



ORDINANCE NO. 28887

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AN ORDINANCE relating to Public Safety; amending Title 8 of the Municipal Code, by adding a new Chapter 8.190, entitled “Drug Crimes,” and repealing in its entirety Chapter 8.29, entitled “Drug Paraphernalia,” to comply with state law.

WHEREAS on May 16, 2023, the Washington State Legislature adopted 2nd Engrossed 2nd Substitute Senate Bill (“2E2SSB”) 5536 Chap. 1, Laws of 2023, 1st Special Session amending Chapters 69.50 and 69.41 of the Revised Code of Washington (“RCW”) related to state drug laws, and

WHEREAS the State Legislature has preempted local jurisdictions (cities and counties) from enacting local laws that differ in penalties from state laws related to controlled substances, counterfeit substances, legend drugs, and drug paraphernalia, and

WHEREAS the State of Washington now will preempt the entire field of regulating drug paraphernalia, allowing local jurisdictions to only pass drug paraphernalia laws authorized by, and consistent with, state law, including penalty provisions, and

WHEREAS the City’s law chapter 8.29 of the Tacoma Municipal Code related to drug paraphernalia is not in compliance with the penalties related to the new state law and must be repealed and replaced by reference to the state laws RCW 69.50.4121 and 69.50.412, and

WHEREAS adopting the applicable sections of 2E2SSB 5536 Chap. 1, Laws of 2023, 1st Special Session is necessary to maintain local control of the



1 prosecution and adjudication of misdemeanor violations of these laws by our City
2 Municipal Court; Now, Therefore,

3 BE IT ORDAINED BY THE CITY OF TACOMA:

4 Section 1. That the City Council hereby adopts the Recitals of this
5 Ordinance as its formal legislative findings.
6

7 Section 2. That Title 8 of the Tacoma Municipal Code ("TMC") is hereby
8 amended by adopting by reference those portions of Chapters 69.50 and 69.41 of
9 the Revised Code of Washington ("RCW") as amended by 2nd Engrossed 2nd
10 Substitute Senate Bill ("2E2SSB") 5536 Chap. 1, Laws of 2023, 1st Special Session
11 including RCW 69.50.4121 related to drug paraphernalia, and also RCW 69.50.412
12 related to certain uses of drug paraphernalia, all as set forth in the attached
13 Exhibit "A."
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15 Section 3. That Title 8 of the TMC is hereby amended by adding a new
16 Chapter 8.190, entitled "Drug Crimes," as set forth in the attached Exhibit "A."
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18 Section 4. That Chapter 8.29 of the TMC, entitled "Drug Paraphernalia" is
19 repealed in its entirety.

20 Section 5. This ordinance shall go into effect at 12:01 A.M. on August 14,
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Section 6. That the City Clerk, in consultation with the City Attorney, is authorized to make necessary corrections to this ordinance, including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

Passed _____

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney



EXHIBIT "A"

CHAPTER 8.190
DRUG CRIMES

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Sections:

8.190.010 Counterfeit Substance.

8.190.020 Controlled Substance.

8.190.030 Cannabis.

8.190.040 Legend Drug.

8.190.050 Drug Paraphernalia.

8.190.010 Counterfeit Substance.

Section 69.50.4011 RCW, as now enacted or hereinafter amended, is hereby adopted by reference as if fully set forth herein, including penalties.

8.190.020 Controlled Substance.

Section 69.50.4013 RCW, as now enacted or hereinafter amended, is hereby adopted by reference as if fully set forth herein, including penalties.

8.190.030 Cannabis.

Section 69.50.4014 RCW, as now enacted or hereinafter amended, is hereby adopted by reference as if fully set forth herein, including penalties.

8.190.040 Legend Drug.

Section 69.41.030 RCW, as now enacted or hereinafter amended, is hereby adopted by reference as if fully set forth herein, including penalties.

8.190.050 Drug Paraphernalia.

Sections 69.50.4121 and 69.50.412 RCW, as now enacted or hereinafter amended, are hereby adopted by reference as if fully set forth herein, including penalties.



