

**STAFF REPORT NO. 099-14**

**TO:** Mayor and City Council  
**FROM:** Eric Holmes, City Manager 

**DATE:** 08/11/2014  
08/18/2014

**Subject:** An ordinance regulating the display of drug paraphernalia and prohibiting its display to minors.

**Key Points:**

- The ordinance prohibits the display of drug paraphernalia in areas of a business that are open to minors.
- Violation of the ordinance is a civil violation and is enforced through the City’s uniform enforcement code. Depending on the circumstances, enforcement could consist of a correction notice or a monetary penalty of \$250 for a first offense; \$500 for a second offense; and \$1,000 for a third offense.

**Objective:** To prevent the display of drug paraphernalia in areas of commercial establishments that are accessible to minors.

**Present Situation:** Currently, the City does not have an ordinance regulating the display of drug paraphernalia. There are stores that display bong and other drug paraphernalia in areas adjacent to candy and other items attractive to children. This sends the wrong message to children that underage drug use is tolerated. The ordinance will require that drug paraphernalia be displayed in a manner that is not open to the view of minors.

**Advantage(s):**

1. The ordinance will correct a situation where drug paraphernalia is displayed in a minor open to the view of minors.
2. The ordinance can be enforced through education and correction notices. If necessary, escalating monetary penalties can be imposed.

**Disadvantage(s):** The ordinance will take some effort by City personnel to engage in education and enforcement actions.

**Budget Impact:** None

**Prior Council Review:** Council workshop on July 28, 2014.

**Action Requested:**

1. On August 11, 2014, approve ordinance on first reading, setting date of second reading and public hearing for Monday, August 18, 2014.
2. On August 18, 2014, subject to second reading and public hearing, approve the ordinance.

Attachment: Ordinance

08/11/14  
08/18/14

ORDINANCE \_\_\_\_\_

AN ORDINANCE relating to regulating the display of drug paraphernalia; prohibiting its display to minors; and providing for an effective date.

WHEREAS, the City of Vancouver is a first class charter city of the State of Washington, organized under Article 11, Section 10 of the Washington State Constitution and pursuant to its legislative powers granted by RCW 35.22.280(35), and has authority to regulate commercial activities by ordinance in order to promote the public's health, safety and welfare and to provide for penalties to be imposed upon the violation thereof; and

WHEREAS, as set forth in SR \_\_\_\_\_, the City of Vancouver recognizes that drug paraphernalia that is designed and marketed for the consumption of marijuana and controlled substances is currently being displayed in a manner that is in open view to minors; and

WHEREAS, the existence of legitimate uses for an object does not preclude categorization of that object as drug paraphernalia; and

WHEREAS, the display of drug paraphernalia in establishments open to minors symbolizes a public tolerance for illegal underage use of marijuana and other illegal controlled substances; and

WHEREAS, the City of Vancouver believes that restricting the display of certain drug paraphernalia to minors will both address the continuing problem of underage use of marijuana and other illegal controlled substances in the City; and

WHEREAS, it is also imperative to take more vigorous enforcement action to implement the existing prohibition of sales of tobacco products to minors found in state law at RCW 26.28.080;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. Adoption. A new Chapter 5.20 to the Vancouver Municipal Code, "Display of Drug Paraphernalia", is hereby adopted as shown in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 2. Amendatory. Ordinance M-3638, as last amended by Ordinance M-4047 and codified as VMC 22.01.030, is hereby amended to read as follows:

VMC 22.01.030 Applicability.

The enforcement provisions of Title 22 shall apply to the following substantive VMC chapters and titles:

VMC chapter 5.20 Display of Paraphernalia.

VMC chapter 5.62, Commercial recycling;

VMC chapter 5.76, Taxi Code.

VMC chapter 6.12, Garbage disposal;

VMC chapter 8.20, Nuisances;

VMC chapter 8.52, False Alarms, for the purposes of criminalizing the violation under 22.02.020 and for purposes of the appeal procedures under VMC chapter 22.03 only;

VMC chapter 11.20, Newsracks;

VMC chapter 11.30, Street frontage maintenance;

VMC chapter 11.40, Traffic control code;

VMC chapter 11.50, Utilities in the right of way;

VMC chapter 11.60, Street Use Permits;

VMC chapter 11.80, Street standards;

VMC chapter 11.90, Construction in the right-of-way;

VMC chapter 12.04, Street trees;

VMC chapter 14.04, Water and Sewer Use - Regulations and Charges;

VMC chapter 14.08, Connection to Public Sewers;

