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City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: Drug Paraphernalia Ordinance

SUMMARY

Due to a recent Court of Appeal decision and some changes in the applicable state law, the City's "drug paraphernalia" ordinance, adopted in 1981, appears to be totally preempted. It is therefore recommended that the Council adopt the attached ordinance which repeals the City's drug paraphernalia ordinance.

BACKGROUND

In 1981, the City Council adopted ordinance No. 81-042, regulating the display and distribution of drug paraphernalia. This ordinance became Chapter 70, Sections 70.100 through 70.105, of the Sacramento City Code. At that time, the City Attorney issued a lengthy opinion,⁽¹⁾ expressing some doubt as to the validity of a "total ban" ordinance as opposed to one limited to display and distribution to minors only.

Since 1981, there have been a number of changes in the state law. These changes generally strengthen the state Penal Code regulations regulating display and distribution of drug paraphernalia.

The City of Escondido, in 1982, adopted an ordinance which:
(i) required any seller of drug paraphernalia to obtain a regulatory license; (ii) prohibited sale or giving drug paraphernalia

⁽¹⁾This opinion was dated May 21, 1981.

to a minor; and (iii) required maintenance of detailed records on each sale of such items. This ordinance was challenged by an owner of a bookstore which stocked and sold drug paraphernalia, on the ground that it was preempted by state law. The case reached the Court of Appeal (Fourth Appellate District), in A & B Cattle Co. v. City of Escondido, (1987) 192 Cal.App.3d 1032, where the Court held that:

...upon examining underlying legislative history, we conclude the Legislature's modification of its general statutory scheme through the addition of sections 11014.5 and 11364.7 shows its intent to establish a total ban on the manufacture and distribution of drug paraphernalia in California, so as to occupy the entire regulatory field to the exclusion of local legislation. 192 Cal.App.3d at p. 1040.

Thus, these enactments [the state statutes] prohibit the retailing of drug paraphernalia to both adults and minors. Therefore, the Legislature's formulating its statutory scheme and express intent to expand its regulation of drug paraphernalia to adults as well, show its intent to preempt the field of drug paraphernalia regulation to the exclusion of local ordinance. 192 Cal.App.3d at p. 1042.

Summarizing the Court's opinion, the recent Penal Code changes have resulted in a total ban in California on manufacture and distribution of drug paraphernalia, making it a misdemeanor to deliver, furnish, or transfer drug paraphernalia to any person, or to possess or manufacture it with the intent to deliver, furnish or transfer it to another. Because of this comprehensive regulatory scheme, the Court concluded that all local regulation regarding drug paraphernalia is preempted.

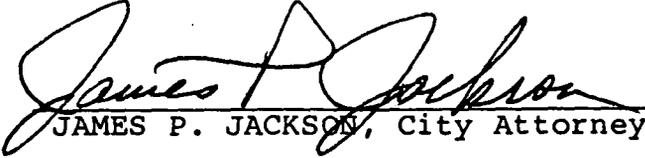
The City's ordinance has not been challenged. If it was, and if the court follows the holding in the Escondido case, the City's ordinance would be held invalid. Because the Court's reasoning in the Escondido case appears to be sound, its holding would likely be followed.

RECOMMENDATION:

Due to a recent Court of Appeal decision and some changes in the applicable state law, the City's "drug paraphernalia" ordinance, adopted in 1981, appears to be totally preempted.

It is therefore recommended that the Council adopt the attached ordinance which repeals the City's drug paraphernalia ordinance.

Respectfully submitted,


JAMES P. JACKSON, City Attorney

ALL DISTRICTS

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

AN ORDINANCE REPEALING CHAPTER 70 OF
THE SACRAMENTO CITY CODE, RELATING TO
REGULATION OF DRUG PARAPHERNALIA

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

SECTION 1.

Sections 70.100 through 70.105 of Chapter 70 of the Sacramento City Code, relating to regulation of display and distribution of drug paraphernalia, are hereby repealed as of the effective date of this ordinance.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK