



AGENDA REPORT

Meeting Date: October 24, 2022

Meeting Type: City Council Conference Meeting

Submitted By: Melissa Moore, City Clerk/Communications Manager

Title

Recodification Update

Background

Pursuant to Minnesota Statute § 415.02 and Fridley City Charter (Charter) § 1.02, the Fridley City Council (Council) may codify and publish ordinances that carry the force and effect of law for the City of Fridley (City), which may be arranged into a system generally referred to as the Fridley City Code (Code).

On August 23, 2021 the Council authorized and directed efforts related to recodification of the Code by adopting Resolution No. 2021-67. Following the process established by the City Manager for revising each chapter of the Code, staff are prepared to offer an update to the work being done on Title 3 (Health, Safety, and Welfare) of the Code.

Public Meetings

As in 2022 the Council established pre-planned Conference Meeting dates at which it would receive an update on recodification from staff. The following dates are proposed for 2023:

- January 23
- March 27
- May 22
- July 24
- September 25
- November 27.

Process Review

When approved by the Council, recodification was expected to take approximately three years to complete. Just over one year into the project, the City has completed the first two titles (General Provisions and Administration). With the benefit of time and experience, the Clerk's Office has plans to evaluate the project's processes to look for any potential process improvements. The Clerk's Office is working to create surveys of staff collaborating on recodification to gauge the project's successes and areas for improvement. Process improvements will be collaborated on and implemented. Continuous training of staff will also be addressed in such areas as writing style, document formatting, research best practices, etc.

Vision Statement

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.

Title 3 Update

In July the City Clerk’s Office began coordinating with staff from the Community Development, Public Safety, Public Works, and City Manager’s Office to begin work on the chapters of Title 3. Staff are reviewing State and federal laws, analyzing comparative city codes, consulting advisory opinions and legal reviews pertaining to all chapters in Title 3.

Chapters to be reviewed in Title 3 are:

- Drugs and Paraphernalia
- Barbiturate Drugs
- Glues and Related Substances
- Codeine Drugs
- Disposition of Certain Property
- Sexually Oriented Businesses
- Trespass on Private Property
- Civil Defense
- False Alarms
- Public Safety Department
- Curfew
- Fire Prevention
- Dangerous Weapons
- Fire Department Service Charges
- Liquor Consumption and Display
- Animal Control
- Boats and Watercraft
- Snowmobiles
- Public Sanitation Facilities
- Air Quality and Solid Waste
- Solid Waste Disposal and Recycling Collection

At this time staff are prepared to present the Council with a draft of a new chapter to the Code titled Drugs, Paraphernalia, and Prohibited Substances (Exhibit A). Minnesota Statute Chapter 152 addresses controlled substances in a very thorough manner and is the chapter of State law most typically cited by Police Officers when issuing violations.

As required by the City’s Recodification Style Guide, § XX.01 is a purpose statement followed by § XX.02, which adopts definitions found in State law. Section XX.03 outlines what acts are prohibited by the Code:

- § XX.03 (1) is a comprehensive way to prohibit the same controlled substances or behavior already addressed by State law;
- § XX.03 (2) prohibits drug paraphernalia and injection devices;
- § XX.03 (3) updates the Code’s language to require people to keep prescription drugs in their original containers;
- § XX.03 (4) addresses glues and inhalants used as a controlled substance;
- § XX.03 (5) prohibits the possession of substances listed in § XX.03 (4); and
- § XX.03 (6) restricts retail establishments from selling any products listed in § XX.03 (4) from a self-service display.

Section XX.04, Penalties, is standard language found in other chapters of the Code.

This new proposed chapter would replace the four chapters of the Code dealing with controlled substances:

- Chapter No. 117, Drugs and Paraphernalia (Exhibit B);
- Chapter No. 118, Barbiturate Drugs (Exhibit C);
- Chapter No. 119, Glues and Related Substances (Exhibit D); and
- Chapter No. 120, Codeine Drugs (Exhibit E).

Staff recommend repeal of these four chapters.

