

ORDINANCE NO. 750

AN ORDINANCE BANNING THE SALE OF DRUG PARAPHERNALIA DESIGNED FOR USE WITH ILLEGAL DRUGS, AND PROVIDING PENALTIES: AND DECLARING AN EMERGENCY.

PURPOSE - The City of Canby City Council does hereby find that certain items designed or marketed for use with illegal drugs enhance the appeal of and contribute to the illegal use of controlled substances among its young people. It therefore desires to ban the sale and display of these items and to limit the distribution of illegal drug paraphernalia to individuals. This ordinance is based upon the Model Drug Paraphernalia Act authorized by the Drug Enforcement Administration of the United States Department of Justice.

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. Definitions.

A. "Controlled substance" means a drug or its immediate precursor classified in Schedules I through V under the Federal Controlled Substances Act, 21 U.S.C., Sections 811 to 812, as modified under ORS 475.035.

B. "Deliver" or "delivery" means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship.

C. The term "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 in violation of the Controlled Substances Act of this State. 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;
9. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
11. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
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:
 - 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. electric pipes;
- j. air-driven pipes;
- k. chillums;
- l. bongs; and
- m. ice pipes or chillers.

D. "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

E. "Medical Practitioner" means licensed pharmacist; licensed and regulated members of a health care service providing organization able to administer controlled substances to patients under Oregon law.

Section 2. Factors to be Considered. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- A. Statements by an owner or by anyone in control of the object concerning its use;
- B. Prior convictions, if any, of an owner, or of anyone in control of the object, under any Municipal, State, or Federal law relating to any controlled substance;
- C. The proximity of the object in time and space, to a direct violation of this ordinance or the State Uniform Controlled Substance Act;

- D. The proximity of the object to controlled substances;
- E. The existence of any residue of controlled substances on the object:
- F. 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 intend to use the object to facilitate a violation of Municipal or State law; the innocence of an owner, or of anyone in control of the object, as to a violation of this law or state law shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
- G. Instructions, oral or written, provided with the object concerning its use;
- H. Descriptive materials accompanying the object which explain or depict its use;
- I National and local advertising concerning its use;
- J. The manner in which the object is displayed for sale;
- K. 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;
- L. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
- M. The existence and scope of legitimate uses for the object in the community; and
- N. Expert testimony concerning its use.

Section 3. Offenses and Penalties.

- A. Possession of drug paraphernalia.
 - 1. 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. Any person who violates this section is guilty of an infraction and upon conviction may be fined not more than \$100.00.
- B. Manufacture or delivery of drug paraphernalia.

1. 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 section is guilty of an infraction and upon conviction may be fined not more than \$500.00.

C. Delivery of drug paraphernalia to a minor.

1. Any person eighteen (18) years of age or over who violates Section 3 (B) by delivering drug paraphernalia to a person under eighteen (18) years of age who is at least three (3) years his junior is guilty of a misdemeanor offense and upon conviction may be imprisoned for not more than one (1) year, fined not more than \$2,500.00, or both.

D. Advertisement of drug paraphernalia.

1. It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing 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 section is guilty of an infraction and upon conviction may be fined not more than \$200.00.

Section 4. Exemption. Medical practitioners and agents acting under their supervision in the course of a professional practice are exempt from the provisions of this ordinance.

Section 5. Nuisance.

A. Drug paraphernalia are public nuisances. Any peace officer who has probable cause to believe such items enumerated above are being possessed in violation of this ordinance shall summarily seize any such paraphernalia and shall deliver it to the Chief of Police, who shall hold it subject to the order of Municipal Court.

B. Whenever it appears to the court that drug paraphernalia has been possessed in violation of this ordinance, the court shall order the Chief of Police to destroy the paraphernalia.

Section 6. Infraction Procedure. A violation of Section 3 (A), 3(B) or 3(D) is an infraction. Citations shall be issued and court procedures followed that are in accord with ORS 153.110 to 153.280.

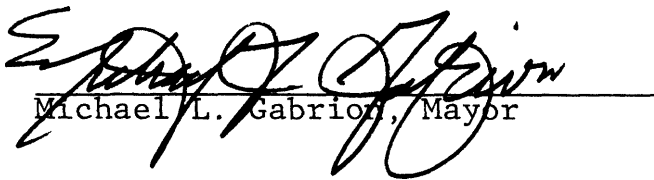
Section 7. Severability. If any provision of this ordinance thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.


Section 8. Effective Date. In view of the necessity to prescribe regulations concerning the sale and display of drug paraphernalia, to promote the safety, health and welfare of the citizens of the City of Canby, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its final reading and passage by the Canby City Council.

Submitted to the Canby City Council and read the first time at a regular meeting thereof on the 18th day of July, 1984, and ordered posted as provided by the Canby City Charter and scheduled for a second reading and action of the Canby City Council at a regular meeting thereof to be held on Wednesday, August 1, 1984, commencing at the hour of 7:30 p.m. at the Council Meeting chambers at Canby City Hall in Canby, Oregon.


Marilyn K. Perkett, Deputy Recorder

ENACTED BY THE CANBY CITY COUNCIL at the Regular meeting thereof on August 1, 1984, by the following vote:
Yes 3 No 1


Michael L. Gabriion, Mayor

ATTEST:

Marilyn K. Perkett, Deputy Recorder