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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County
[redacted] of Erie
[redacted]
[redacted]
Local Law No. 2 of the year 19 82

A local law amending Local Law No. 4 - 1980 relating to the control of
(insert title)
the possession, manufacture and sale of drug paraphernalia.

Be it enacted by the County Legislature of the
(Name of Legislative Body)

County
[redacted] of Erie as follows:
[redacted]

Section 1. LEGISLATIVE FINDINGS. In 1980, the Legislature of Erie County found the growing and continued use of controlled substances and marihuana to be detrimental to the health, safety and welfare of the community. The Legislature further found that shops and stores which openly display objects whose primary purposes are drug related, facilitated the illegal use of controlled substances and marihuana. Therefore, the Legislature banned the possession, delivery, manufacture and sale of drug paraphernalia in Local Law No. 4 - 1980. Following a court challenge, Sections II (C) and (D) were declared null and void by the Federal Courts under the doctrine of Preemption.

Since the time of the Federal Court order, developments have arisen which allow this Legislature to impose penalties for the possession, sale and manufacture of drug paraphernalia. The Supreme Court of the United States, in three cases, The Flipside, Hoffman Estates v. Village of Hoffman Estates, Casbah v. Thone, and Brache v. Westchester, have held the authority of local and state officials to regulate and prohibit the sale and use of drug paraphernalia.

In Franza v. Carey, the state law which was found to preempt Erie County's Local Law by the Federal Court was declared null and void because of its failure to impose a scienter or mens rea requirement. Since some sections of Erie County's Local Law contain the same constitutional infirmity, the Erie County Legislature, in order to prohibit the sale and possession of drug paraphernalia in a constitutionally acceptable way, hereby amends Local Law No. 4 - 1980.

Section 2. Local Law No. 4 - 1980, Sections 1, II, III, and IV are hereby amended to read as follows:

(If additional space is needed, please attach sheets of the same size as this and number each)

Section I
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 used, 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 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 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 quine 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 marihuana;
 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 or 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 in the human body;
 12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marihuana, 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 marihuana 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. Bonges;
- m. Ice pipes or chillers;

13. '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.

14. '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 hashish, rather than lawful smoking tobacco, and which may or may not be equipped with a screen.

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 knowingly use or possess with intent to use 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 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 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 drug paraphernalia to another 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 knowingly 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 equipment, products or materials for purposes of unlawfully manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, containing, concealing, injecting, ingesting, inhaling or otherwise introduction 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 in accordance with state 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 an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant 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 intended 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) Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(11) The existence and scope of legitimate uses for the object in the community;

(12) 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 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 3. Local Law No. 4 - 1980, is hereby amended to amend Section V thereof and to renumber said Section V to read Section VI, and to add a new Section V to read as follows:

Section V

ADVERTISING DRUG PARAPHERNALIA

It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertising, 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 VI

PENALTY

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

Any person found guilty of a violation of Section IV (A) of this local law shall 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 15 days or both.

Any person found guilty of a violation of Section V of this local law shall be guilty of a Class A misdemeanor.

Section 4. 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 5. This local law shall take effect immediately upon filing with the secretary of state.