

## Chapter 16

### OFFENSES AND MISCELLANEOUS PROVISIONS\*

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\* **Cross References:** Traffic and vehicles, ch. 26.  
**State Law References:** Crimes, MCL 445.771 et seq.

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#### Article I. In General

Sec. 16-1. Trespass.  
Sec. 16-2. Disorderly conduct.  
Sec. 16-3. Loitering.  
Sec. 16-4. Prowling.  
Sec. 16-5. Loitering or prowling; determining violation.  
Sec. 16-6. Defacing of property (graffiti); possession of spray paint.  
Sec. 16-7. Curfew for minors.  
Sec. 16-8. Purchase, consumption or possession of alcohol.  
Sec. 16-9. Disturbing the peace.  
Sec. 16-10. Possession of tobacco by minors.  
Sec. 16-11. Use of Fireworks  
Secs. 16-12--16-40. Reserved.

#### Article II. Drugs and Drug Paraphernalia

##### Division 1. Generally

Sec. 16-41. Use or possession of marijuana; penalty.  
Sec. 16-42. Open house parties; use of alcoholic beverages and drugs.  
Secs. 16-43--16-60. Reserved.

##### Division 2. Drug Paraphernalia

Sec. 16-61. Purpose of division.  
Sec. 16-62. Definitions.  
Sec. 16-63. Determination as to whether object is drug paraphernalia.  
Sec. 16-64. Possession.  
Sec. 16-65. Manufacture, delivery or sale.  
Sec. 16-66. Advertisement.  
Sec. 16-67. Exceptions.  
Sec. 16-68. Civil forfeiture.  
Sec. 16-69. Delivery or sale to a minor; penalty.  
Sec. 16-70. Penalty for violation of article.

## ARTICLE I.

### IN GENERAL

#### Sec. 16-1. Trespass.

(a) *Prohibited generally.* It shall be unlawful for any person to commit a trespass within this municipality upon either public or private property.

(b) *Enumeration of prohibited acts.* Without constituting any limitation upon the provisions of subsection (a) of this section, any of the following acts by any person shall be deemed included among those

that constitute trespasses in violation of the provisions of subsection (a) of this section, and appropriate action may be taken under this section at any time, or from time to time, to prevent or punish any violations of this section. The enumerated prohibited acts shall include the following:

- (1) An entry upon the premises, or any part thereof, of another, including any public property in violation of a notice posted or exhibited at the main entrance to such premises, or at any point of approach of entry or in violation of any notice, warning or protest given orally or in writing by any owner or occupant thereof;
- (2) The pursuit of a course of conduct or action incident to the making of an entry upon the land of another in violation of a notice posted or exhibited at the main entrance to such premises or at any point of approach or entry, or in violation of any notice, warning or protest given orally or in writing by any owner or occupant thereof;
- (3) A failure or refusal to depart from the premises of another in case of being requested, either orally or in writing, by any owner or occupant thereof; or
- (4) An entry into or upon any vehicle, aircraft or watercraft made without the consent of the person having the right to the possession or control thereof, or a failure or refusal to leave any such vehicle, aircraft or watercraft after being requested to leave by the person having such right.

(c) *Penalty.* Any person violating or failing to comply with the provisions of this section shall be guilty of a misdemeanor and be punished in accordance with section 1-12.  
(Ord. No. 91-12, §§ 2--4, 11-18-1991; Ord. No. 97-3, § 2, 11-3-1997)

**State Law References:** Trespass generally, MCL 750.546 et seq.

## **Sec. 16-2. Disorderly conduct.**

(a) *Prohibited generally; enumeration of prohibited acts.* No person shall engage in disorderly conduct. Any person who shall do any of the following shall be guilty of disorderly conduct:

- (1) Acts in a violent or tumultuous manner toward another where any person is placed in fear of safety of his life, limb or health.
- (2) Acts in a violent or tumultuous manner toward another where property of any person is placed in danger of being destroyed or damaged.
- (3) Engages in unlawful pursuits of another by acts of violence, angry threats or abusive conduct.
- (4) Causes, provokes or engages in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another.
- (5) Assembles or congregates with another or others for the purpose of causing, provoking or engaging in any fight or brawl.
- (6) Is found jostling or roughly crowding or pushing any person in any public place.