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Chapter 102 of the Code (Public Safety Department) is proposed to be removed (Exhibit F). The Chapter creates the Public Safety Department for the City, describes its roles, responsibilities, organizational structure, and creates the role of Director of Public Safety. Reasons for staff's recommendation for repeal include:

- No other department in the City is created by ordinance for placement in the Code;
- There is no requirement in State law or the Fridley City Charter that creating such a department must be done by ordinance;
- M.S. § 12.25 requires each city to establish an organization for emergency management, but does not direct how a city must go about doing so; and
- Creating such administrative departments, or structure of the City via ordinance, is not the most efficient or cost-effective method.

Exhibit G is a sample resolution created by the Clerk's Office that the Council could consider adopting that essentially does the same function as Chapter 102. Repealing this chapter and adopting a similar resolution would have no bearing on the role, status, structure, authority, or budget of the Public Safety Department.

Attachments and Other Resources

- Exhibit A: Draft of Chapter X, Drugs, Paraphernalia, and Prohibited Substances
- Exhibit B: Chapter No. 117, Drugs and Paraphernalia
- Exhibit C: Chapter No. 118, Barbiturate Drugs
- Exhibit D: Chapter No. 119, Glues and Related Substances
- Exhibit E: Chapter No. 120, Codeine Drugs
- Exhibit F: Chapter 102, Public Safety Department
- Exhibit G: Sample resolution

Vision Statement

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Fridley City Code
Chapter X Drugs, Paraphernalia, and Prohibited Substances

XX.01 Purpose

The purpose of this Chapter is to protect and promote the public health, safety, and general welfare of citizens within the City of Fridley (City) by deterring the use and availability of drugs, paraphernalia, and prohibited substances.

XX.02 Definitions

The definitions listed in Minnesota Statute (M.S.) § 152.01 are hereby adopted.

XX.03 Prohibited Acts

1. It is unlawful for any person to grow, cultivate, manufacture, possess, constructively possess, sell, give away, barter, exchange, distribute, or otherwise transfer any controlled substance, except on a lawful prescription by a person licensed by law to prescribe and administer controlled substances.
2. It is unlawful for any person to manufacture, possess, constructively possess, sell, give away, barter, exchange, distribute, or otherwise transfer any equipment, products, or materials of any kind, except those items used in conjunction with permitted uses of controlled substances under M.S. § Chapter 152 or the Uniform Controlled Substances Act, which are knowingly or intentionally used primarily in:
 - (a) Manufacturing a controlled substance
 - (b) Injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance
 - (c) Testing the strength, effectiveness, or purity of a controlled substance, except for products that detect the presence of fentanyl or a fentanyl analog in a controlled substance
 - (d) Enhancing the effect of a controlled substance.
3. It is unlawful for any person to possess any controlled substance in any container other than the original container in which it was delivered and bearing the pharmacist's original label identifying the prescription, until such controlled substance is used in accordance with such prescription.
4. It is unlawful for any person to inhale, breathe, drink, be or become intoxicated by reason of inhaling, breathing or drinking any substance commonly known as glue, adhesive, cement,

mucilage, dope, solvents, lacquer, drugs, fingernail polish and lacquer, nail polish remover or thinners for the above named substances, canned air, gas dusters, or any substances containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, difluoroethane, nitrous oxide, or any other substance which contains ketones, aldehydes, organic acetates, ether, chlorinated-hydrocarbons, or any other similar ingredient which releases toxic vapors for the purpose of inducing symptoms of intoxication, elation, excitement, confusion, dizziness, paralysis, irrational behavior, or in any manner change, distort or disturb the balance, coordination or the audio, visual or mental processes.

5. It is unlawful for any person to, for the purpose of violating or aiding another to violate any provision of this chapter, intentionally possess, buy, sell, transfer possession, or receive possession of any substances containing the substances defined in § XX.03 (4).

6. It is unlawful for any retail establishment selling products containing the intoxicating substances defined in § XX.03 (4) to sell such products from a self-service display.

XX.04 Penalties

Any violation of this Chapter is a misdemeanor and is subject to all penalties provided for such violation under the provisions of Chapter 204 of this Code.