VMC chapter 14.09, Stormwater Management - Regulations and Charges;

VMC chapter 14.24, Erosion control;

VMC chapter 14.25, Stormwater control;

VMC chapter 14.26; Water resources protection;

VMC chapter 16.04, Firecode;

VMC chapter 16.20, Fireworks;

VMC chapter 16.30, Consumer fireworks;

All chapters in Title 17 of the VMC, but not including VMC chapter 17.39. Title 22 shall not limit any corrective actions or remedies contained in Title 17 of the VMC;

VMC Title 20, Development code, except that Title 22 shall not apply to the damages calculations under VMC chapter 20.770, Tree Conservation, but shall apply to 20.770 for the purposes of enforcement procedures under VMC chapter 22.02 and the appeal procedures under VMC chapter 22.03.

Section 3. Amendatory. Section 13 of Ordinance M-4047, as last amended by Section 8 of Ordinance M-3857 and codified as VMC 22.02.070, is hereby amended to read as follows:

A. The person responsible for a violation shall incur an initial monetary penalty, pursuant to whether the violation is a first, second or subsequent violation and according to the monetary penalty schedule in VMC 22.02.070(D).

B. In addition to the monetary penalty in VMC 22.02.070(D), the person responsible for a violation shall automatically incur a daily monetary penalty, pursuant to whether the violation is a first, second or subsequent violation and according to the monetary penalty schedule in VMC 22.02.070(D), if the person responsible for a violation fails to comply with the corrective action or actions in a notice of civil violation and order or order to revoke permit by the corrective date specified in the order. The daily penalty shall begin to accrue after the corrective date specified in the notice of civil violation and order or order to revoke permit.

C. The city may not seek to collect cumulative monetary penalties unless the city official has complied with the requirements contained in VMC 22.02.050.

D. The monetary penalties for first, second and subsequent violations of the code enforced through this title, within any two (2) year period, shall be as follows:

<b>VMC TITLE</b>	<b>FIRST VIOLATION</b>	<b>SECOND VIOLATION</b>	<b>SUBSEQUENT VIOLATIONS</b>
<u>VMC Chapter 5.20, Display or Drug Paraphernalia</u>	<u>\$250</u>	<u>\$500</u>	<u>\$1,000</u>
VMC Chapter 5.62, Commercial Recycling	\$250	\$500	\$1,000
VMC Chapter 5.76, Taxi code	\$250	\$500	\$1,000
VMC Chapter 6.12, Garbage disposal	\$250	\$500	\$1,000
VMC Chapter 8.20, Nuisances	\$250	\$500	\$500
VMC Chapter 11.20, Newsracks	\$100	\$200	\$200
VMC Chapter 11.30, Street frontage improvements	\$100	\$200	\$200
VMC Chapter 11.40, Traffic control code	\$100	\$200	\$200
VMC Chapter 11.50, Utilities in the right of way	\$100	\$200	\$200
VMC Chapter 11.60, Street use permits	\$100	\$200	\$200
VMC Chapter 11.80, Street standards	\$100	\$200	\$200
VMC Chapter 11.90, Construction in the right of way	\$100	\$200	\$200
VMC Chapter 12.04, Street Trees	\$250	\$500	\$1,000
VMC Chapter 14.04, Water and Sewer	\$250	\$500	\$1,000

Use - Regulations and Charges			
VMC Chapter 14.08, Connection to Public Sewers	\$250	\$500	\$1,000
VMC Chapter 14.09, Stormwater Management - Regulations and Charges	\$250	\$500	\$1,000
VMC Chapter 14.16, Water and Sewer Service Connections	\$250	\$500	\$1,000
VMC Chapter 14.24, Erosion control	\$250	\$500	\$1,000
VMC Chapter 14.25, Stormwater control	\$250	\$500	\$1,000
VMC Chapter 14.26, Water resources protection	\$250	\$1,000	\$5,000
VMC Chapter 16.04, Firecode, excluding false alarms under VMC 16.04.140	\$500	\$500	\$1,000
VMC Chapter 16.20, Fireworks	\$500	\$1,000	\$1,000
VMC 16.30.040, Illegal consumer fireworks	\$500	\$1,000	\$1,500
VMC 16.30.050, Legal Consumer Fireworks	\$250	\$500	\$1,000
International Fire Code Section 503.4	\$100	\$100	\$100
All Chapters in Title 17 of the VMC, but not including VMC Chapter 17.39	\$250	\$500	\$1,000
Violation of a stop work order	\$250	\$500	\$1,000
VMC Title 20, except that Title 22 shall not apply to VMC Chapter 20.770, Tree conservation except for the purposes of enforcement and the appeal process under VMC 22.02 & 22.03	\$250	\$500	\$1,000
VMC 20.935.030A	\$100	\$100	\$100
VMC Chapter 20.740, Critical Areas Protection Ordinance	\$500	\$1000	\$1,500