- (7) Collects in bodies or in crowds for unlawful purposes.
- (8) Assembles or congregates with another or others for the purpose of or with the intent to engage in gaming.
- (9) Frequents any public place with intent to obtain money from another by an illegal and fraudulent scheme, trick, artifice or device.
- (10) Assembles with another or others for the purpose of engaging in any fraudulent scheme, device or trick to obtain any valuable thing in any place or from any person in the village.
- (11) Utters while in the state of anger, in the presence of another, any lewd or obscene words or epithets.
- (12) Frequents any place where gaming or the illegal sale or possession of alcoholic beverages or narcotics or dangerous drugs is allowed or tolerated.
- (13) Acts in a dangerous manner towards others.
- (14) Uses "fighting words" directed towards any person who becomes outraged and thus creates turmoil.
- (15) Assembles or congregates with another or other persons for the purpose of doing bodily harm to another.
- (16) By acts of violence, interferes with another's pursuit of a lawful occupation.
- (17) Congregates with another or others in or on any public ways so as to halt the flow of vehicular or pedestrian traffic and refuses to clear any public way when ordered to do so.
- (18) Interferes with any public gathering or religious worship within the village.
- (19) Of sufficient ability who refuses or neglects to support his family.
- (20) Engages in any indecent, insulting, immoral or obscene conduct in any public place.
- (21) Engages in prostitution, gambling, the illegal sale of intoxicating liquor or any other illegal or immoral business or occupation or attends, frequents, operates or is an occupant or inmate of any such place.
- (22) Is found begging in a public place excepting persons engaged in Halloween trick or treating.
- (23) Is intoxicated in a public place and who is either endangering directly the safety of another person or of property or is acting in a manner that causes a public disturbance.
- (24) Engages in peeping in the windows of any inhabited place.

- (25) Is drunk or intoxicated while hunting with a firearm or other weapon.
- (26) Under the age of 21 years who purchases, consumes or knowingly possesses or transports or has under his control in any motor vehicle any alcoholic beverages, and, for the purpose of this subsection, it shall be presumed that a minor is knowingly in possession of or is knowingly transporting alcoholic beverages if the alcoholic beverage is found in a motor vehicle occupied by the minor, provided that the provisions of this subsection, except as to purchasing and consuming, shall not apply to a minor employed by a licensee under the Michigan Liquor Control Act (MCL 436.1 et seq.), during the regular working hours and in the regular course of his employment.
- (27) Consumes any alcoholic beverage in any public place not licensed by the state as a location for dispensing of alcoholic beverages.
- (28) Either directly or indirectly by himself, clerk, agent, servant or employee, sells, furnishes, gives or delivers any alcoholic beverage to any minor, except upon the authority of and in pursuance of a prescription of a physician licensed by the state.
- (29) Fires, discharges, displays or possesses any fireworks, except of the type and under the conditions permitted by MCL 750.243b.
- (30) Discharges any firearm, air rifle, air pistol, bow and arrow or slingshot in the village, except when lawfully acting in the defense of persons or property or the enforcement of law or at a duly established range, the operation of which has been approved by the village council, and except during hunting seasons as permitted by state statute.

(b) *Penalty for violation of section.* Any person violating or failing to comply with the provisions of this section shall be guilty of a misdemeanor and punished in accordance with section 1-12. (Comp. Ords. 1987, §§ 20.101, 20.102, 20.105; Ord. No. 92-1, §§ 1, 2, 1-20-1992; Ord. No. 97-4, § 2, 11-3-1997; Ord. No. 2003-01, § 2B, C, 2-3-2003)

**State Law References:** Authority of village president to suppress disorderly conduct, MCL 64.2, authority of village to punish disorderly persons, MCL 67.1(b); chief of police authorized to suppress breaches of the peace, MCL 67.24; "disorderly person" defined, MCL 750.167.

### **Sec. 16-3. Loitering.**

No person shall loiter on any street, sidewalk or in any public place. For the purpose of this section, the term "loitering" is defined as the act of standing or idling in or about any street, sidewalk or in any public place so as to hinder or impede the passage of pedestrians or vehicles.

(Comp. Ords. 1987, § 20.271; Ord. No. 91-9, § 2, 10-21-1991; Ord. No. 97-3, § 2, 11-3-1997)

### **Sec. 16-4. Prowling.**

No person shall prowl about any alley or the private premises of any other person in the nighttime without authority or the permission of the owner or occupant of such premises.

