

LOCAL LAW NO. 8-1982
CHAUTAUQUA COUNTY

Prohibiting the Possession, Manufacture and Sale of Drug Paraphernalia

BE IT ENACTED, by the County Legislature of the County of Chautauqua, New York as follows:

SECTION 1. Legislative Findings. The Chautauqua County Legislature finds the growing and continuing use of controlled substances and marijuana by some of the citizens of Chautauqua County, especially minors, to be detrimental to the health, safety and welfare of the community. Furthermore, the growing development of shops and stores which openly display objects whose primary purposes are drug-related, facilitates the illegal use of controlled substances and marijuana. These shops and displays, by providing ready access to objects which can be used in drug-related ways, impute a false sense of legality to the use of both controlled substances and marijuana.

The Chautauqua County Legislature further finds the availability of smoking accessories and smoking herbs to minors to be an inducement to the tobacco, herb, hashish and marijuana smoking experiences. As such, it is necessary in order to make the prohibition on the use of controlled substances, marijuana, and in the case of minors, tobacco, effective, for this Legislature to ban the possession, delivery, manufacture and sale of drug paraphernalia and to provide for appropriate civil penalties for violators thereof.

SECTION 2. Definitions

A. "Controlled Substance" means any controlled substance as defined by subdivision five of Sec. 220.00 of the New York State Penal Law.

B. The term "Drug Paraphernalia" shall mean all equipment, products and materials of any kind intended for use or designed for use in 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 or marijuana as defined by Section 220.00 (subd. 5 and 6) of the New York Penal Law. The term "Drug Paraphernalia" as used herein does not include any item or substance of which knowing possession thereof would constitute a crime under Section 220.50 of the Penal Law. It includes, but is not limited to:

1. Kits 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 intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
3. Isomerization devices intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance;
4. Testing equipment intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;
5. Scales and balances intended for use or designed for use in weighing or measuring controlled substances;
6. Separation gins and sifters intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;

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

8. Capsules, balloons, envelopes and other containers intended for use or designed for use in packing small quantities of controlled substances;

9. Containers and other objects intended for use or designed for use in storing or concealing controlled substances;

10. Objects 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 intended for use in holding 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;

m. Ice pipes or chillers;

11. "Cocaine Spoon": A spoon with a bowl so small that the primary use for which it is reasonably adopted or designed is to hold or administer cocaine, and which is so small as to be unsuited for the typical, lawful uses of a spoon. A cocaine spoon may or may not be labeled as a "cocaine spoon or coke" spoon;

12. "Marijuana or Hashish Pipe": A pipe characterized by a bowl which is so small that the primary use for which it is reasonably adopted or designed is the smoking of marijuana or hashing, rather than lawful smoking tobacco, and which may or may not be equipped with a screen;

13. "Cigarette Paper": Any paper of colorful design containing language or names or symbols oriented for use with illegal cannabis or controlled substances. This definition shall not include ordinary white paper or tobacco-oriented paper normally and lawfully used with lawful smoking tobacco.

C. "Marijuana" means marijuana or concentrated cannabis as defined by subdivision six of Sec. 220.00 of the New York Penal Law.

D. "Minor" means a person who has not attained the age of eighteen years.

E. "Unlawfully" means in violation of Article thirty-three of the Public Health Law.

F. "Deliver" means to give or dispose of to another, or to offer or agree to do the same.

G. "Smoking Accessories" means any cigarette or cigar holder, pipe, mechanical lighter, or other tobacco or smoking-related device or instrument whose sale and/or use is not unlawful or prohibited except as provided in Section 5 of this Local Law.

H. "Smoking Herb" means any substance or compound containing tobacco or tobacco-related materials whose sale and/or use is not unlawful or prohibited except as provided in Section 5 of this Local Law.

SECTION 3. Offenses.

A. Possession of Drug Paraphernalia. It shall be unlawful for any person to knowingly use or possess with intent to use drug paraphernalia under circumstances evincing an intent to use or under circumstances evincing knowledge that a person to whom such paraphernalia is sold, bartered, exchange, delivered or otherwise given away intends to use the equipment, products or materials to unlawfully 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 or marijuana.

B. Manufacture of drug paraphernalia. It shall be unlawful for any person to knowingly manufacture drug paraphernalia under circumstances evincing an intent to use or under circumstances evincing knowledge that a person to whom such paraphernalia is sold, bartered, exchanged, delivered or otherwise given away intends to use the equipment, products or materials for purposes of unlawfully manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance or marijuana.