E. In the event of an appeal, monetary penalties under VMC 22.02.070(B) shall accrue during the appeal period unless the appellant prevails on appeal. Accrued monetary penalties shall not exceed three (3) times the amount of the daily monetary penalty set by VMC 22.02.070(D) for any single violation from the first date of the violation through the date the hearings examiner renders a final decision.

F. Payment of any monetary penalties associated with the violation does not relieve the person to whom the notice of civil violation and order or order to revoke a permit is directed of the duty to correct the violation.

G. Collection of monetary penalties and necessary and reasonable costs.

1. Payment. Monetary penalties and necessary and reasonable costs are due and payable to the applicable city department or service area ten (10) calendar days after the city personally serves the cited person with a written demand for payment, itemizing the costs the city incurred. If not served personally, monetary penalties and necessary and reasonable costs are due fifteen (15) calendar days after the city deposits in the U.S. mail such a demand and itemized costs. If a violation is appealed as provided herein, monetary penalties and necessary and reasonable costs are due fifteen (15) calendar days after the date the city deposits in the U.S. mail a copy of the hearings examiner's final order. The provisions of VMC 3.08.060 for dishonored checks and VMC 3.08.080 for late fees and interest shall apply to payments due under this title.

2. Approved collection methods. The city attorney or the city attorney's designee is authorized to take any appropriate legal action to collect monetary penalties and necessary and reasonable costs, including liens, personal obligations, assignment of claims to collection agencies, and other collection methods authorized by law.

3. Authority to negotiate settlement. The city official and the city attorney or the city attorney's designee may negotiate a settlement, compromise or otherwise dispose of an action when to do so would be in the best interest of the city.

Section 4. Savings. Those ordinances or parts of ordinances which are amended or repealed by this ordinance shall remain in full force and effect until the effective date of this ordinance.

Section 5. Severability. If any clause, sentence, paragraph, section, or part of this ordinance or the application thereof to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not effect or invalidate the remainder of any parts thereof to any person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable.

Section 6. Effective date. This ordinance shall become effective thirty (30) days following the date of final adoption.

Read first time:

Ayes: Councilmembers

Nayes: Councilmembers

Absent: Councilmembers

Read second time:

PASSED by the following vote:

Ayes: Councilmembers

Nayes: Councilmembers

Absent: Councilmembers

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Timothy D. Leavitt, Mayor

Approved as to form:

\_\_\_\_\_  
E. Bronson Potter, City Attorney

Attest:

\_\_\_\_\_  
R. Lloyd Tyler, City Clerk  
By: Carrie Lewellen, Deputy City Clerk

"NEW CHAPTER"

## **Chapter 5.20**

### **DISPLAY OF DRUG PARAPHERNALIA**

#### **Sections:**

#### **5.20.010 Definitions**

#### **5.20.020 Display of Drug Paraphernalia**

#### **5.20.030 Enforcement**

#### **5.20.010 Definitions**

As used in this chapter, the following terms shall mean the following:

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

B. "Controlled substance" means those controlled substances set forth in the Revised Code of Washington (RCW 69.50) or the United States Code (21 USC §§ 801-971) as such now exist or may hereafter be amended.

C. "Display" means to show to a patron or to place the drug paraphernalia in a manner so that it is within open view by a member of the public.

D. "Drug paraphernalia" for the purposes of this chapter means, but is not limited to:

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 inhaling, injecting or ingesting of marijuana, hashish, hashish oil, cocaine, methamphetamine or any controlled substance;

2. any item, whether useful for non drug related purposes or not, which is designed, decorated, adorned, packaged or displayed in a manner to reasonably suggest its usefulness in inhaling, injecting or ingesting of marijuana, hashish, hashish oil, cocaine, methamphetamine or any controlled substance;

3. any item defined as drug paraphernalia as set forth in the Revised Code of Washington (RCW 69.50) or the United States Code (21 USC §§801-971) as such now exist or may hereafter be amended;

4. isomerization devices used, intended for use, or primarily designed for use in increasing the potency of marijuana, hashish, hashish oil or any species of plant which is an unlawful drug or controlled substance;