FRIDLEY CITY CODE
CHAPTER 17. DRUGS AND PARAPHERNALIA
(Ref. 527)

117.01. POSSESSION OF DRUGS RESTRICTED

No person shall possess, sell, distribute, administer, dispense, furnish, use or prescribe any cocaine or opium or any of their derivatives, or any cannibus indica or cannibus sativa or marijuana, or any of their derivatives (hereinafter called "drugs"), except as provided in Section 117.02.

117.02. DOCTORS TO COMPLY WITH FEDERAL LAW

Any manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, public or private hospital, sanitarium or institution maintained or conducted in whole or in part for the treatment of disability or disease or inebriety or drug addiction, may purchase, receive, possess, sell, distribute, prescribe, administer or dispense such drugs provided all the provisions and requirements of the Act of Congress of December 17, 1914, known as the Harrison Narcotic Law, as the same exists and may be amended, have been complied with.

117.03. POSSESSION OF INJECTION IMPLEMENTS

No person, except dealers in surgical instruments, apothecaries, physicians, dentists, veterinarians, nurses, attendants and interns of hospitals, sanitariums or any other institution in which persons are treated for disability or disease, shall at any time have or possess any hypodermic syringe or needle or any instrument or implement adapted for the use of cocaine or narcotic drugs by subcutaneous injections and which is possessed for that purpose, unless such possession be authorized by the certificate of a physician issued within a period of one (1) year prior to any time of such possession.

117.04. POSSESSION OF OPIUM-SMOKING PARAPHERNALIA PROHIBITED

No person shall use, possess or have under his or her control for use any stem, bowl, lamp, yen hock or other opium-smoking paraphernalia or accessories used for smoking or inhalation of opium.

117.05. DISTRIBUTORS EXCEPTED

The provisions of Sections 117.01, .02, .03 and .04 shall not apply to common carriers or persons engaged in the business of operating a warehouse or their employees engaged in lawful distribution or storage of the drugs and materials mentioned in said sections, or to public officers or employees while engaged in the performance of their official duties, or to the temporary incidental possession thereof by employees or agents of persons lawfully entitled to such possession.

117.06. MENACE TO PUBLIC WELFARE

Any possession, sale, distribution, prescription, administration, dispensation or use of such drugs, injection implements, or opium-smoking paraphernalia contrary to the provisions of this Chapter is hereby declared to be dangerous to the public health and a menace to the public welfare.

117.07. FRAUDULENT RECEIPT OF DRUGS

No person shall fraudulently obtain any such drugs by any deceit, misrepresentation, subterfuge or concealment of material fact or the use of a false name or address in order to obtain treatment in the course of which such drugs may be prescribed.

117.08. PENALTIES

Any violation of this Chapter is a misdemeanor and is subject to all penalties provided for such violation under the provisions of Chapter 901 of this Code.

FRIDLEY CITY CODE
CHAPTER 118. BARBITURATE DRUGS
(Ref. 528)

118.01. DEFINITIONS

1. Prohibited Drug.

A. Barbitol and any derivative thereof including, but not limited to, the following: diethylbarbituric acid; anynalkyl, aryl, metallic or a halogenated derivative of barbituric acid; veronal (barbitone); seasonal; total; dial; neonal (soneryl); sandoptal; amytal; phenobarbital (luminal); phandorn; noctal; allonal (which contains allylisopropylbarbituric acid in combination with amidopyrine); medianl; and any preparation, mixture or other substance containing any of the foregoing substances.

B. Amphetamine and any derivatives thereof including, but not limited to, such substances as follows: desoxyephedrine (methamphetamine) mephentermine, pipradol, phenmetrazine, methyphendiate or any salt mixture or optical isomer which has a stimulating effect on the central nervous system.

2. Deliver.

To sell, offer for sale, barter, exchange, administer, dispense, give away, distribute, or supply in any other manner. The term deliver as herein defined shall include the attempt to do such acts as well as the actual completed commission thereof.

3. Patient.

As the case may be: (1) The individual for whom a prohibited drug is prescribed or to whom a prohibited drug is administered; or (2) The owner or agent of the owner of any animal for which a prohibited drug is prescribed or to which a prohibited drug is administered.