(Comp. Ords. 1987, § 20.272)

### **Sec. 16-5. Loitering or prowling; determining violation.**

A person commits a violation of sections 16-3 or 16-4 if he loiters or prowls in a place at a time or in a manner not usual for law abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself or manifestly endeavors to conceal himself or any object. Unless flight by the actor or other circumstance makes it impracticable, a peace officer shall, prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the peace officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm.  
(Comp. Ords. 1987, § 20.273)

### **Sec. 16-6. Defacing of property (graffiti); possession of spray paint.**

(a) For the purpose of this subsection, the term "deface" means the placement, without consent, of any drawing, inscription, initial, design, scribbling, motto, message, name or picture, including those commonly known as graffiti, on an object or surface.

(b) It shall be unlawful for any person to use any paint, spray paint, pigment, tools, objects, or any other similar means to injure, deface, or destroy the property of another, including the making of any drawing, inscription, initial, design, scribbling, motto, name, picture, pictograph, or other markings commonly referred to as "graffiti."

(c) As used in this subsection, the term "spray paint" means any container of paint, varnish, lacquer, stain or similar substance commonly used in painting and propelled by compressed air, aerosol or other propellant and applied by a spraying method or similar technique.

(d) Except as otherwise provided, a person under 18 years of age shall not possess, buy, or give to another any spray paint. Except as otherwise provided, a person shall not sell or give spray paint to another person under 18 years of age. However, a person may sell or give spray paint to a person under 18 years of age for lawful uses if the juvenile exhibits the written consent therefor of his parent or guardian. If a person under 18 years of age exhibits the written consent of his parent or guardian, the person selling or giving the spray paint to the juvenile shall record the name, address, sex, and age of the juvenile, and the name and address of the consenting parent or guardian. All data required by this section shall be kept in a permanent register available for inspection by the police department for a period of at least one year. Violation of this section shall be deemed a misdemeanor, punishable in accordance with section 1-12.

(e) It shall be the responsibility of the owner of any property marked or defaced as defined in this section to remove or paint over such markings within seven days after discovery of their existence so as to minimize the addition of further markings and other blight upon the property. If removal is delayed by extenuating circumstances such as infirmity, or financial inability, the property owner may petition (the police) for a time extension. Any owner removing markings pursuant to this section shall be entitled to restitution in an amount determined by the court for the cost of removing the markings. Restitution shall be paid by any person

convicted under this section of making the markings. If the individual defacing property is under 18 years of age, to the extent practical, the individual shall be required to restore the premises. Violation of this section shall be deemed a municipal civil infraction, enforceable under section 2-161 et seq.

#### **Sec. 16-7. Curfew for minors.**

(a) *Exceptions.* It shall be unlawful for any minor under the age of 17 years to loiter, idle, wander, stroll or play in or be found upon the public streets, alleys, parks, public buildings, places of amusement and entertainment, vacant lots or any public place in the village between the hours of 10:30 p.m. and 5:00 a.m. of the following day, official village time, unless such minor shall be accompanied by his parent, guardian or other adult person having the care and custody of such minor, or unless such minor is in the performance of an errand or duty directed by such adult person, or where such minor is returning home from any function conducted by the public schools, or unless the legal employment of such minor makes it necessary to be upon the streets during such hours.

(b) *Observance by parent; guardian.* It shall be unlawful for the parent, guardian or other adult person having the care and custody of a minor under 17 years of age to permit such minor to loiter, idle, wander, stroll or play in or be found upon the public streets, alleys, parks, playgrounds or other public places or in any public place in the village between the hours of 10:30 p.m. and 5:00 a.m., official village time, unless such minor is subject to the exceptions set forth in subsection (a) of this section.

(c) *Observance by places of amusement and entertainment.* It shall be unlawful for any person operating places of amusement and entertainment in the village to permit any minors under the age of 17 years to enter or remain in such places of amusement and entertainment between the hours of 10:30 p.m. and 5:00 a.m. of the following day unless such minor is subject to the exceptions set forth in subsection (a) of this section.

