

Chapter 8.29 DRUG PARAPHERNALIA

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8.29.010 Findings.

The illegal use of controlled substances within the city creates serious social, medical and law enforcement problems, and constitutes a nuisance hazardous to the health, and welfare of the citizens of the city. It is causing serious physical and psychological damage to the youth of this community, an impairment of education 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 Tacoma. The proliferation of the display of drug paraphernalia in stores within the City, and the manufacture, distribution, and sale of such paraphernalia, intensifies and otherwise compounds the problem of illegal use of controlled substances within this community

8.29.020 Intent and Purpose.

A. The city council has become aware of and concerned over the general proliferation of establishments engaged in the sale of paraphernalia associated with drug use. Therefore, the city council did heretofore adopted Ordinance 22182, in 1980, regulating the display of drug paraphernalia to minors. However, the city council now finds that the prior ordinance has been ineffective and the continued proliferation of drug paraphernalia and illegal use of controlled substances by all persons, especially those under 18 years of age, requires further legislation on the subject.

B. The display of drug paraphernalia in 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 eighteen (18) years of age has not proven practical. A person who displays or

distributes would have difficulty determining who could lawfully view or receive drug paraphernalia.

C. Law enforcement agencies would be subjected to 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 eighteen (18) years of age or older. It would be lawful to display and distribute paraphernalia to some students attending the same school in which the display or 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 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.

D. This chapter is a measure which is necessary in order to discourage the illegal use of controlled substances within the community. Therefore, it is the purpose and intent of the council to introduce this measure banning the manufacture, distribution, display and sale of drug paraphernalia in order to discourage the illegal use of controlled substances within the city

8.29.010 Definitions.

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

“Business” means any location, whether indoors or outdoors, at which merchandise is offered for sale.

“Controlled substance” means those controlled substances set forth in the Revised Code of the state of Washington or the United States Code as such now exist or may hereafter be amended.

“Display” means to show to a patron or place in a manner so as to be available for viewing or inspection by a patron.

“Distribute” means to transfer ownership or a possessory interest to another, whether for consideration, as a gratuity, for consignment, or otherwise. “Distribute” includes both sales and gifts.

“Drug paraphernalia” means any of the following:

1. Any item whether useful for non drug-related purposes or not, which is displayed, grouped with other items, advertised, or promoted in a manner to reasonably suggest its usefulness in the growing, harvesting, processing, manufacturing, preserving, inhaling, injecting or ingesting of marijuana, hashish, cocaine, or any controlled substance as defined in the Revised Code of the state

of Washington (Chapter 69.50 RCW) or the United States Code (21 USC §§ 801-971) as such now exist or may hereafter be amended;

2. Any item, whether useful for non drug-related purposes or not, which is designed, decorated or adorned in a manner to reasonably suggest its usefulness in the growing, harvesting, processing, inhaling, injecting, or ingesting of marijuana, hashish, cocaine, or any controlled substance as defined in the Revised Code of the state of Washington (Chapter 69.50 RCW) or the United States Code (21 USC §§ 801-971) as such now exist or may hereafter be amended.

3. Any item defined by any statute of the state of Washington as drug paraphernalia (Chapter 69.50 RCW) or by any statute of the United States Code (21 USC §§ 801-971) as drug paraphernalia.

4. The term "drug paraphernalia" includes, without limitation, all equipment, products, and materials of any kind, whether useful for non drug-related purposes or not, whose primary design function is for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body unlawful drugs, including, but not limited to, controlled substances as defined by Chapter 69.50 RCW. Such term includes, but is not limited to:

- A. Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance or unlawful drug can be derived.
- B. Kits used, intended for use, or designed for use in the manufacturing, compounding, converting, producing, processing, or preparing of unlawful drugs.
- C. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is an unlawful drug.
- D. Testing equipment used, intended for use, or designed for use in identifying or analyzing the strength, effectiveness, or purity of unlawful drugs.
- E. Scales and balances used, intended for use, or designed for use in weighing or measuring unlawful drugs.