4. Person.

An individual, corporation, partnership or association.

5. Practitioner.

A person licensed by law to prescribe and administer any of the prohibited drugs as defined above.

6. Pharmacist.

A person duly licensed and registered with the Minnesota State Board of Pharmacy as a registered pharmacist.

7. Prescription.

A written or oral order by a practitioner to a pharmacist for a prohibitive drug or stimulant for a particular patient, which specifies the date of its issue, the name and address of such practitioner, the name and address of the patient (and, if such barbituate or stimulant is prescribed for an animal, the species of such animal), the name and quantity of the prohibited drug prescribed, the directions for use of such drug, and in the case of a written order, the signature of such practitioner. An oral order by a practitioner for a prohibited drug must be promptly reduced to writing by the pharmacist

8. Manufacturer.

Persons other than pharmacists who prepare drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process.

9. Wholesaler.

Persons engaged in the business of distributing prohibited drugs to persons included in any of the classes named in Section 118.03.

10. Warehouse Operator.

Persons who store prohibited drugs for others and who have no control over the disposition of such prohibited drugs or stimulants except for the purpose of such storage.

118.02. UNLAWFUL POSSESSION, DELIVERY OR PURCHASE

It is unlawful for any person to have in possession, purchase, or to deliver, any prohibited drug, as defined in Section 118.01 hereof, except on a lawful prescription by a practitioner.

118.03. EXCEPTED LAWFUL BUSINESSES AND PROFESSIONS

Section 118.02 of this Chapter shall not apply to the following in the ordinary course of their trade, business or profession provided, however, this exception shall not be a defense to the doing of acts prohibited in Section 118.02 or 118.04 hereof.

1. Practitioners.
2. Pharmacists.
3. Manufacturers.
4. Pharmacists as manufacturers.
5. Wholesalers.

6. Warehouse Operator.
7. Person engaged in transporting such prohibited drugs as agent or employee of a practitioner, pharmacist, manufacturer, warehouse operator, wholesaler or common carrier.
8. Public officers or public employees in the performance of official duties requiring possession or control of such prohibited drugs, or persons aiding such officers or employees in the performance of such duties.
9. Any patient as herein defined with respect to procuring, possession and use of a prohibited drug in accordance with the terms of a prescription and prescribed treatment.
10. Persons who procure, possess or use such drugs for the purpose of lawful research, teaching or testing, and not for sale
11. Lawfully licensed and registered hospitals or bona fide institutions wherein sick or injured persons are cared for and treated, or by bona fide hospitals for the treatment of animals.

118.04. UNLAWFUL PROCUREMENT, PURCHASE, DELIVERY OR POSSESSION

No person shall possess, control, purchase, or deliver a prohibited, drug, or attempt to do any of the same, by any of the following:

1. Fraud, deceit, misrepresentation or subterfuge.
2. The forgery or alteration of a prescription.
3. The concealment of a material fact.
4. The use of a false name or the giving of a false address.
5. Making a false statement in any prescription, order, report, or record relative to a prohibited drug.
6. Falsely assuming the title of, or falsely representing any person to be a manufacturer, wholesaler, warehouse operator, pharmacist, practitioner or other person described in Section 118.03.
7. Making, issuing or uttering any false or forged prescription.

118.05. CONFISCATION AND DISPOSITION

Any prohibited drugs found in the possession of any person convicted of a violation of this Chapter shall be confiscated and shall be forfeited to the Chief of Police who shall make proper and timely disposition thereof by destroying them.

118.06. USE OF ORIGINAL CONTAINERS AND LABELS REQUIRED

Any person having possession of any prohibited drugs by lawful prescription of a practitioner, while such prohibited drugs are lawfully in such person's possession, shall keep such prohibited drugs in the original container in which they were delivered until used in accordance with such prescription, and shall not remove the pharmacist's original label identifying the prescription from such original container.

118.07. PENALTIES

Any violation of this Chapter is a misdemeanor and is subject to all penalties provided for such violation under the provisions of Chapter 901 of this Code.

