marijuana Ordinance