(Comp. Ords. 1987, §§ 20.777--20.279)

#### **Sec. 16-8. Purchase, consumption or possession of alcohol.**

(a) No person under the age of 21 shall at any time purchase alcoholic liquor, consume alcoholic liquor in a licensed premises, or possess alcoholic liquor, except possess as provided in section (d) or as otherwise provided by state law. A person less than 21 years of age who violates this subsection is guilty of a misdemeanor punishable as follows:

- (1) For the first violation, a fine of not more than \$100.00, and may be ordered by the court to perform community service, and to undergo substance abuse screening and assessment at his or her own expense.
- (2) For a second violation, a fine of not more than \$200.00, and may be ordered by the court to participate in substance abuse prevention or substance abuse treatment and rehabilitation services as defined in section 6107 of the Public Health Code, Act No. 368 of the Public Acts of 1978, being MCL 333.6107, to perform community service and to undergo substance abuse screening and assessment at his or her own expense.
- (3) For a third or subsequent violation, a fine of not more than \$500.00, and may be ordered to

participate in substance abuse prevention or substance abuse treatment and rehabilitation services as defined in section 6107 of Act No. 368 of the Public Acts of 1978 to perform community service, and to undergo substance abuse screening and assessment at his or her own expense.

(4) Sanctions against his or her operators or chauffeur's license shall occur as provided under state law.

(b) A peace officer who has reasonable cause to believe a person less than 21 years of age has consumed alcoholic liquor may require the person to submit to a preliminary chemical breath analysis. A legal presumption shall be made by the court that the person less than 21 years of age has consumed or possessed alcoholic liquor if a preliminary chemical breath analysis or other acceptable blood alcohol test indicates the person's blood contained .02% or more by weight of alcohol. A person less than 21 years of age who refuses to submit to a preliminary chemical breath test analysis is responsible for a civil infraction.

(c) A person who furnishes fraudulent identification to a person less than 21 years of age, or a person less than 21 years of age who presents fraudulent identification to purchase alcoholic liquor, notwithstanding section (a) of this section, is guilty of a misdemeanor, punishable by up to 90 days in jail and up to a \$100.00 fine.

(d) Nothing herein shall prohibit:

(1) The purchase of an alcoholic beverage by a person less than 21 years of age under authority of and pursuant to a prescription of a duly licensed physician;

(2) Use in the course of employment or academic study if the alcoholic liquor possessed is not for his or her personal consumption;

(3) The consumption of alcoholic liquor by a person less than 21 years of age if in connection with sacramental services at a church, synagogue, or temple; or

(4) An undercover operation in which the person less than 21 years of age purchases or receives alcoholic liquor under the direction of a police agency or prosecuting official.

(Ord. No. 2003-02, § 2A., 2-3-2003)

### **Sec. 16-9. Disturbing the peace.**

No person shall disturb the peace and quiet by loud, boisterous or vulgar conduct.

(Ord. No. 2003-03, § 2A., 2-3-2003)

### **Sec. 16-10. Possession of tobacco by minors.**

#### **a. Purpose.**

The purpose of this section is to provide for the control of the possession of tobacco by minors within the Village of Capac and for the preservation of the public peace, health, safety, and welfare of the people of the Village of Capac.

b. Definitions:

As used in this section, the following definitions apply:

- .01 "CHEWING TOBACCO" means loose tobacco or a flat, compressed cake of tobacco which is inserted into the mouth to be chewed or sucked.
- .02 "TOBACCO SNUFF" means shredded, powdered or pulverized tobacco which may be inhaled through the nostrils, chewed or placed against the gums.

c. Prohibited:

A person under eighteen (18) years of age shall not possess or smoke cigarettes or cigars; or possess or chew, suck, or inhale chewing tobacco or tobacco snuff; or possess or use tobacco in any other form, on a public highway, street, alley, park, or other lands used for public purposes, or in a public place of business or amusement.

d. Penalty:

A person who violates this section is guilty of a misdemeanor, punishable by a fine of not more than Fifty (\$50.00) Dollars for each offense. Pursuant to a probation order, the court may require a person who violates this section to participate in a health promotion and risk reduction assessment program, if available. A probationer who is ordered to participate in a health promotion and risk reduction assessment program under this section is responsible for the cost of participation in the program. In addition, a person who violates this section is subject to the following:

- A. For the first violation the court may order the person to do one of the following:
  - .01 Perform not more than sixteen (16) hours of community service in a hospice, nursing home, or long-term care facility.
  - .02 Participate in a health promotion and risk reduction assessment program as described in this section.
- B. For a second violation, in addition to participation in a health promotion and risk reduction assessment program, the court may order the person to perform not more than thirty-two (32) hours of community service in a hospice, nursing home, or long-term care facility.
- C. For a third or subsequent violation, in addition to participation in a health promotion and risk reduction program, the court may order the person to perform not more than forty-eight (48) hours of community service in a hospice, nursing home, or long-term care facility.

## **Sec. 16-11. Use of Fireworks.**

(a) **Definitions:** The following words, terms, and phrases, when used in the division, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning.