- F. Dilutants and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting unlawful drugs.
- G. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.
- H. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding unlawful drugs.
- I. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of unlawful drugs.
- J. Containers and other objects used, intended for use, or designed for use in storing or concealing unlawful drugs.
- K. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body such as:
 - 1. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - 2. Water pipes;
 - 3. Carburetion tubes and devices;
 - 4. Smoking and carburetion masks;
 - 5. 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;
 - 6. Miniature cocaine spoons and cocaine vials;
 - 7. Chamber pipes;
 - 8. Carburetor pipes;
 - 9. Electric pipes;
 - 10. Air-driven pipes;
 - 11. Chilams;
 - 12. Bongs;
 - 13. Ice pipes or chillers;
 - 14. Wired cigarette papers; or
 - 15. Cocaine freebase kits
- L. In determining whether an object is "drug paraphernalia," a court, hearing officer (e.g. license revocation appeal proceedings), the Director of Tax & License, or other authority may consider, in addition to the foregoing and all other logically relevant factors, the following:

1. Statement 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 or reasonably should know intend to use the object to facilitate a violation of the laws of the state or the United States 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. The existence and scope of legitimate uses for the object in the community; and
9. Expert testimony concerning its use, including testimony from law enforcement personnel regarding their knowledge and experience concerning its use;

“Patron” means a person who enters a business for the purpose of purchasing or viewing as a shopper for merchandise offered for sale at the business.

“Person” means a natural person or any firm, partnership, association, corporation or cooperative association.

8.29.040 Display or Sale.

A. Except as authorized by law, it shall be unlawful for any person to maintain or operate any business knowing, or under circumstances where one reasonably should know, that drug paraphernalia is displayed or sold at such business. Law Enforcement Officers and City officials charged with enforcing City ordinances may provide verbal or written notification to a business that drug paraphernalia is on display or being sold at a business. A business that receives such a notice shall have twenty-four (24) hours to remove from display all drug paraphernalia identified in the notice and shall immediately cease all sales upon receipt of said notice. Any display of drug paraphernalia subsequent to the expiration of the 24-hour period or any sale of drug paraphernalia following service of the notice shall constitute a rebuttable presumption that the person or business has knowingly displayed or sold drug paraphernalia. Violation of this subsection is a gross misdemeanor.

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, knowingly, or under circumstances where one reasonably

should know, to display or sell drug paraphernalia. Law Enforcement Officers and City officials charged with enforcing City ordinances may provide verbal or written notification to an employee, agent, or owner of the business that drug paraphernalia is on display or being sold at the business in violation of this ordinance. An employee, agent or owner that receives such a notice shall have twenty-four (24) hours to remove from display all drug paraphernalia identified in the notice and shall immediately cease all sales upon receipt of said notice. Any display of drug paraphernalia subsequent to the expiration of the 24-hour period or any sale of drug paraphernalia following service of the notice shall constitute a rebuttable presumption that the employee, agent or owner has knowingly displayed or sold drug paraphernalia. Violation of this subsection is a gross misdemeanor.

8.29.050 Distribution or Manufacture

Except as authorized by law, it shall be unlawful for any person to distribute to another person, or manufacture drug paraphernalia, within the City of Tacoma knowing, or under circumstances where one reasonably should know, that it may be used to plant, propagate, cultivate, grow, harvest, 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 Washington or the United States. Law Enforcement Officers and City officials charged with enforcing City ordinances may provide verbal or written notification to any person or business engaged in the distribution or manufacture of drug paraphernalia in violation of this ordinance. A person or business that receives such a notice shall immediately cease distribution and/or manufacture of drug paraphernalia within the City of Tacoma. Any further distribution or manufacture of drug paraphernalia after service of the notice shall constitute a rebuttable presumption that a business or person has knowingly distributed or manufactured drug paraphernalia. Violation of this subsection is a gross misdemeanor.

8.29.060 Illegal conduct.

A. It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, 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. Any person who violates this subsection is guilty of a misdemeanor.

B. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, 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. Any person who violates this subsection is guilty of a misdemeanor.

C. Any person eighteen years of age or over who violates subsection (B) of this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his junior is guilty of a gross misdemeanor.

D. It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.

E. It is unlawful for any person to loiter in or upon any highway, street, alley, sidewalk, access easement, utility easement, or parking lot whether publicly owned or open to the public, or in or upon any public park or open space, or in or upon any other publicly owned property in a manner and under circumstances manifesting the purpose of engaging in any activity related to illegal drugs. For the purposes of this section, activity related to illegal drugs includes, but is not limited to, selling, purchasing, transporting, manufacturing, distributing, or using any illegal drug or drug paraphernalia, or the soliciting or advertising for sale, purchase, transportation, manufacture, distribution or use of any illegal drug or drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.

