

LOCAL LAW NO.

TITLE

1 of 1998	REGULATING THE OPERATION OF TATTOO AND PIERCING PARLORS WITHIN THE COUNTY OF RENSSELAER
2 of 1998	INCREASING THE SALARY OF THE RENSSELAER COUNTY SHERIFF
3 of 1998	ESTABLISHING POSITION OF MEDICAL LEGAL DEATH INVESTIGATOR
4 of 1998	PROVIDING THE EXCLUSION OF NON-REIMBURSED MEDICAL AND PRESCRIPTION DRUG EXPENSES FROM THE INCOME OF SENIOR CITIZENS IN ACCORDANCE WITH THE PROVISIONS OF REAL PROPERTY TAX LAW SECTION 467
5 of 1998	TO ADOPT THE 1998 RETIREMENT INCENTIVE PROGRAM (CHAPTER 47, LAWS OF 1998)
6 of 1998	REGULATING THE OPERATION OF TATTOO AND PIERCING PARLORS WITHIN THE COUNTY OF RENSSELAER
7 of 1998	MISDEMEANOR FORFEITURE LAW

(Use this form to file a local law with the Secretary of State.)

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

~~City~~~~Town~~~~Village~~

of RENSSELAER, NEW YORK

Local Law No. 1 of the year 19 98..

A local law RESTRICTING THE ADVERTISING OF TOBACCO PRODUCTS FOR THE PROTECTION OF YOUTH
(Insert Title)

BY: KELLEHER

Be it enacted by the COUNTY LEGISLATURE of the
(Name of Legislative Body)

County

~~City~~~~Town~~~~Village~~

of RENSSELAER, NEW YORK as follows:

Section One. This Local Law is filed at the request of the Rensselaer County Executive.

Section Two. Legislative Intent.

The Rensselaer County Legislature finds that certain tobacco product manufacturers have admitted engaging in strategies designed to advertise and promote tobacco products to minors and that such strategies undermine existing state laws prohibiting the sale or distribution of tobacco products to minors. The Rensselaer County Legislature further finds that the exposure of minors to such tobacco product advertising and promotion may be constitutionally restricted through the enactment of reasonable targeted limitations on the advertising and promotion of such products near schools and other like locations regularly frequented by children so as to strengthen compliance with and enforcement of laws prohibiting the sale or distribution of tobacco products to children and protect children against such illegal sales.

Although the rate of smoking among adults nationwide has decreased by 50% between 1971 and 1993, the federal Centers for Disease Control and Prevention have reported that the rate of smoking among all high school students during the years 1991 through 1996 increased by over 26% and now stands at its highest rate since 1981. This dramatic increase in teenage smoking has occurred while all fifty states and the District of Columbia have had prohibitions in effect on the sale or distribution of cigarettes and other tobacco products to minors and while all tobacco product manufacturers were pledged to adhere to a voluntary industry code prohibiting advertisement of tobacco products that appeal to or influence minors. In New York State it is illegal to sell tobacco products to a minor.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

It has also been reported that nearly 90% of all smokers begin to smoke prior to the age of 18; and the average child smoker starts daily smoking by the age of 14. Between 1991 and 1996 the rate of smoking among Hispanic high school students nationwide reportedly increased by over 34% while, during the same period, the rate of smoking among African-American high school students nationwide increased by over 48%; these rates of increased smoking are the highest in the decade.

Similarly, a 1994 report by the United States Surgeon General containing data on the use of smokeless tobacco by minors reported that the market for smokeless tobacco had shifted dramatically toward young people since 1970. That report cited school-based surveys conducted in 1991 which estimated that 19.2% of ninth to twelfth grade boys use smokeless tobacco. Among high school seniors who had ever tried smokeless tobacco, the report said, 73% did so by the ninth grade.

Recently surveys find that there has been a significant increase in cigar smoking by minors. In Erie County, New York, 12.7 percent of ninth grade students reported smoking a cigar during the previous 30 days. National data indicates that more than 27 percent of 14 to 19 year-old individuals had smoked a cigar.

The Easy Access report cited a 1992 Journal of American Medical Association (JAMA) article entitled "Brand Logo Recognition by Children Ages 3 to 6 Years" which demonstrated that 30 percent of the three year olds and 91 percent of the six year olds surveyed could correctly match the Joe Camel cartoon trademark with Camel cigarettes; and a 1991 JAMA report entitled "RJR Nabisco's Cartoon Camel Promotes Camel Cigarettes to Children" which estimated that illegal sales of Camel cigarettes to minors rose from \$6 million per year before the advent of Joe Camel in 1988 to \$476 million by the end of 1991. The 1991 JAMA report concluded that one-quarter of all Camel sales in 1991 were to minors.

A 1991 JAMA study concluded that "cigarette advertising encourages youth to smoke and should be banned". In a 1994 report, the National Institute of Medicine stated that "the substantial convergent evidence that advertising and promotion increase tobacco use by youths is impressive and, in the Committee's view, provides a strong basis for legal regulation." Similarly, a 1995 report by the federal Centers for Disease Control and Prevention found that "cigarette marketing practices appeared to be the most likely to account for the increase in teen smoking initiation rates."