CHAPTER 8.29
DRUG PARAPHERNALIA

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~~Sections:~~

- ~~8.29.005 Enforcement priority.~~
- ~~8.29.010 Findings.~~
- ~~8.29.020 Intent and purpose.~~
- ~~8.29.030 Definitions.~~
- ~~8.29.040 Repealed.~~
- ~~8.29.050 Repealed.~~
- ~~8.29.060 Illegal conduct.~~
- ~~8.29.065 Repealed.~~
- ~~8.29.070 Violation — Penalty.~~
- ~~8.29.080 Revocation of business license.~~
- ~~8.29.090 Repealed.~~
- ~~8.29.100 Exceptions.~~
- ~~8.29.110 Seizure.~~
- ~~8.29.120 Severability.~~

~~**8.29.005 Enforcement priority.**~~

~~The police chief and city attorney shall make the investigation, arrest, and prosecution of cannabis (a/k/a "marijuana") offenses the lowest enforcement priority, as this term may be defined in their policies and procedures manuals, for adult personal use.~~

~~**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 causes serious physical and psychological damage to the youth of this community, impairs educational achievement and efficiency, increases non drugrelated crime, and threatens the ability of the community to ensure future generations of responsible and productive adults.~~

~~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. All of the foregoing is detrimental to the health, safety, and welfare of the citizens of Tacoma.~~

~~**8.29.020 Intent and purpose.**~~

~~A. The City Council has been aware of and concerned about the general proliferation of establishments engaged in the sale of paraphernalia associated with drug use. In 1980, the City Council passed Ordinance No. 22182, regulating the display of drug paraphernalia to minors. However, the City Council now finds that the present 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 18 years of age has not proven practical. A person who displays or distributes has difficulty determining who could lawfully view or receive drug paraphernalia.

C. The present ordinance creates an unnecessary enforcement burden by adding the 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 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 symbolizes 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.

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 City 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.

8.29.030 Definitions.

A. As used in this chapter, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed 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 a controlled substance as defined by chapter 69.50 RCW, possession of which is unlawful under chapter 69.50 RCW. It includes, but is not limited to:

1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

3. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

4. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;

5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

7. 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;

8. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;



- 1 9. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in
packaging small quantities of controlled substances;
- 2 10. Containers and other objects used, intended for use, or designed for use in storing or concealing
controlled substances;
- 3 11. Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in
parenterally injecting controlled substances into the human body;
- 4 12. 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:
- 5 a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent
6 screens, hashish heads, or punctured metal bowls;
- 7 b. Water pipes;
- 8 c. Carburetion tubes and devices;
- 9 d. Smoking and carburetion masks;
- 10 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;
- 11 f. Miniature cocaine spoons, and cocaine vials;
- 12 g. Chamber pipes;
- 13 h. Carburetor pipes;
- 14 i. Electric pipes;
- 15 j. Air driven pipes;
- 16 k. Chillums;
- 17 l. Bongs; and
- 18 m. Ice pipes or chillers.
- 19 B. In determining whether an object is drug paraphernalia under this section, a court or other authority
should consider, in addition to all other logically relevant factors, the following:
- 20 1. Statements by an owner, or by anyone in control of the object, concerning its use;
- 21 2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal
22 law relating to any controlled substance;
- 23 3. The proximity of the object, in time and space, to a direct violation of chapter 69.50 RCW;
- 24 4. The proximity of the object to controlled substances;
- 25 5. The existence of any residue of controlled substances on the object;
- 26 6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to
deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a
violation of chapter 69.50 RCW; the innocence of an owner, or of anyone in control of the object, as to a
direct violation of chapter 69.50 RCW shall not prevent a finding that the object is intended or designed
for use as drug paraphernalia;
7. Instructions, oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale;



11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

13. The existence and scope of legitimate uses for the object in the community; and

14. Expert testimony concerning its use.

~~8.29.040 Display or sale—Revocation of business license. Repealed by Ord. 27639.~~

~~8.29.050 Distribution—Revocation of business license. Repealed by Ord. 27639.~~

8.29.060 Illegal conduct.

A. It is unlawful for any person to use, or to possess with intent 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 other than marijuana. 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 other than marijuana. Any person who violates this subsection is guilty of a misdemeanor.

C. Any person 18 years of age or over who violates subsection B of this section by delivering drug paraphernalia to a person under 18 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 drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.