C. Delivery of drug paraphernalia. It shall be unlawful for any person to knowingly deliver drug paraphernalia to another under circumstances evincing an intent to use or under circumstances evincing knowledge that a person to whom such paraphernalia is sold, bartered, exchanged, delivered, or otherwise given away intends to use the equipment, products or materials for purposes or unlawfully manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or marijuana.

D. Sale of drug paraphernalia. It shall be unlawful for any person to knowingly sell or possess with intent to sell, or offer to sell drug paraphernalia under circumstances evincing knowledge that a person to whom such paraphernalia is sold, bartered, exchanged, delivered, or otherwise given away intends to use the equipment, products or materials for purposes or unlawfully manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or marijuana.

E. This section does not apply to or govern any matter, act, or omission controlled by Article 33 of the Public Health Law or Penal Law Section 260.20 (Subd. 5). This section shall not be construed to prohibit any possession, manufacture, or use of hypodermic made lawful by Section 220.45 of the Penal Law.

F. Any drug paraphernalia used in violation of this section shall be seized by and forfeited to the agency enforcing this law in accordance with State law.

G. Whenever an employee of a business establishment, acting as a agent for the business establishment, is charged with a violation of this Local Law, there shall be a rebuttable presumption that the owner, proprietor, operation, or manager of the establishment had knowledge of the acts of the employee or agent and that said violation was permitted in contravention of this law by the said owner, proprietor, operator, or manager of the establishment.

SECTION 4. Determinations and Construction. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the presence or any or all of the following:

- A. Statements by an owner or by anyone in control of the object concerning its use;
- B. The proximity of the object, in time and space, to a direct violation of this Act;

- C. The proximity of the object to controlled substances;
- D. The 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 it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this law; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this law shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
- F. Instructions, oral or written, provided with the object concerning its use;
- G. Descriptive materials accompanying the object which explain or depict its use;
- H. National and local advertising concerning its use;
- I. The manner in which the object is displayed for sale;
- J. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
- K. The existence and scope of legitimate uses for the object in the community;
- L. Expert testimony concerning its use.

SECTION 5. Sale of Smoking Accessories to a Minor

A. It shall be unlawful to sell, barter, exchange, deliver, or give away or cause or permit or procure to be sold, bartered, exchanged, delivered, or given away smoking accessories to any person under eighteen years of age.

It shall be unlawful to see, barter, exchange, deliver, or give away or cause or permit or procure to be sold, bartered, exchanged, delivered, or given away smoking herbs to any person under eighteen years of age.

B. Any person under the age of eighteen who presents, or offers to any vendor, or to the agent or employee of such vendor any written evidence of age which is false, fraudulent or not actually his own for the purpose of purchasing or attempting to purchase any smoking accessory or herb shall be guilty of a violation.

C. Warning to Minors. Any person, firm, partnership, company or corporation operating a place of business wherein smoking accessories and smoking herbs are sold or offered for sale, shall post in a conspicuous place upon the premises a sign upon which there shall be imprinted the following statement, "SALE OF SMOKING ACCESSORIES AND SMOKING HERBS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW". "THE MISREPRESENTATION OF AGE TO PROCURE SUCH A SALE IS PROHIBITED BY LAW" Such a sign shall be printed on a white card in red letters at least one-half inch in height.

D. The sale of smoking accessories to a minor or of drug paraphernalia shall constitute presumptive evidence that such sale was permitted in contravention of this law by the person exercising dominion or control over the business premises in which the sale was made.

SECTION 6. Advertising Drug Paraphernalia. It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publication produced or originating within the County of Chautauqua, New York, 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 objects designed or intended for use as drug paraphernalia.

SECTION 7. Penalties. Any person, corporation, firm, partnership or company found guilty of a violation of Section 3A, 3B, 3C, 3D, 5A or 6 of this Local Law shall be guilty of an

offense and shall be subject to a fine of not less than \$25.00 and not more than \$100.00 for each such offense. For any subsequent conviction of the same offense, the offender shall be subject to a fine of not less than \$50.00 and not more than \$100.00 or by imprisonment not exceeding fifteen (15) days, or by both such fine and imprisonment.

SECTION 8. Severability. If any clause, sentence, paragraph, section or article of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such adjudication shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or article thereof directly involved in the proceedings in which such adjudication shall have been rendered.

SECTION 9. Effective Date. This Local Law shall become effective on November 1, 1982.

Adopted by Legislature: 9/10/82 R/C Vote: 24 Yes; 1 Absent
Public Hearing: 9/24/82
Adopted as Local Law 8-82