5. testing equipment used, intended for use, or primarily designed for use in identifying or analyzing the strength, effectiveness, or purity of unlawful drugs or controlled substances;

6. blenders, bowls, containers, spoons and mixing devices used, intended for use, or primarily designed for use in compounding unlawful drugs or a controlled substance;

7. any objects used, intended for use or primarily designed for use in ingesting, inhaling or otherwise introducing marijuana, hashish, hashish oil, cocaine, methamphetamine or any controlled substance 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, including but not limited to, glass tubes commonly marketed as novelty items such as a miniature rose, vase, air freshener or colored marking pens, which, when taken apart, contain a pipe that can be used for smoking or otherwise inhaling controlled substances;

b. carburetion tubes and devices;

c. smoking and carburetion masks;

d. 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;

e. miniature cocaine spoons, cocaine vials, or any spoon used, intended for use, or primarily designed for ingestion of a controlled substance;

f. chamber pipes;

g. carburetor pipes;

h. electric pipes;

i. air driven pipes;

j. chillums;

k. bongs;

l. ice pipes or chillers;

m. wired cigarette papers;

n. cocaine freebase kit;

o. a device constructed so as to prevent the escape of smoke into the air and to channel smoke into a chamber where it may be accumulated to permit inhalation or ingestion of larger quantities of smoke than would otherwise be possible;

p. a device constructed so as to permit the simultaneous mixing and ingestion of smoke and nitrous oxide or other compressed gas, whether the device is known as a "buzz bomb" or otherwise;

- q. a canister, container or other device with a tube, nozzle, or other similar arrangement attached thereto so constructed as to permit the forcing of smoke accumulated therein to the user's lungs, under pressure, whether the device is known as a "power hitter" or otherwise;
- r. a straw or tube for ingestion of a controlled substance through the nose or mouth; or
- s. a smokable pipe constructed with a receptacle or container in which water or other liquid may be placed into which smoke passes and is cooled in the process of being inhaled or ingested.

8. In determining whether an object is "drug paraphernalia," a court, hearing officer or other authority may consider the following, in addition to the foregoing and all other logically relevant factors:

- a. Statement 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, relating to any controlled substance for the limited purpose of demonstrating knowledge or lack of mistake regarding the object's use as drug paraphernalia, and after determining on the record that the probative value of such outweighs prejudicial impact.
- c. Proximity of the object to controlled substances.
- d. Existence of any residue of controlled substances on the object.
- e. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver to persons whom he or she knows, or reasonably should know, intend to use the object to facilitate a violation of the Vancouver Municipal code, the laws of the State of Washington, or the laws of the United States relating to controlled substances.
- f. Descriptive materials or instructions, written or oral, accompanying the object, which explain or depict its use.
- g. National and local advertising concerning its use.
- h. The manner in which the object is displayed for sale, including its proximity to other objects falling within the definition of drug paraphernalia.
- i. The existence and scope of legitimate uses for the object in the community.
- j. Expert testimony concerning its use, including testimony from law enforcement personnel regarding their knowledge and experience concerning its use.

E. "Person" means a natural person or any firm, partnership, association, corporation or cooperative association.

F. "Primarily designed for" or "marketed for" in this section means a device which has been fabricated, constructed, altered, adjusted, packaged, labeled or marked especially for use in the smoking, ingestion or consumption of marijuana, hashish, hashish oil, cocaine, methamphetamine, or any controlled substance, and is peculiarly adapted to such purposes by virtue of a distinctive feature, combination of features, packaging or labeling associated with drug paraphernalia, notwithstanding the fact that it might also be possible to use such device for some other purpose.

### **5.20.020 Display of Drug Paraphernalia**

No person shall display in any business any drug paraphernalia in a manner so that it is open to viewing by a minor. It is not a violation of this section to display drug paraphernalia in a business, separate room or enclosure to which entry by minors is prohibited. The entry of each business, separate room or enclosure to which the entry by minors is prohibited shall be posted with a sign that is conspicuously visible notifying the public that minors are excluded.

### **5.20.030 Enforcement**

It shall be unlawful to violate the provisions of this chapter. Enforcement of this chapter shall be governed by title 22 of the Vancouver Municipal Code.

## SUMMARY

### ORDINANCE \_\_\_\_\_

AN ORDINANCE relating to regulating the display of drug paraphernalia; prohibiting its display to minors; and providing for an effective date.

The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 487-8711, or via [www.cityofvancouver.us](http://www.cityofvancouver.us) (Go to City Government and Public Records).