8.29.070 Violation - Penalty.

Violations of this chapter shall constitute a separate offense for each day upon which the violation occurs or is allowed to continue. Any person convicted of having violated a section of this Chapter identified as a gross misdemeanor shall be punished by a fine of not more than \$5,000.00 or a jail sentence of not more than one year, or both. Any person convicted of having violated a section of this Chapter identified as a gross misdemeanor shall be punished by a fine of not more than \$1,000.00 or a jail sentence of not more than ninety days, or both.

8.29.080 Revocation of business license.

A. Violation of the provisions of this chapter shall constitute grounds for suspension or revocation of any business license issued by the city to a business for the premises or activity from which the violation occurred. Suspension and revocation of a business license shall be pursuant to the procedures set forth in this subsection and in Title 6 of the Tacoma Municipal Code including the appeal procedures set forth in Title 6. This remedy shall be in addition to any other remedy provided by law, including the penalty provisions applicable for violation of the terms and provisions of this chapter.

B. For a first violation of this ordinance, the business license of the owner shall be suspended for thirty days. During this thirty-day period, the business owner shall cease all business related to that license. At the end of the thirty-day period, the business license may be reinstated provided that the licensee refrains from the sale of any items prohibited by this ordinance or other provisions of law, and complies with all other legal requirements.

C. If a licensee engages in business during any period of suspension or subsequently violates this ordinance at any time after a first violation, the business license shall be revoked for a period of one year from the date of the violation. The licensee shall not be eligible for any business license from the City of Tacoma during this period. At the end of the one year period, the licensee may apply for a new business license provided that the licensee complies with all requirements for such a license; posts a \$50,000.00 performance bond; refrains from the sale of any items prohibited by this ordinance or other provisions of law; and complies with all other legal requirements. The performance bond must continue in effect for all periods during which the licensee conducts business in the City of Tacoma. The performance bond shall be forfeited and the license revoked should the licensee subsequently violate this ordinance or other provisions of law.

D. Second revocation of license. If a license is revoked for the second time pursuant to section C of this subsection, the licensee shall not be eligible for any license to conduct or manage any business or activity in the City of Tacoma.

E. The penalties set forth herein and throughout this ordinance apply to the licensee or any business or entity in which the licensee has an ownership interest or membership, or in which the licensee has or has had influence or control. A licensee may not circumvent the provisions of this ordinance by applying for a license in the name of a spouse or other relative or by using shell business entities. The Director of Tax & License may require any license applicant to provide such documentation as necessary to fully determine the true status of ownership of that business.

8.29.090 Nuisance or Chronic Nuisance.

The manufacture, distribution, display, sale or possession for the purpose of manufacture, distribution, sale, exhibition or display, in any place of business of drug paraphernalia, contrivances, instruments, or paraphernalia, whether useful for non drug-related purposes or not, which are designed for or intended to be used for smoking, ingestion, or consumption of marijuana, hashish, PCP, or any controlled substance other than prescription drugs and devices to ingest or inject prescription drugs, is hereby declared to be a public nuisance and a chronic nuisance. As such, they may be abated by the City of Tacoma pursuant to Chapters 8.30 and 8.30A of the Tacoma Municipal Code. This remedy shall be in addition to any other remedy provided by law, including the penalty provisions applicable for violation of the terms and provisions of this chapter.

8.29.100 Exceptions.

This chapter shall not apply to any of the following:

- A. Any state licensed pharmacist or other state licensed and authorized person who sells or furnishes drug paraphernalia upon the prescription of a physician, dentist, podiatrist or veterinarian;
- B. Any physician, dentist, podiatrist, or veterinarian who furnishes or prescribes drug paraphernalia to his or her patient;

- C. Any manufacturer, wholesaler or retailer licensed by the Washington State Board of Pharmacy of the Washington State Health Department to manufacture, distribute, sell, or transfer drug paraphernalia.
- D. This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is otherwise in accordance with the Revised Code of Washington. This section shall not be construed to prohibit the possession or use of a hypodermic pursuant to a prescription from a licensed health professional authorized to prescribe such.
- E. It is lawful for any person over the age of eighteen to possess sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases.

8.29.110 Seizure

Any drug paraphernalia that was displayed, distributed, used, possessed, sold, or manufactured in a violation of this section may be seized and, after a conviction for that violation shall be forfeited, and upon forfeiture shall be disposed of pursuant to Chapter 69 of the Revised Code of Washington or any other applicable provision of law.

8.29.120 Severability.

If any provision or section of this chapter shall be held to be void or unconstitutional, all other parts, provisions, and sections of this chapter not expressly so held to be void or unconstitutional shall continue in full force and effect.