FRIDLEY CITY CODE
CHAPTER 119. GLUES AND RELATED SUBSTANCES
(Ref. 529)

119.01. PURCHASE, SALE AND POSSESSION

The inhaling, breathing or drinking of certain substances, commonly known as glue, is prohibited and the purchase, sale and possession thereof are regulated as follows:

1. Inhaling, Breathing, Drinking of Certain Substances Prohibited.

No person shall inhale, breathe, drink, be or become intoxicated by reason of inhaling, breathing or drinking any substance commonly known as glue, adhesive, cement, mucilage, dope, solvents, lacquer, drugs, fingernail polish and lacquer, nail polish remover or thinners for the above named substances, or any substances containing toluol, hexane, trichloroethylene, acetone, touene, ethyl acetate, methyl ethyl ketone, trichoroathane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance which contains ketones, aldehydes, organic acetates, ether, chlorinated-hydrocarbons, or any other similar ingredient which releases toxic vapors for the purpose of inducing symptoms of intoxication, elation, excitement, confusion, dizziness, paralysis, irrational behavior, or in any manner change, distort or disturb the balance, coordination or the audio, visual or mental processes.

2. Purchase, Sale or Possession Regulated.

No person shall, for the purpose of violating or aiding another to violate any provisions of this Chapter, intentionally possess, buy, sell, transfer possession or receive possession of any glue containing the intoxicating substances listed in Section 119.01.1.

3. Self-service Display Prohibited.

Retail establishments selling glue containing the intoxicating substances defined in Section 119.01.1 shall not sell such glue from a self-service display

119.02. PENALTIES

Any violation of this Chapter is a misdemeanor and is subject to all penalties provided for such violation under the provisions of Chapter 901 of this Code.

FRIDLEY CITY CODE
CHAPTER 120. CODEINE DRUGS
(Ref. 530)

120.01. REGULATION OF SALE AND POSSESSION

The sale and possession of codeine shall be regulated as follows:

1. Sales of Codeine Prohibited. No person shall administer, dispense, sell, barter, exchange, offer for sale, give away, distribute, deliver or supply, in any manner, when that person knows or can with reasonable diligence ascertain that such acts will provide more than six grains of codeine, or any of its salts, within forty-eight (48) consecutive hours to the person to whom or for whose use preparation is administered, dispensed, sold, bartered, exchanged or offered for sale except pursuant to a lawful prescription issued by a practitioner duly licensed under the laws of the State of Minnesota.

2. Purchase and Possession Prohibited.

No person shall, within forty-eight (48) consecutive hours, purchase or have in his or her possession more than six grains of codeine or any of its salts, except pursuant to a lawful prescription issued by a practitioner duly licensed under the laws of the State of Minnesota.

120.02. PENALTIES

Any violation of this Chapter is a misdemeanor and is subject to all penalties provided for such violation under the provisions of Chapter 901 of this Code.

FRIDLEY CITY CODE
CHAPTER 102. PUBLIC SAFETY DEPARTMENT

(Ref. 33, 504, 575, 605, 641, 791, 1018, 1168, 1250, 1346; 1359
and Resolutions adopted January 7, 1952 and August 4, 2017)

102.01. CREATION.

There is hereby created a Public Safety Department for the City of Fridley.

102.02. PURPOSE

The Public Safety Department shall be responsible for the equal protection of all persons and property, fair and just enforcement of all applicable laws of the State of Minnesota and ordinances of the City, prevention of fires, removal of fire hazards, rendering of firefighting, preservation of the public peace and order, prevention and detection of crime, apprehension of offenders, rendering of Emergency Management Services, and development of education and training for employees, volunteers, and citizens of the City respecting matters involving in particular all the foregoing purposes, and in general, the safety and wellbeing of the community at large.

The Public Safety Department shall consist of a Police Department Division, a Fire Department Division and an Emergency Management Division.

