

ORDINANCE NO. 1055

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO DRUG PARAPHERNALIA, DEFINING DRUG PARAPHERNALIA, THE FACTORS TO BE CONSIDERED BY A COURT WHEN DETERMINING WHETHER AN OBJECT SATISFIES THE DEFINITION OF DRUG PARAPHERNALIA, DESCRIBING ILLEGAL CONDUCT RELATING TO THE DELIVERY, SALE, POSSESSION OR MANUFACTURE OF DRUG PARAPHERNALIA, AND ESTABLISHING REMEDIES/PENALTIES FOR VIOLATIONS; ADOPTING A NEW CHAPTER 9.38 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the illegal use of controlled substances creates serious physical and psychological damage to users and their families; and

WHEREAS, the City of Gig Harbor expends considerable resources dealing with the secondary impacts of the illegal use of controlled substances, including costs to clean up methamphetamine labs and the cost for police, courts, and corrections associated with illegal drug use; and

WHEREAS, the Gig Harbor City Council believes that the continued proliferation and sale of drug paraphernalia symbolizes a public tolerance for illegal use of controlled substances; and

WHEREAS, the Council believes that reducing the availability of drug paraphernalia will discourage the use of illegal controlled substances in the City; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meetings of September 25, and October 9, 2006; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. A new chapter 9.38 is hereby added to the Gig Harbor Municipal Code, entitled "Drug Paraphernalia," which shall read as follows:

CHAPTER 9.56 DRUG PARAPHERNALIA

SECTIONS:

- 9.38.010 Definitions.**
- 9.38.020 Illegal Conduct.**
- 9.38.030 Remedies.**

9.38.010. Definitions. As used in this Chapter, the following terms shall have the following meanings:

- 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 (chapter 69.50 RCW) or the United States Code (at 21 USC Section 801-971) as such now exist or may hereafter be amended.
- C. “Display” means to show to a patron or to place in a manner so as to be available for viewing or inspection by a patron.
- D. “Distribute” means to transfer ownership or a possessory interest to another whether for consideration, as a gratuity or gift, for consignment, or otherwise.
- E. “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, 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 the growing, harvesting, processing, inhaling, injecting, or ingesting of marijuana, hashish, cocaine, methamphetamine, or any controlled substance.
 - 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 (at USC Sections 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, 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. Drug paraphernalia includes, but is not limited to, 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. Kits used, intended for use, or primarily 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 primarily designed for use in the manufacturing, compounding, converting, producing, processing or preparing of unlawful drugs or controlled substances.

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 or controlled substance.

d. Testing equipment used, intended for use, or designed for use in weighing or measuring unlawful drugs or controlled substances.

f. Diluents and adulterants, such as quinine hydrochloride, mannitol/mannite, dextrose and lactose used, intended for use, or designed for use in cutting or thinning unlawful drugs or controlled substances.

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 or other controlled substance.

h. Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding unlawful drugs or a controlled substance.

i. Capsules, balloons, containers, spoons and mixing devices used, intended for use or designed for use in compounding unlawful drugs or a controlled substance.

j. Containers and other objects used, intended for use, or designed for use in storing or concealing unlawful drugs.

k. Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting unlawful drugs or controlled substances.

l. The phrase “designed primarily for” in Subsection 9.38.010(4) means a device which has been fabricated, constructed, altered, adjusted or marked especially for use in the smoking, ingestion, or consumption of marijuana, hashish, hashish oil, cocaine, or any other “controlled substance” and is peculiarly adapted to such purposes by virtue of a distinctive feature or combination of features associated with drug paraphernalia, notwithstanding the fact that it might also be possible to use such device for some other purpose. Such drug paraphernalia includes, but is not limited to, the following items or devices:

(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; whether the device is known as a “roach clip” or otherwise;

(6) Miniature cocaine spoons, cocaine vials, or any spoon used, intended for use or primarily designed for ingestion of a controlled substance;

(7) Chamber pipes;

(8) Carburetor pipes;

(9) Electric pipes;

(10) Air driven pipes;

(11) Chillums;

(12) Bongs;

(13) Ice pipes or chillers;

(14) Wired cigarette papers;

(15) Cocaine freebase kits;

(16) 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 that would otherwise be possible, whether the device is known as a “bong” or otherwise;

(17) 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;

(18) 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 into the user’s lungs, under pressure, whether the device is known as a “power hitter” or otherwise;

(19) A straw or tube for ingestion of a controlled substance through the nose or mouth; and

(20) 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.

m. 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:

(1) Statement by an owner or by anyone in control of the object concerning its use;

(2) Proximity of the object to controlled substances;

(3) 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 or she knows, or reasonably should know, intend to use the object to facilitate a violation of the laws of the State of Washington 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;
 - (9) Expert testimony concerning its use, including testimony from law enforcement personnel regarding their knowledge and experience concerning its use.
- F. "Manufacture" means to fabricate, make, produce, create, assemble, modify, adapt, or turn out.
- G. "Patron" means a person who enters a business for the purpose of purchasing, or viewing as a shopper, merchandise offered for sale at the business;
- H. "Person" means a natural person or any firm, partnership, association, corporation or cooperative association.

9.38.020. Illegal Conduct.

- A. 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.
- B. 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.
- C. It is unlawful for any person to sell, give, or permit to be sold or given, to any person, any drug paraphernalia in any form.

9.38.030. Remedies.

- A. Any person who violates any provision of subsections A or B or C of GHMC Section 9.38.020, commits a civil infraction under chapter 7.80 RCW and shall be punished by a fine of \$250.00. It shall be no defense to a prosecution for an infraction issued under this subsection that the person acted or was believed by the defendant to act, as agent or representative of another; PROVIDED that nothing in this section prohibits legal distribution of injection syringe equipment through public health and community-based HIV prevention programs.
- B. Any person 18 years of age or over who violates GHMC Section 9.38.020 by delivering drug paraphernalia to a person less than 18 years of age who is at least three years his junior shall be guilty of a gross misdemeanor.

Upon conviction, said person shall be punished according to GHMC Section 1.16.010.

C. Any person who violates GHMC Sections (A) or (B) and has previously been found to have committed an infraction under either of those sections within the most recent twenty-four month period shall be guilty of committing a misdemeanor. Upon conviction, said person shall be punished according to GHMC Section 1.16.010.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this 6th day of October, 2006.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 09/21/06
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