

ORDINANCE NO. 81-042

AN ORDINANCE OF THE CITY OF SACRAMENTO REPEALING ORDINANCE NO. 4456, AND ORDINANCE NO. 81-040, AND 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

Effective June 27, 1981, Ordinance No. 4456, adopted December 16, 1980, and Ordinance No. 81-040, adopted May 28, 1981, are hereby repealed.

SECTION 2

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

CHAPTER 70
DRUG PARAPHERNALIA

APPROVED
BY THE CITY COUNCIL

JUN 2 - 1981

OFFICE OF THE
CITY CLERK

Sec. 70.100 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 Section 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 is 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 intended 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) Minature cocaine spoons, and cocaine vials;

(G) Chamber pipes;

(H) Carburetor pipes;

(I) Air-driven pipes;

(J) Bongs.

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. 70.101 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 wilfully display drug paraphernalia at such business.

Sec. 70.102 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 substances in violation of any law of the State of California.

Sec. 70.103 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. 70.104 Violations

(a) Misdemeanor

Any person who violates any provision of this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine not exceeding five hundred dollars (\$500.00). 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.

Sec. 70.105 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 3 Publication

This ordinance shall be published once within ten (10) days after its adoption by the City Council, in the official newspaper of the City of Sacramento.

SECTION 4 Emergency

This ordinance shall take effect on June 27, 1981, as an emergency measure. The facts constituting the emergency are that the repeal of Ordinance No. 4456 and Ordinance No. 81-040, which are respectively the minors only drug paraphernalia ordinance and the total ban drug paraphernalia ordinance, are repealed by this ordinance on June 27, 1981, which is the normal effective date of Ordinance No. 81-040. It is in the best interest and welfare of the citizens of the City of Sacramento that there be at all times an effective ordinance regulating the display and distribution of drug paraphernalia. Therefore, the effective date of this ordinance must coincide with the repeal of the two ordinances as set out above.

PASSED FOR PUBLICATION:

ENACTED:

EFFECTIVE:

ATTEST:

MAYOR

CITY CLERK