1. Police Division. The Police Department Division consists of a Police Chief and such other members as may be determined from time to time. The Director of Public Safety may serve as Police Chief. The Police Chief and other personnel of the Police Department Division are appointed by the City Manager for an indefinite period. The Police Department Division shall be under the direct supervision of the Police Chief who shall be responsible to and under the direct supervision of the Director of Public Safety.
2. Fire Division. The Fire Department Division consists of a Fire Chief and such other subordinate officers and firefighters as may be determined from time to time. The Director of Public Safety may serve as Fire Chief. The Fire Chief and other personnel of the Fire Department Division are appointed by the City Manager for an indefinite period. The Fire Department Division shall be supervised by the Fire Chief who shall be responsible to and under the direct supervision of the Director of Public Safety.
3. Emergency Management Division. The Emergency Management Division consists of an Emergency Management Director who shall be responsible for the duties and responsibilities as specified in Chapter 106. The Emergency Management Director may be the Police Chief or Fire Chief and shall be appointed by the City Manager.

102.04. DIRECTOR OF PUBLIC SAFETY

The Public Safety Department shall be under the direction and supervision of a Director of Public Safety who shall be appointed by and subject to the supervision and direction of the City Manager.

102.05 DUTIES OF PUBLIC SAFETY

The Director of Public Safety shall be responsible to the City Manager and also serve as the City's Emergency Management Director. The Director of Public Safety will be responsible for all aspects of public safety including all fire and police activities relating to the fair and just enforcement of all laws; City Charter provisions, Minnesota Statutes, City ordinances and the preservation of justice, law and order in the City; the direction of Emergency Management activities within the City and the assignment of personnel within the Public Safety Department; developing and implementing procedures and policies pertaining to all fire and police activities; and developing selection procedures for personnel of the department with assistance from both the Police Chief and Fire Chief

Resolution No. 2022-XX**Establishing a Local Organization for Emergency Management, Designating the Public Safety Director, and Creates Organizational Structure of the Public Safety Department**

Whereas, Minnesota Statute (M.S.) § 12.25 requires the Fridley City Council (Council) to establish a local organization to perform emergency management functions; and

Whereas, the Fridley City Charter § 6.03 empowers the Council to create offices, departments, or divisions for the administration of the City's affairs; and

Whereas, M.S. § 12.25 subd. 1 requires the Council to designate a Director of Public Safety.

Now, therefore, be it resolved, that the City Council of the City of Fridley hereby creates the Public Safety Department for the City of Fridley that will be responsible for the equal protection of all persons and property, fair and just enforcement of all applicable laws of the State and ordinances of the City, prevention of fires, removal of fire hazards, rendering of firefighting, prevention of the public peace and order, prevention and detection of crime, apprehension of offenders, rendering of Emergency Management Services, and development of education and training for employees, volunteers, and citizens of the City and general safety and wellbeing of the community at large.

Be it further resolved, that the City Council of the City of Fridley hereby designates Brian Weierke as the Public Safety Director for the City of Fridley who shall be responsible to the City Manager, serve as the City's Emergency Management Director, and be responsible for all aspects of public safety including all fire and police activities

Be it further resolved, that the City Council of the City of Fridley hereby approves the following organizational structure and roles and responsibilities:

1. The Police Division will consist of a Police Chief and such other members as may be determined from time to time. The Director of Public Safety may serve as Police Chief. The Police Chief and other personnel of the Police Division are appointed by the City Manager for an indefinite period. The Police Division shall be under the direct supervision of the Police Chief who shall be responsible to and under the direct supervision of the Director of Public Safety.

2. The Fire Division will consist of a Fire Chief and such other subordinate officers and firefighters as may be determined from time to time. The Director of Public Safety may serve as Fire Chief. The Fire Chief and other personnel of the Fire Department Division are appointed by the City Manager for an indefinite period. The Fire Division shall be supervised by the Fire Chief who shall be responsible to and under the direct supervision of the Director of Public Safety.

3. The Emergency Management Division will consist of an Emergency Management Director who shall be responsible for the duties and responsibilities as specified in Chapter 106 of the Fridley City Code. The Emergency Management Director may be the Police Chief or Fire Chief and shall be appointed by the City Manager.

Passed and adopted by the City Council of the City of Fridley this [xx] day of [Month], [Year].

Scott J. Lund – Mayor

Attest:

Melissa Moore – City Clerk