



CITY OF SACRAMENTO

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CITY MANAGER'S OFFICE  
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December 4, 1980

Honorable City Council  
Council Chamber  
City Hall  
Sacramento, CA 95814

RE: ORDINANCE PROHIBITING SALE AND DISPLAY  
OF DRUG PARAPHERNALIA TO MINORS

Members in Session:

SUMMARY

Councilman Blaine Fisher has asked that the attached ordinance be presented to the City Council. The ordinance would prohibit the sale of drug paraphernalia to minors. It would specify that a business which does sell paraphernalia must display it in a separate, posted and enclosed area from which minors are excluded unless accompanied by a parent or guardian. The ordinance is scheduled to be passed for publication on December 9th and discussed and acted upon on December 16th.

BACKGROUND INFORMATION

The attached ordinance would prohibit the sale of drug paraphernalia to minors. It would specify that a business which does sell paraphernalia must display it in a separate, posted and enclosed area from which minors are excluded unless accompanied by a parent or guardian. Senate Bill 1660 which will become effective on January 1, 1981 expressly authorizes cities to adopt ordinances regulating the sale and display of drug paraphernalia to minors.

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 McLean* for:  
CITY MANAGER

**APPROVED**  
BY THE CITY COUNCIL

DEC 9 1980

OFFICE OF THE  
CITY CLERK

JPJ:mb  
attachment

ORDINANCE NO.

FOURTH SERIES

AN ORDINANCE OF THE CITY OF SACRAMENTO  
ADDING CHAPTER 70 TO THE SACRAMENTO CITY  
CODE RELATING TO THE DISPLAY AND SALE TO  
MINORS 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 and Findings.

The illegal use of controlled substances by persons under 18 years of age within the City of Sacramento constitutes a serious law enforcement problem.

Illegal use of controlled substances by minors causes physical and psychological damage to the youth of the City of Sacramento, and impairs their educational achievement as well as the efficiency and efficacy of the local educational system as a whole. It also causes increases in local dependency-originated (non-drug related) crime, and threatens the ability of the community to insure future generations of responsible and productive adults.

Drug paraphernalia retail outlets have proliferated within the City, so that openly visible displays of such paraphernalia are readily accessible to minors. Vendors place such paraphernalia in areas frequented by and which have a special attraction for minors, such as record stores. Such openly visible displays tend to convey an impression of legitimacy of lifestyles involving illegal usage of

drugs. This effect is compounded by the implied endorsement of the merchant vendor. This proliferation, open display and the impression of legitimacy created thereby compounds, intensifies, aids and abets the problem of illegal use of controlled substances within the City.

This chapter is a measure which is designed to address the uniquely local problem of protecting the City's youth by discouraging the availability, acceptance and illegal use of controlled substances by youth.

Sec. 70.101 Definitions.

As used in this chapter, the following words, phrases and terms shall have the following meanings:

(a) 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;

(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) Director 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) Director 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.

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

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

(d) Sell. "Sell" means any form of transfer of possession or delivery, whether with or without consideration.

(e) Minor. "Minor" means any person under 18 years of age.

(f) 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.

(g) Enclosure. "Enclosure" shall mean floor space, the physical access to which is restricted and the interior of which is not subject to view by a patrol from the outside.

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

Sec. 70.102 Maintenance and Display of Drug Paraphernalia.

(a) It shall be unlawful for any person to maintain or operate any place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away unless such drug paraphernalia are completely and wholly kept, displayed or offered within a separate room or enclosure from which persons under the age of 18 who are not accompanied by a parent or legal guardian are excluded. Each entrance to such a room or enclosure shall be sign-posted in reasonably visible and legible words to the effect that minors, unless accompanied by a parent or legal guardian, are excluded.

(b) It shall be unlawful for any owner, manager, proprietor, or other person in charge of any room or enclosure, within any place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away to permit or allow any person under the age of 18 years to enter, be in, remain in, or visit such room or enclosure unless such minor is accompanied by one of his or her parents or by his or her legal guardian.

(c) It shall be unlawful for any person under the age of 18 years to enter, be in, remain in, or visit any room or enclosure in any place of business which has been sign-posted in the manner prescribed by subsection (a) of this section, unless accompanied by one of his or her parents or by his or her legal guardian.

Sec. 70.103 Application of Section 70.102

The provisions of subsection (a) of Section 70.102 shall not apply to any person unless that person maintains or operates a place of business in which drug paraphernalia is kept, displayed, or offered in any manner with intent to deliver, sell, furnish, transfer or give away, knowing or under circumstances where he or she should reasonably know that it will be used to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, replace, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human system a controlled substance in violation of any law of the State of California. The provisions of subsection (b) of Section 70.102 shall not apply to any owner, manager, proprietor or other person in charge of any room or enclosure within any place of business in which drug paraphernalia is kept, unless the drug paraphernalia is required by the provisions of subsection (a) of Section 70.102 to be kept, displayed or offered within such separate room or enclosure.

Sec. 70.104 Sale to Minors Prohibited.

It shall be unlawful for any person to deliver, sell, furnish, transfer or give away to a minor any drug paraphernalia, knowing or under circumstances where he or she reasonably should 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. 70.105 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. 70.106 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. 70.107 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