



CITY OF SACRAMENTO

DEPARTMENT OF LAW  
812 TENTH ST. SACRAMENTO, CALIF. 95814  
SUITE 201 TELEPHONE (916) 449-5346

CITY MANAGER'S OFFICE  
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JAMES P. JACKSON  
CITY ATTORNEY  
THEODORE H. KOBEY, JR.  
ASSISTANT CITY ATTORNEY  
LELIAND J. SAVAGE  
DAVID BENJAMIN  
SAM JACKSON  
WILLIAM P. CARNAZZO  
SABINA ANN GILBERT  
STEPHEN B. NOCITA  
DEPUTY CITY ATTORNEYS

December 4, 1980

Honorable City Council  
Council Chamber  
City Hall  
Sacramento, CA 95814

RE: ORDINANCE PROHIBITING SALE AND  
DISPLAY OF DRUG PARAPHERNALIA

Members in Session:

SUMMARY

Councilman Dan Thompson has asked that the attached ordinance be submitted to the City Council. The ordinance would prohibit the sale and display of drug paraphernalia to all persons. The ordinance is scheduled to be passed for publication at the December 9th Council meeting and to be discussed and acted upon at the December 16th Council meeting.

BACKGROUND INFORMATION

The attached ordinance prohibits the sale and display of drug paraphernalia to all persons. It is similar in most respects to the ordinance adopted by the County of Sacramento. Minor changes have been made in the definition of "drug paraphernalia." The enforcement mechanics would include (a) creating "infractions" with progressive fines; (b) declaring a violating business a public nuisance which can be civilly abated; and (c) providing for revocation of the business operations license tax certificate of a violating business.

This item is scheduled to be passed for publication on December 9th and discussed and acted upon on December 16th.

Very truly yours,

*James P. Jackson*  
JAMES P. JACKSON  
City Attorney

FOR THE INFORMATION OF COUNCIL

*Mac McNeil Gov.*  
CITY MANAGER

**APPROVED**  
BY THE CITY COUNCIL

DEC 9 1980

OFFICE OF THE  
CITY CLERK

JPJ:mb  
attachment

12/4/80

ORDINANCE NO.

FOURTH SERIES

AN ORDINANCE OF THE CITY OF SACRAMENTO  
ADDING CHAPTER 70 TO THE SACRAMENTO  
CITY CODE RELATING TO THE DISPLAY  
AND DISTRIBUTION OF DRUG PARAPHERNALIA

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO AS FOLLOWS:

SECTION 1.

The Sacramento City Code is amended to add Chapter 70 to read as follows:

CHAPTER 70

DRUG PARAPHERNALIA

Sec. 70.100 Purpose.

The illegal use of controlled substances within the City of Sacramento creates serious social, medical and law enforcement problems. The illegal use of such substances by persons under 18 years of age has reached crisis dimensions. It is causing serious physical and psychological damage to the youth of this community, an impairment of educational achievement and of the efficiency of the educational system, increases in non-drug related crime, and a threat to the ability of the community to ensure future generations of responsible and productive adults - all to the detriment of the health, safety and welfare of the citizens of the City of Sacramento.

The proliferation of the display of drug paraphernalia in retail stores within the City, and the distribution of such paraphernalia intensifies and otherwise compounds the problem of illegal use of controlled substances within this community.

A ban only upon the display and distribution of drug paraphernalia to persons under 18 years of age would not be practical. The person who displays or distributes would not have to be concerned with the question of minority and who could lawfully view or receive drug paraphernalia. The already thinly staffed law enforcement agencies would be subjected to intolerable added enforcement burdens by adding age of a person who views or receives paraphernalia as an element of a prohibition upon display and distribution.

A significant number of high school students are 18 years of age or older. It would be unlawful to distribute paraphernalia to some students attending the same school in which the distribution to other students would be prohibited. Permitted display and distribution to adults within the community would symbolize a public tolerance of illegal drug use, making it difficult to explain the rationale of programs directed against similar abuse by youth. The problem of illegal consumption of controlled substances by adults within this community is significant and substantial, necessitating a cessation of the encouragement to drug abuse which the display and distribution of drug paraphernalia create.

This chapter is a measure which is necessary in order to discourage the illegal use of controlled substances within the City of Sacramento.

Sec. 70.101 Definitions.

As used in this chapter, the following terms shall be ascribed the following meanings:

(a) Business. "Business" means a fixed location, whether indoors or outdoors, at which merchandise is offered for sale at retail.

(b) Display. "Display" means to show to a patron or have in a manner so as to be available for viewing.

(c) Distribute. "Distribute" means to transfer ownership or a possessory interest to another, whether for consideration or as a gratuity. "Distribute" includes both sales and gifts.

(d) Controlled substance. "Controlled substance" means those controlled substances set forth in Sections 11054, 11055, 11056, 11057 and 11058 of the California Health and Safety Code, identified as Schedules I through V, inclusive, as said sections now exist or may hereafter be amended, renumbered or added to in any way.

