

CLARE COUNTY ORDINANCE NUMBER 16

THE COUNTY OF CLARE, STATE OF MICHIGAN, ENACT:

DRUG PARAPHERNALIA

An act to protect and promote the public health; to add to the laws and ordinances of the County of Clare relating to public health; to prohibit the possession, use, retail delivery or sale of drug paraphernalia under certain circumstances; and to provide for penalties and remedies.

Section 1. As used in this Ordinance, "drug paraphernalia" means any equipment, product, material, or combination of equipment, products or materials, which is used, intended for use or specifically 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 as defined by Article 7 of the Public Health Code, MCL 333.7101, et seq; MSA 14.15 (7101) et seq; including, but not limited to, all of the following:

(i) An isomerization device used, intended for use, or specifically designed for use in increasing the potency of any species of plant which is a controlled substance.

(ii) Testing equipment used, intended for use, or specifically designed for use in identifying, or in analyzing the

strength, effectiveness, or purity of a controlled substance.

(iii) Weight scale or balance used, intended for use, or specifically designed for use in weighing or measuring a controlled substance.

(iv) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or specifically designed for use with a controlled substance.

(v) A separation gin or sifter used, intended for use, or specifically designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marihuana.

(vi) A blender, bowl, container, spoon, or mixing device used, intended for use, or specifically designed for use in compounding a controlled substance.

(vii) A capsule, balloon, envelope, or other container used, intended for use, or specifically designed for use in packaging a controlled substance.

(viii) A container or other object used, intended for use, or specifically designed for use in storing or concealing a controlled substance.

(ix) A hypodermic syringe, needle, or other object used, intended for use, or specifically designed for use in injecting a controlled substance into the human body.

(x) An object used, intended for use, or specifically designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, including all of the following:

(A) A metal, wooden, acrylic, glass, stone, plastic,

or ceramic pipe.

(B) A water pipe.

(C) A carburetion tube or device.

(D) A smoking or carburetion mask.

(E) A roach clip, being an object 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) A miniature cocaine spoon or cocaine vial.

(G) A chamber pipe.

(H) A carburetor pipe.

(I) An electric pipe.

(J) An air-driven pipe.

(K) A chillum.

(L) A bong.

(M) An ice pipe or chiller.

(xi) A kit used, intended for use, or specifically 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.

(xii) A kit used, intended for use, or specifically designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

Section 2. In determining whether an object is drug paraphernalia, in addition to all other logically relevant factors, all of the following shall be considered:

(A) Statements by an owner or by anyone in control of the object concerning the use of the object.

(B) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance.

(C) The proximity of the object to a controlled substance or a violation of this Act.

(D) The existence of any residue of a controlled substance on the object.

(E) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver the object to a person whom he or she knows or intends to use the object to introduce into the human body a controlled substance.

(F) Instructions, oral or written, provided with the object concerning the use of the object.

(G) Descriptive materials accompanying the object which explain or depict the use of the object.

(H) National and local advertising concerning the use of the object.

(I) The manner in which the object is displayed for sale.

(J) The existence and scope of legitimate uses for the object.

(K) Expert testimony concerning the use or uses of the object.

(L) Whether the owner, or anyone in control of the object, is a legitimate supplier or similar objects to the community, such as a licensed distributor or dealer of tobacco products.

(M) Direct or circumstantial evidence of the ratio of sales by the owner of the object to the total sales of the business enterprise.

Section 3. (1) A person shall not use, or possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

(2) A person shall not deliver or possess with intent to deliver drug paraphernalia, knowing or having reason to know, that the drug paraphernalia 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.

Section 4. A person who violates Sections 1, 2, or 3 is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$500.00, or both.

Section 5. Sections 1 through 4 do not apply to any of the following:

(A) An object sold or offered for sale to a licensed physician, osteopath, dentist, veterinarian, nurse, pharmacist, podiatrist, chiropractor, psychologist, physical therapist, embalmer, or funeral director or any intern, trainee, apprentice, or assistant in any of the professions enumerated in this subdivision for use in that profession.

(B) An object sold or offered for sale to any hospital, sanitarium, clinical laboratory, or other health care institution including a penal, correctional, or juvenile detention facility for use in that institution.

(C) A hypodermic syringe or needle sold or offered for sale for the purpose of injecting or otherwise treating livestock or other animals.

(D) A hypodermic needle or syringe sold or offered for sale for the purpose of injecting a substance other than a controlled substance.

(E) A smoking pipe if the seller reasonably believes the pipe is for the purpose of display, decoration, or smoking a substance other than a controlled substance.

(F) An object sold or offered for sale to a dealer in medical, dental, surgical, or pharmaceutical supplies.

(G) A hypodermic syringe, needle, or other object possessed by a diabetic or other person for the treatment of disability or disease under the authorization of a licensed health care professional.

#### SEVERABILITY

Section 6. All other ordinances or parts of ordinances in conflict herewith are hereby repealed. This ordinance and the various parts, sections, subsections, provisions, sentences and clauses are severable. If any part of this ordinance is found to be unconstitutional or invalid, it is declared that the remainder of this ordinance shall not be affected thereby.

