

ORDINANCE NO. 140
DRUG PARAPHERNALIA ORDINANCE

AN ORDINANCE TO PROHIBIT THE USE, POSSESSION, DELIVERY, SALE, OR ADVERTISEMENT OF DRUG PARAPHERNALIA.

THE VILLAGE OF DECATUR, VAN BUREN COUNTY, MICHIGAN ORDAINS:

Section 1: DEFINITIONS.

A. The term “drug paraphernalia” means all equipment, products and materials of any kind 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 as defined in Section 7104 of the Michigan Public Health Code (Act No. 368 of the MI Public Acts of 1978, as Amended), in violation of the laws of the State of Michigan. 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 quinine, hydrochloride, mannitol, manite, 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, marijuana;
8. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;
9. Capsules, balloons, envelopes or other containers used, intended for use or designed for use in packaging small quantities of controlled substances;
10. Containers or 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 into the human body;
12. 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. 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 materials, such as a marijuana cigarette, that have 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.

B. In determining whether an object is “drug paraphernalia,” a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;
2. 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 substances;
3. The proximity of the object, in time and space, to a direct violation of state law;
4. The proximity of the object to controlled substances;
5. The existence of any residue of controlled substances on the object;
6. 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 intend to use the object to facilitate a violation of state law or this Ordinance; the innocence of an owner, or of anyone in control of the object, as to a direct violation of state law shall not prevent a finding that the object is intended for use or designed for use drug paraphernalia;
7. Instructions, oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale;
11. 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;
12. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
13. The existence and scope of legitimate uses for the object in the community, and;
14. Expert testimony concerning its use.

Section 2: POSSESSION OF DRUG PARAPHERNALIA.

It is unlawful for any person, firm, or corporation to use, or to possess with intent to use, drug paraphernalia 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 in violation of the laws of the State of Michigan.

Section 3: MANUFACTURE, DELIVERY OR SALE OF DRUG PARAPHERNALIA.

It is unlawful for any person, firm, or corporation to deliver, sell, possess with intent to deliver or sell or manufacture with intent to deliver or sell drug paraphernalia, knowing that it will be used to plant, convert, product, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the laws of the State of Michigan.

Section 4: ADVERTISEMENT OF DRUG PARAPHERNALIA.

It is unlawful for any person, firm, or corporation to advertise, in any newspaper, magazine, handbill or other publication, or by sign, poster, or any other means of advertisement, for the purpose of promoting the sale of objects designed or intended for use as drug paraphernalia.

Section 5: CIVIL FORFEITURE.

Any drug paraphernalia used, sold, possessed with intent to use or sell, or manufactured with intent to sell in violation of this Ordinance shall be seized and forfeited to the Village of Decatur, Michigan.

Section 6: SEVERABILITY.

Sections of this Ordinance shall be deemed severable and should any section, clause or provision of this Ordinance be declared to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

Section 7: PENALTY.

Any person, firm, or corporation who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be subject to a fine of not more than Five Hundred and 00/100 (\$500.00) Dollars, plus Court costs and costs of prosecution, or by imprisonment in the County jail for a term not exceeding ninety (90) days, or both, at the discretion of the Court. Each day that a violation occurs shall be considered a separate offense. The Village may in addition seek injunctive relief.

Section 8: EFFECTIVE DATE.

This Ordinance shall become effective the 26th day of March, 2001.

Adopted by the Village Council of the Village of Decatur, Van Buren County, Michigan on this 5th day of March, 2001.