*Act* means Public Act 256 of 2011. MCL 28.451 et seq. and the Fireworks Safety Act Emergency Rules drafted by the Michigan Department of Licensing and Regulatory Affairs and filed with the Secretary of State on March 9, 2012.

*APA* refers to American Pyrotechnics Association of Bethesda, Maryland.

*Consumer fireworks* means fireworks devices that are designed to produce visible effects by combustion, that are required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States of Consumer Product Safety Commission under 16 CFR parts 1500 and 1507, and that are listed in APA standard 87-1, 3.1.2, 3.1.3, or 3.5. Consumer fireworks does not include low-impact fireworks. Examples of consumer fireworks include bottle rockets and roman candles.

*Display fireworks* means large fireworks devices that are explosive materials intended for use in fireworks displays and designed to produce visible or audible effects by combustion, deflagration, or detonation, as provided in 27 CFR 555.11, 49 CFR 172, and APA standard 87-1, 4.1.

*Firework or fireworks* means any composition or device, except for a starting pistol, flare gun, or a flare, designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, and special effects.

*Low-impact fireworks* means ground and handheld sparkling devices as that phrase is defined under APA standard 87-1, 3.1, 3.1.1.1 to 3.1.1.8, and 3.5.

*National Holiday* means: New Year's Day (January 1), Birthday of Martin Luther King Jr. (the third Monday in January), Washington's Birthday (the third Monday in February), Memorial Day (the last Monday in May), Independence Day (July 4<sup>th</sup>), Labor Day (the first Monday in September), Columbus Day (the second Monday in October), Veterans Day (November 11), Thanksgiving Day (the fourth Thursday in November), and Christmas Day (December 25).

*Person* means an individual, agent, association, charitable organization, company, limited liability company, corporation, labor organization, legal representative, partnership, unincorporated organization, or any other legal or commercial entity.

### **(b) Use, ignition, or discharge of consumer fireworks.**

(i) A person shall not ignite, discharge, or use consumer or display fireworks, except as permitted in this subsection. Any person, firm, or corporation violating the provisions of this law shall be guilty of a misdemeanor, punishable by up to 93 days in jail and/or a fine up to \$500.00.

(ii) Except as prohibited in this subsection, a person is permitted to use consumer fireworks on the day preceding, the day of, or the day after a national holiday.

(iii) No person shall ignite, discharge, or use fireworks on public property, school property, church property or the property of another person without that organization's or person's express permission to use those fireworks on those premises. A person that violates this subsection is responsible for civil infraction and may be ordered to pay a civil fine of not more than \$100.00.

(iv) A person shall not willfully cause, by way of ignition, discharge use, or any other means, fireworks to enter upon the lands or premises of another without the express permission of the owner or occupant, or agent or servant of the owner or occupant of the lands or premises. A person that violates this subsection is responsible for this civil infraction and may be ordered to pay a civil fine of not more than \$100.00. A person who pleads or is found responsible for this civil infraction shall be presumed responsible for any resulting property damage and shall be required to pay in full restitution to the property owner.

(v) An individual shall not use consumer fireworks or low-impact fireworks while under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance. A person that violates this subsection shall be guilty of a misdemeanor, punishable by up to 93 days in jail and /or a fine up to \$500.00.

(vi) No minor shall ignite, discharge, or use consumer fireworks, at any time.

**(c): Articles pyrotechnic or display fireworks ignition; permit; competency and qualifications of operators; retention of fee.**

The village board, upon application in writing, in accordance with the provisions of MCL 28.451 et seq., may grant a permit for the use of fireworks otherwise prohibited by this section for public display by organizations or groups of individuals approved by the Village board. Prior to the issuance of a permit under this section, the village board shall rule on the competency and qualifications of operators seeking such permit. The village board may charge a fee to issue a permit under this section and shall retain the fee paid.

**Secs. 16-12--16-40. Reserved.**

## **ARTICLE II.**

### **DRUGS AND DRUG PARAPHERNALIA\***

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\* **State Law References:** Controlled substances, MCL 333.7101 et seq.

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#### **DIVISION 1.**

##### **GENERALLY**

#### **Sec. 16-41. Use or possession of marijuana; penalty.**

(a) It shall be unlawful for any individual to use or have in his possession, or under his control, marijuana or cannabis as defined by MCL 333.7106, except as otherwise authorized by MCL 333.7101 et seq.

