

ORDINANCE NO. 2007

AN ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHAPTER 5.37 OF THE CHULA VISTA MUNICIPAL CODE BY ADDING THERETO A NEW SECTION 5.37.020, AND AMENDING TITLE 9 OF THE CHULA VISTA MUNICIPAL CODE BY ADDING THERETO A NEW CHAPTER 9.17, ALL RELATING TO THE REGULATION AND PROHIBITION OF THE DISTRIBUTION OF DRUG PARAPHERNALIA IN THE CITY OF CHULA VISTA

The City Council of the City of Chula Vista does ordain as follows:

SECTION I: That Chapter 5.37 of the Chula Vista Municipal Code be, and the same is hereby amended by adding thereto a new Section 5.37.020 to read as follows:

Sec. 5.37.020 Amortization of Prohibited
 Business Use - Drug Paraphernalia
 Restricted to Adults Only.

That all provisions set forth hereinabove in said Section 5.37.010 be, and the same are hereby repealed and shall have no further force and effect one year from and after the date of adoption of the provisions of new Chapter 9.17 of this Code.

It is hereby the finding of the City Council of the City of Chula Vista that any businesses displaying or selling drug paraphernalia as more precisely defined in said Chapter 9.17 be, and the same are hereby declared to be subject to said prohibition and shall no longer be allowed as licensed businesses within the City of Chula Vista one year from the effective date of this ordinance.

SECTION II: That Title 9 of the Chula Vista Municipal Code be, and the same is hereby amended by adding thereto a new Chapter 9.17 to read as follows:

CHAPTER 9.17 DRUG PARAPHERNALIA - PROHIBITED.

Sec. 9.17.010 Purpose and Intent.

The City Council of the City of Chula Vista has become aware of and concerned over the general proliferation of "head shops" and other establishments engaged in the sale of paraphernalia associated with

drug use. Therefore, the City Council did heretofore adopt Ordinance No. 1892 in 1980 prohibiting the sale or display of such items to minors. However, the City Council now finds that the illegal use of such substances by all persons, especially those under 18 years of age, has reached critical proportion requiring further legislation on the subject. 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 Chula Vista.

The distribution of such paraphernalia intensifies and otherwise compounds the problem of illegal use of controlled substances within this community.

It has further been determined that the existing ban as prescribed in the Chula Vista Municipal Code that has been in effect since 1980 against the display and distribution of drug paraphernalia to persons under 18 years of age has not been practical. The person who displays or distributes would not have to be concerned with the question of minority and who could lawfully view or receive drug paraphernalia. The already thinly staffed law enforcement agencies would be subject to intolerable added enforcement burdens by adding age of a person who views or receives drug 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 unlawful to distribute paraphernalia to some students attending the same school in which the 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 by adults 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.

Therefore, it is the purpose and intent of the Council to introduce this measure banning the display and distribution of drug paraphernalia in order to discourage the illegal use of controlled substances within the City of Chula Vista.

Sec. 9.17.020 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 Sections 11054, 11055, 11056, 11057 and 11059 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. Miniature cocaine spoons, and cocaine vials;
 - G. Chamber pipes;
 - H. Carburetor pipes;
 - I. Air-driven pipes;

J. Bongos.

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) 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 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 concernings 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. 9.17.030 Display of Drug Paraphernalia.

It shall be unlawful for any person to maintain or operate any business knowing or under circumstances where he should reasonably know what drug paraphernalia is displayed at such business.

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 willfully display drug paraphernalia at such business.

Sec. 9.17.040 Distribution of Drug Paraphernalia.

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 substance in violation of any law of the State of California.

Sec. 9.17.050 Exceptions.

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.

No provisions 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.

This chapter shall not apply to any currently existing business legally displaying and distributing paraphernalia in accordance with the provisions of Section 5.37.010 of the Chula Vista Municipal Code for a period of one year from the effective date of this ordinance. Thereafter, said business shall also be deemed to be unlawful in accordance with the amortization provisions as established by this chapter and Section 5.37.020.

Sec. 9.17.060 Violations.

Any person who violates any provision of this chapter is guilty of a misdemeanor, instead of the infraction penalty attached to the violation of any other provision of this Municipal Code, and upon conviction of said violation is punishable by a fine not exceeding five hundred dollars (\$500) or by imprisonment in the county jail of San Diego County for a period of not more than six months, or by both such fine and imprisonment. A person who violates the provisions of Sections 9.17.030 and 9.17.040 shall be deemed to be guilty of a separate offense for each day or portion thereof, during which the violation continues.


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.

Sec. 9.17.070 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 tht 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. (See Bamboo Brothers v. Carpenter 133 C.A.3d 116).

SECTION III: This ordinance shall take effect and be in full force on the thirty-first day from and after its adoption.

Presented and Approved as to form by



George D. Lindberg, City Attorney

0-2001

FIRST READ AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA, CALIFORNIA, HELD October 5, 19 82, AND FINALLY PASSED AND ADOPTED AT A REGULAR MEETING THEREOF HELD October 12, 19 82, BY THE FOLLOWING VOTE, TO-WIT:

AYES: Councilmen : Scott, Cox, Malcolm, Moore, McCandless
NAYES: Councilmen : None
ABSTAIN: Councilmen : None
ABSENT: Councilmen : None

Gregory R. Cox
Mayor of the City of Chula Vista

ATTEST Jennie M. Fulasz
City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss.
CITY OF CHULA VISTA)

I, JENNIE M. FULASZ, CMC, CITY CLERK of the City of Chula Vista, California, DO HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. 2007, and that the same has not been amended or repealed.

DATED _____

(seal)

City Clerk

ORDINANCE NO. 2007

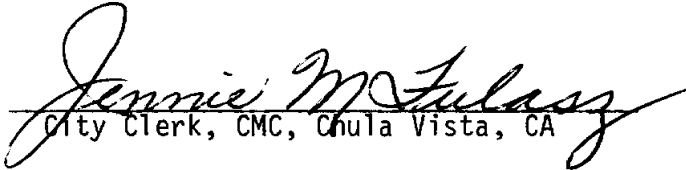
AN ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHAPTER 5.37 OF THE CHULA VISTA MUNICIPAL CODE BY ADDING THERETO A NEW SECTION 5.37.020 AND AMENDING TITLE 9 OF THE CHULA VISTA MUNICIPAL CODE BY ADDING THERETO A NEW CHAPTER 9.17 ALL RELATING TO THE REGULATION AND PROHIBITION OF THE DISTRIBUTION OF DRUG PARAPHERNALIA IN THE CITY OF CHULA VISTA

By a unanimous vote on October 12, 1982, the City Council placed the ordinance on second reading and adoption.

The ordinance constitutes a total ban on the display or distribution of drug paraphernalia in the City of Chula Vista; defining "drug paraphernalia"; noting the exceptions and violations. Any person violating any provision of this ordinance is guilty of a misdemeanor and upon conviction, will be punishable by a fine not exceeding \$500 or by imprisonment for a period not exceeding six months, or by both fine and imprisonment.

Copies of the ordinance are available at the office of the City Clerk, City Hall, 276 Fourth Avenue, Chula Vista.

Dated: 10/15/82


City Clerk, CMC, Chula Vista, CA