

**CITY OF LUNA PIER
ORDINANCE # 184**

AN ORDINANCE TO PROHIBIT THE POSSESSION AND SALE
OF DRUG PARAPHERNALIA

The City of Luna Pier ordains:

Section 1 Title.

This ordinance shall be referred to as the "Luna Pier Drug Paraphernalia Ordinance."

Section 2 Code and Amendments and Revisions adopted.

A. DEFINITIONS

As used in this chapter:

- (1) "Cocaine spoon" means a spoon with a bowl so small that the primary use for which it is reasonably adapted 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 merchandised on a chain and may or may not be labeled as a "cocaine" spoon or "coke" spoon.
- (2) "Controlled substance" shall be defined as it is in the Controlled Substances Act of the State of Michigan, M.C.L.A. 333.7101 et seq., as amended.
- (3) "Drug paraphernalia" means any item which is used or intended for use with a controlled substance. "Used or intended for use with a controlled substance" means that:
 - (a) The item was primarily designed or adapted, because of its objective physical features, for use with a controlled substance;
 - (b) The item was intended by an individual for use with a controlled substance;
 - (c) An individual would know, or should have known, that the item was intended for use with a controlled substance.
- (4) "Marijuana or hashish pipe" means a pipe characterized by a bowl which is so small that the primary use for which it is reasonably adapted 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.
- (5) "Owner" means any person who possesses or has any legal and/or equitable interest in property.
- (6) "Property" means any structure, house, building or premises or any part thereof.

B. SELLING, FURNISHING OR DISPLAYING DRUG PARAPHERNALIA

- (1) Unlawful Activity. No person shall sell, offer for sale, display, furnish, supply, possess or give away any empty gelatin capsule, hypodermic syringe or needle, cocaine spoon, marijuana pipe, hashish pipe or any other instrument, implement or device which is primarily adapted, implemented, utilized, used or designed for the administration or use of any controlled substance. (Ord. 96-018. Passed 8-12-96.)

- (2) Exceptions. The prohibitions and restrictions set forth in subsection 3(a) hereof regarding hypodermic syringes or needles shall not apply to manufacturers, wholesalers, jobbers, licensed medical technicians, technologists, nurses, hospitals, licensed medical doctors or osteopathic physicians, clinical laboratories or embalmers, in the normal lawful course of their respective businesses or professions, nor to persons suffering from diabetes, asthma or any other medical conditions requiring self-injection.

C. STRUCTURES WHERE CONTROLLED SUBSTANCES AND/OR DRUG PARAPHERNALIA ARE FOUND; DECLARATION OF NUISANCE.

- (1) The City hereby determines that whenever the use, sale, furnishing, giving or possession of controlled substances or drug paraphernalia occurs on any property, the result is increased criminal activity in the neighborhood surrounding the property, increased pedestrian and/or vehicular traffic in the surrounding neighborhood and disruption of the peace and quiet of residents living in the neighborhood surrounding the property, thereby creating a public nuisance.

(2) Declaration of Public Nuisance; Public Hearings; Notice.

(a) Whenever the use, sale, furnishing, giving or possession of controlled substances or drug paraphernalia occurs on any property, the City Council may declare such property a public nuisance by resolution. Prior to such declaration, notice shall be given to the owner, a public hearing shall be held and a recommendation shall be submitted from the appropriate department.

(b) Notice to the property owner of the public hearing shall consist of either personal service or certified or registered U.S. mail, return receipt requested, to the owner in whose name the property appears upon the last local tax assessment roll. Notice to the owner shall occur at least 14 calendar days prior to the date of the public hearing.

(3) Abatement; Costs

(a) If the City Council determines that a property is a public nuisance, then, in addition to any other remedies available to the City in law or equity, the City Council, by resolution, may:

(1) Authorize the Department of Public Services to prohibit the occupancy of the property by either padlocking a portion of the property or boarding up the property, whichever is appropriate, for a period of up to one year from the date Council adopted the resolution; and/or

(2) Determine that the owner shall be liable for the full cost and expense of any and all City employees utilized to padlock or board up the property, including any and all employees utilized to remove padlocks and/or boarding devices; as well as the full cost and expense of any and all police officers involved in each drug related activity, including arrests and drug raids, on the property. Such costs shall be assessed against the property.

(b) If the City Council determines that property which is the subject of the public hearing is, according to current court documents, the subject of eviction proceedings, the City Council will take the matter under advisement and withhold declaration of the property as a public nuisance until such time as evidence is submitted to the Clerk/Treasurer that the eviction proceedings have been completed, terminated or otherwise resolved.

- (3) Persuasive Presumption of a Public Nuisance. It shall be a persuasive presumption that a property is a public nuisance if the following criteria are met.
- (a) That controlled substances and/or narcotic paraphernalia are used, sold, furnished, given or possessed on the property, or that the property has been raided by the police and controlled substances and/or drug paraphernalia are found by the police.
 - (b) That a letter has been sent to the property owner informing the owner that controlled substances and/or drug paraphernalia have been found by the police at the property. The letter must inform the owner of the potential consequences if similar activity occurs at the property. The letter shall wither be sent by certified or registered U.S. mail, return receipt requested, or personally served on the property owner in whose name the property appears upon the local tax assessment roll.
 - (c) That controlled Substances and/or narcotic paraphernalia are sold, furnished, given or possessed on the property again within 365 days from the date that they were first sold, furnished, given or possessed on the property, or that the same property is raided again within 365 days from the date of the first raid, and controlled substances and/or narcotic paraphernalia are found in the raid.
- (4) Appeal; The decision of the City Council shall be final. However, an owner and/or taxpayer of record of raided property subject to this section may appeal to the Circuit Court. Upon appeal, the Court shall review the record and decision of the Council to insure that the decision:
- (a) Is based upon proper procedures
 - (b) Is supported by competent, material, and substantial evidence on the record.
 - (c) Represents the reasonable exercise of discretion granted by law to the City Council.

If the Court finds the record of the City Council inadequate to make the review required by this section, or that there is additional evidence which is material and was not presented to the City Council, the court shall order further proceedings before the City Council. The City Council may modify its findings and decision as a result of the new proceedings, or it may affirm its original decision. The supplementary record and decisions shall be filed with the Court.

As a result of the review required by this section, the Court may affirm, reverse, or modify the decision of the City Council.

- (D) LOITERING WHERE CONTROLLED SUBSTANCES AND/OR DRUG PARAPHERNALIA ARE SOLD, FURNISHED OR STORED.
- (1) Conduct Prohibited. No person shall knowingly loiter about or in any place or area open to the public where controlled substances or drug paraphernalia are being illegally sold, dispensed, furnished, given away or stored.
 - (2) Exception. Subsection (1) hereof shall not apply to persons inside licensed pharmacies or drug stores, persons licensed by the State of Michigan to sell or dispense controlled substances or any person lawfully possessing a controlled substance pursuant to a prescription written by a person authorized to write a prescription under law.

Section 3. Penalties.

A person violating any section of this ordinance is guilty of a misdemeanor punishable by a fine of up to \$500.00 and/or 93 days jail.

I hereby certify that this ordinance was passed at a regular meeting of the City Council of the City of Luna Pier, Luna Pier, Michigan held on Thursday, the 24th day of March, 2005.

P. Michelle Cureton
City Clerk

Published: March 29, 2005

Effective Date: April 18, 2005