(b) All violations of this section shall be a misdemeanor and, upon conviction, shall be punishable in accordance with section 1-12.  
(Ord. No. 98-2, § 1, 8-3-1998)

#### **Sec. 16-42. Open house parties; use of alcoholic beverages and drugs.**

(a) *Definitions.* For the purpose of this section, the following terms shall be defined as follows:

*Adult* means a person 17 years of age or older.

*Alcoholic beverage* means any beverage containing more than one-half of one percent of alcohol by weight. The percentage of alcohol by weight shall be determined in accordance with the provisions of MCL 436.2.

*Control* means any form of regulation or dominion including a possessory right.

*Drug* means a controlled substance as defined by MCL 333.7105.

*Minor* means a person not legally permitted by reason of age to possess alcoholic beverages pursuant to MCL 436.33b.

*Open house party* means a social gathering of persons at a residence other than the owner or those with rights of possession or their immediate family members.

*Residence* means a home, apartment, condominium or other dwelling unit and includes the curtilage of such dwelling unit.

(b) *Responsibility of adult having control of residence.* No adult having control of any residence shall allow an open house party to take place at the residence if any alcoholic beverage or drug is possessed or consumed at such residence by any minor where the adult knew or reasonably should have known that an alcoholic beverage or drug was in the possession of or being consumed by a minor at the residence, and where the adult failed to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug at the residence.

(c) *Exception.* The provisions of this section shall not apply to legally protected religious observances or legally protected educational activities.

(d) *Penalties.* All violations of this section shall be deemed infractions punishable in accordance with section 1-12.

(Comp. Ords. 1987, §§ 20.260--20.263)

**Secs. 16-43--16-60. Reserved.**

## **DIVISION 2.**

### **DRUG PARAPHERNALIA**

#### **Sec. 16-61. Purpose of division.**

The purpose of this division is to provide for drug paraphernalia control within the village and for the preservation of the public peace, health, safety and welfare of the people of the village.

(Ord. No. 98-3, § 1, 8-3-1998)

#### **Sec. 16-62. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*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, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of state or local 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 a 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) Dilutents and adulterants, such as quinine 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, 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 and other containers used, intended for use or designed for use in packaging small quantities of 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; and
- (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 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; and
- m. Ice pipes or chillers.

(Ord. No. 98-3, § 2(A), 8-3-1998)

**Cross References:** Definitions generally, § 1-2.

### **Sec. 16-63. Determination as to whether object is drug paraphernalia.**

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 objects 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, intends to use the object to facilitate a violation of state or local law; 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 as drug paraphernalia;
- (7) Instruction, 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 objects 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.

(Ord. No. 98-3, § 2(B), 8-3-1998)

#### **Sec. 16-64. Possession.**

It is unlawful for any person 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 state or local law.

(Ord. No. 98-3, § 3, 8-3-1998)

#### **Sec. 16-65. Manufacture, delivery or sale.**

It is unlawful for any person 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, 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 state law.

(Ord. No. 98-3, § 4, 8-3-1998)

#### **Sec. 16-66. Advertisement.**

It is unlawful for any person to place in any newspaper, magazine, handbill, sign, poster or other publication any advertisement, knowing 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.

(Ord. No. 98-3, § 5, 8-3-1998)

#### **Sec. 16-67. Exceptions.**

This division shall not apply to manufacturers, wholesalers, jobbers, licensed medical technicians, technologists, nurses, hospitals, research teaching institutions, clinical laboratories, medical doctors, osteopathic physicians, dentists, chiropractors, veterinarians, pharmacists and embalmers, in the normal legal course of their respective business or profession, nor to persons suffering from diabetes, asthma or any other medical condition requiring self-injection.

(Ord. No. 98-3, § 6, 8-3-1998)

#### **Sec. 16-68. Civil forfeiture.**

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

(Ord. No. 98-3, § 7, 8-3-1998)

**Sec. 16-69. Delivery or sale to a minor; penalty.**

An individual 18 years of age or over who violates section 16-65 by delivering or selling to an individual under 18 years of age drug paraphernalia, knowing that it will be used to plant, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$250.00 and not more than \$500.00, and by imprisonment of not less than three days nor more than 90 days, in the discretion of the court.

(Ord. No. 98-3, § 8, 8-3-1998)

**Sec. 16-70. Penalty for violation of article.**

All violations of this division shall be a misdemeanor and, upon conviction, shall be punishable by a fine in accordance with section 1-12.

(Ord. No. 98-3, § 9, 8-3-1998)