

COUNTY OF ERIE

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ERIE COUNTY  
LEGISLATURE

LOCAL LAW NO. 4-1980

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LOCAL LAW INTRO. NO. 20 (Print #5)

1979

PROPOSED LOCAL LAW PROHIBITING DRUG AND SMOKING PARAPHERNALIA  
BE IT ENACTED BY THE ERIE COUNTY LEGISLATURE AS FOLLOWS:

P R E A M B L E

The Erie County Legislature finds the growing and continued use of controlled substances and marihuana by some of the citizens of Erie County, especially minors, to be detrimental to the health, safety and welfare of the community. Moreover, 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 marihuana. 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 marihuana.

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

Section 1

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 which are primarily used, adapted 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 marihuana 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

C. "Marihuana" means marihuana or concentrated cannabis as defined by subdivision six of Sec. 220.00 of the New York State 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.

Section II

OFFENSES

A. Possession of Drug Paraphernalia

It shall be unlawful for any person to use or to possess with intent to use, drug paraphernalia, under circumstances evincing an intent to use, to convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inject, inhale or otherwise introduce into the human body a controlled substance or marihuana.

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 some person 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 marihuana.

C. Delivery of drug paraphernalia. It shall be unlawful for any person to knowingly deliver to another drug paraphernalia under circumstances evincing an intent to use or under circumstances evincing knowledge that some person 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 marihuana.

D. Sale of Drug Paraphernalia. It shall be unlawful for any person to sell, or possess with intent to sell, or offer to sell, drug paraphernalia, under circumstances evincing an intent to use or under circumstances evincing knowledge that some person intends to use the same 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 or marihuana.

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 hypodermics 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.

G. Whenever an employee of a business establishment, acting as an agent for the business establishment, is charged with a violation of this local law, there shall be a rebuttable presumption that the owner, proprietor, operator, 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 III

In determining whether there is a violation of this law, a court or other authority may consider, in addition to all other logically revelant factors, the presence of any or all of the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) The proximity of the object, in time and space, to a direct violation of this Act;
- (3) The proximity of the object to controlled substances;
- (4) The existence of any residue of controlled substances on the object;
- (5) 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 adapted for use, or designed for use as Drug paraphernalia;
- (6) Instructions, oral or written, provided with the object concerning its use;
- (7) Descriptive materials accompanying the object which explain or depict its use;
- (8) National and local advertising concerning its use;
- (9) The manner in which the object is displayed for sale;
- (10) 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;
- (11) Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

- (12) The existence and scope of legitimate uses for the object in the community;
- (13) Expert testimony concerning its use.

Section IV

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 sell, 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 vender 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 OR 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 V  
PENALTY

Any person found guilty of a violation of Section 2 (A) of this local law shall, for the first offense, be guilty of a violation and shall be subject to a fine fixed by the court not exceeding \$250.00 or a term of imprisonment not exceeding fifteen days or both. For each succeeding offense, such person shall be guilty of a Class A misdemeanor and shall be subject to a fine fixed by the court not exceeding \$1,000.00 or a term of imprisonment not exceeding one year or both.

Any person found guilty of a violation of Section 2 (B) (C) or (D) of this local law shall be guilty of a Class A misdemeanor.

SEVERABILITY

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

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L. William Paxon  
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Acknowledged by Secretary of State 5/9/80