E. Every person who sells or gives, or permits to be sold or given to any person, any drug paraphernalia in any form commits a class I civil infraction under chapter 7.80 RCW. For purposes of this subsection, “drug paraphernalia” means all equipment, products, and materials of any kind which are used, intended for use, or designed 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 a controlled substance other than marijuana. Drug paraphernalia includes, but is not limited to, objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cocaine into the human body, such as:

1. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, or punctured metal bowls;

2. Water pipes;

3. Carburetion tubes and devices;

4. Smoking and carburetion masks;

5. Miniature cocaine spoons and cocaine vials;

6. Chamber pipes;

7. Carburetor pipes;



8. Electric pipes;

9. Air driven pipes; and

10. Ice pipes or chillers.

F. It shall be no defense to a prosecution for a violation of subsection E that the person acted, or was believed by the defendant to act, as agent or representative of another.

G. Nothing in subsection E of this section prohibits legal distribution of injection syringe equipment through public health and community-based HIV prevention programs, and pharmacies.

~~8.29.065 Illegal conduct. Repealed by Ord. 27272.~~

~~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 or a jail sentence of not more than one year, or both such fine and imprisonment.~~

~~Any person convicted of having violated a section of this chapter identified as a misdemeanor shall be punished by a fine of not more than \$1,000 or a jail sentence of not more than 90 days, or both such fine and imprisonment. Any person convicted of violating this chapter shall be subject to the minimum penalties set forth in RCW 69.50.425 as now enacted or subsequently amended.~~

~~8.29.080 Revocation of Business License.~~

~~A. The purpose of this chapter is to protect the welfare, health, peace, and safety of the citizens of Tacoma by assuring that businesses within City boundaries conduct their business in a manner that does not promote or encourage the use of illegal drugs within the community.~~

~~1. Any license issued under Title 6 TMC may be suspended or revoked for any violation of this chapter by the licensee, or his or her agents or employees on the premises of the licensed business. For the purposes of this section, the term “premises” includes a vehicle.~~

~~2. Any license issued under Title 6 TMC may be suspended or revoked for any violation of this chapter by persons other than those listed in subsection (a) when the business owner or operator can reasonably control or prevent the violation.~~

~~3. Past violation of this chapter may be considered under Title 6 TMC in determining whether to issue a business license to any person.~~

~~4. The standard of proof for a violation is a preponderance of the evidence. It is not necessary for a person to be charged with or convicted of a crime for a violation to occur. Suspension or revocation of a license 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.~~

~~5. The procedures for suspending or revoking a license and any appeal of the suspension or revocation shall be in accordance with Title 6 TMC.~~

~~B. For a first violation of this chapter, the license of the owner shall be suspended for 30 days. During this 30 day period, the owner shall cease all activity related to that license. At the end of the 30 day period, the license may be reinstated, provided that the licensee refrains from violating this chapter or other provisions of law and complies with all other legal requirements.~~

~~The 30 day period shall run from the date of suspension unless a timely appeal is filed. In the event a timely appeal is filed but ultimately denied, the 30 day period shall begin to run the day after all appellate remedies have been exhausted.~~

~~C. If a licensee engages in activity during any period of suspension or subsequently violates this chapter at any time after a first violation, the license shall be revoked for a period of one year. The one year period shall run from the date of revocation unless a timely appeal is filed. In the event a timely appealed~~



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~~is filed but ultimately denied, the one-year period shall begin to run the day after all appellate remedies have been exhausted. The licensee shall not be eligible for any license from the City of Tacoma during this period. At the end of the one-year period, the licensee may apply for a new license, provided that the licensee complies with all requirements for such a license, posts a \$50,000 performance bond, refrains from violating this chapter 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 or a licensed activity in the City of Tacoma. The performance bond shall be forfeited and the license permanently revoked should the licensee subsequently violate this chapter or other provisions of law.~~

~~D. Second revocation of license. If a license is revoked and a performance bond forfeited pursuant to Section C of this subsection, the licensee shall never 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 chapter 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 chapter by applying for a license in the name of a spouse, relative, or other person, or by using shell business entities. The Tax & License Division Manager may require any license applicant to provide such documentation as necessary to fully determine the true status of ownership, control, and finances of that business.~~

~~F. The remedies under this section 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.~~

~~**8.29.090 Nuisance or chronic nuisance.** Repealed by Ord. 27639.~~

~~**8.29.100 Exceptions.**~~

~~This section shall not apply to:~~

- ~~(1) any person authorized by local, state, or federal law to manufacture, possess, or distribute such items, or~~
- ~~(2) any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products.~~

~~**8.29.110 Seizure.**~~

~~Any drug paraphernalia that was displayed, distributed, used, possessed, sold, or manufactured in 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 RCW 69 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.~~

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