(e) Drug paraphernalia. "Drug paraphernalia" means all equipment, products and materials of any kind which are intended by a person charged with a violation of this chapter for use in manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of any law of the State of California. "Drug paraphernalia" includes, but it not limited to, all of the following:

(1) Kits intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(2) Isomerization devices intended for use in increasing

the potency of any species of plant which is a controlled substance;

(3) Testing equipment intended for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

(4) Dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose used, intended for use or designed for use in cutting controlled substances;

(5) Separation gins and sifters intended for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;

(6) Blenders, bowls, containers, spoons and mixing devices intended for use in compounding controlled substances;

(7) Capsules, balloons, envelopes, and other containers intended for use in packaging small quantities of controlled substances;

(8) Containers and other objects intended for use in storing or concealing controlled substances; and,

(9) Objects intended for use in injecting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil 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) Carburetion tubes and devices;

(D) Smoking and carburetion masks;

(E) Roach clips, meaning objects used to hold

burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;

- (F) Miniature cocaine spoons, and cocaine vials;
- (G) Chamber pipes;
- (H) Carburetor pipes;
- (I) Air-driven pipes;
- (J) Bong.

In determining whether an object is "drug paraphernalia," a court or other authority may consider in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) The proximity of the object to controlled substances;
- (3) The existence of any residue of controlled substances on the object;
- (4) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver to persons whom he knows intend to use the object to facilitate a violation of the laws of the State of California relating to controlled substances.
- (5) Descriptive materials or instructions, written or oral, accompanying the object which explain or depict its use;
- (6) National and local advertising concerning its use;
- (7) The manner in which the object is displayed for sale, including its proximity to other objects falling within

the definition of drug paraphernalia.

(8) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;

(9) The existence and scope of legitimate uses for the object in the community; and,

(10) Expert testimony concerning its use.

(f) Person. "Person" means a natural person or any firm, partnership, association, corporation, or cooperative association.

Sec. 70.102 Display of Drug Paraphernalia

(a) Except as authorized by law, it shall be unlawful for any person to maintain or operate any business knowing or under circumstances where he should reasonably know that drug paraphernalia is displayed at such business.

(b) Except as authorized by law, it shall be unlawful for any person who is the owner of a business, an employee thereof or who works at such business as an agent of the owner, to willfully display drug paraphernalia at such business.

Sec. 70.103 Distribution of Drug Paraphernalia

Except as authorized by law, it shall be unlawful for any person to distribute to another person drug paraphernalia, knowing or under circumstances where he should reasonably know that it will be used to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of any law of the State of California.

Sec. 70.104 Exceptions

(a) This chapter shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes drug paraphernalia upon the prescription of a physician, dentist, podiatrist or veterinarian.

(2) Any physician, dentist, podiatrist or veterinarian who furnishes or prescribes drug paraphernalia to his or her patient.

(3) Any manufacturer, wholesaler or retailer licensed by the California State Board of Pharmacy to sell or transfer drug paraphernalia.

(b) No provision of this chapter shall be deemed, whether directly or indirectly, to authorize any act which is otherwise prohibited by any law of the State of California or require any act which is prohibited by any law of the State of California. Nor shall any provision of this chapter be deemed, whether directly or indirectly, to prohibit any act or acts which are prohibited by any law of the State of California.

Sec. 70.105 Violations

(a) Infraction

Any person who violates any provision of this chapter is guilty of an infraction, and upon conviction is punishable by (1) a fine not exceeding fifty dollars (\$50.00) for a first violation; (2) a fine not exceeding one hundred dollars (\$100.00) for a second violation within one year; (3) a fine not exceeding two hundred fifty dollars (\$250.00) for each additional violation within one year. A person who violates the provisions of Section 70.102(a) shall be deemed



to be guilty of a separate offense for each day or portion thereof, during which the violation continues.

(b) Public Nuisance

A violation of any provision of this chapter is declared to be a public nuisance subject to abatement pursuant to Section 731 of the Code of Civil Procedure or pursuant to the procedures specified in Chapter 61 of this Code.

(c) Business Operations Tax Certificate

Notwithstanding any provision contained in this Code to the contrary, violation of provisions of this chapter shall constitute grounds for revocation, suspension, or refusal to renew the business operations tax certificate of the person or entity violating this chapter. A criminal conviction or adverse judgment in a nuisance action shall not be required in order to establish a violation of this chapter for purposes of revocation, suspension or refusal to renew a business operations tax certificate pursuant to this subsection.

Any person or entity aggrieved by the actions of the City Manager in revoking, suspending or refusing to renew a business operations tax certificate pursuant to this subsection shall have the right to appeal to the City Council by filing with the City Clerk a written notice of appeal within ten (10) days of receipt of written notice of the City Manager's action. Upon receipt of the notice of appeal, the City Clerk shall transmit the notice to the City Council. In any appeal pursuant to this subsection, the provisions of Chapter 2, Article XIX, Section 2.320 et seq. shall govern the required context of the notice and proceedings on the appeal.

Sec. 70.106 Severability

The City Council hereby declares that it would have passed this ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that the provisions of this ordinance are severable and if for any reason any sentence, paragraph or section of this ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this ordinance.

SECTION 2.

(certification and publication)

PASSED FOR PUBLICATION:

ENACTED:

EFFECTIVE:

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MAYOR

ATTEST:

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CITY CLERK