The federal Department of Health and Human Services' Food and Drug Administration (FDA) recently reported that "in 1993, the tobacco industry spent a total of \$6.2 billion on the advertising, promotion and marketing of cigarettes and smokeless tobacco. Of that number, 31% (\$1.9 billion) was spent on advertising and promotional activities, 26 percent (\$1.6 billion) was given to retailers in the form of cash allowances or retailer items to facilitate and enhance the sale of tobacco products and finally, 43 percent (\$2.6 billion) was in the form of financial incentives (e.g. coupons, cents off, buy one get one free, free samples) to consumers."

In announcing its final rules on the advertising and promotion of tobacco products, published in the Federal Register on August 28, 1996, the FDA commented upon the nexus between advertising and promotion and smoking among minors. The FDA observed that the images typically associated with advertising and promotion convey the message that tobacco use is desirable, socially approved, safe and healthful, and widely practiced among young adults, whom children and youths want to emulate. As a result, tobacco advertising and promotion undoubtedly contribute to the multiple and convergent psychosocial influences that lead children and youths to begin using these products and become addicted to them."

In that same announcement on its final rules on advertising and promotion of tobacco products, the FDA discussed the issue of federal preemption of state and local restrictions. The FDA specifically stated that, "FDA believes the requirements it is establishing in this final rule set an appropriate floor for regulation of youth access to tobacco products but do not, as a policy matter, reflect a judgement that more stringent State or local requirements are inappropriate."

On March 20, 1997, as part of a settlement agreement signed by the Attorneys General of 17 states, including New York State, and Liggett & Myers Inc. and the Brooke Group, Ltd., cigarette manufacturers, the following statement was among those made by and on behalf of Liggett & Myers: "Liggett acknowledges that the tobacco industry markets to "youth", which means those under 18 years of age...".

In light of the foregoing evidence that cigarettes are advertised and promoted to minors and that smoking by minors continues to dramatically increase despite laws banning the sale or distribution of tobacco products to minors, the Rensselaer County Legislature finds and declares that affirmative, reasonable and constitutionally permissible restrictions on tobacco product advertising and promotion may and must be enacted.

The purpose of this legislation is to promote enforcement of the aforementioned laws banning the sale or distribution of tobacco products to minors and to protect young people. The Rensselaer County Legislature is cognizant of the necessity of acting within the protection afforded by the First Amendment to the United States Constitution and has, therefore, narrowly tailored the scope and effect of this legislation to impose reasonable time, place and manner restrictions on tobacco advertising aimed at or regularly seen by youth while not directly affecting advertising directed at adults.

Section Three. Definitions.

A. "Child day care center" shall mean (i) any public, private or parochial child care center, school-age child care program, day nursery school, kindergarten, play school or other similar school or service and (ii) any facility that provides child care services as defined in Section 410-p of the New York State Social Services Law. Child day care center shall not include child day care centers located in private residences and multiple dwelling units.

B. "Children's institution" shall mean (i) any public, private or parochial congregate institution, group residence, group home or other place where, for compensation or otherwise, seven or more children under three (3) years of age are received for day and night care apart from their parents or guardians, (ii) youth center or facilities for detention as defined in Section 527-A or 502 of the New York State Executive Law, (iii) group homes for children as defined in Section 371 of the New York State Social Services Law, (iv) public institutions for children as defined in Section 371 of the New York State Social Services Law, and (v) residential treatment facilities for children and youth as defined in Section 1.0 of the New York State Mental Hygiene Law. The term "children's institution" shall not include children's institutions located in private residence and multiple dwelling units.

C. "Person" shall mean any natural person, partnership, corporation, government agency, association or other legal entity.

D. "Playground" shall mean an outdoor area open to the public where children play, which contains play equipment such as a sliding board, swing, jungle gym, sandbox, play platform, or which is designated as a public play area or which includes, but is not limited to, a baseball diamond or basketball courts.

E. "Private residence" shall mean any building or structure designed and occupied for residential purposes by not more than two families, including the grounds of such building or structure.

F. "Publicly visible location" means any (i) outdoor location visible to the public including, but not limited to, outdoor billboards, roofs and sides of buildings, water towers and free-standing signboards and (ii) doors or windows reasonably visible to the public, from the outside of the building, at a distance of two feet or more from such doors or windows.

G. "Publicly visible location" shall not include any location intended to be visible only by those inside a premises, or a private residence or any door or window of a multiple dwelling unit.

H. "School premises" shall mean the buildings, grounds or facilities, or any portion thereof, owned, occupied by or under the custody or control of public, private or parochial institutions for the primary purpose of providing educational instruction to students at or below the twelfth grade level.

I. "Smokeless tobacco" shall mean any product that consists of cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity.

J. "Tobacco advertisement" shall mean any words, pictures, posters, placards, signs, photographs, symbols, devices, graphic displays or visual images of any kind, or any combination thereof, the purpose or effect of which is to promote the use or sale of a tobacco

product, a trademark, a tobacco product or trade name associated exclusively with a tobacco product.

K. "Tobacco product" shall mean cigarettes, smokeless tobacco, cigarette tobacco and cigars.

L. "Tobacco product promotion" shall mean (i) the marketing, licensing, sale or distribution of items or services, or causing items or services to be marketed, licensed, sold, or distributed, whether indoors or outdoors, which are not tobacco products but which bear the brand name, alone or in conjunction with any work, logo, symbol, motto, selling, message, recognizable color or pattern or colors, or any other indicia or product identification identical or similar to, or identifiable with, or those used for any brand of tobacco product; or (ii) offering or causing to be offered any gift or item other than a tobacco product to any person purchasing a tobacco product in consideration of the purchase thereof, or to any person in consideration of furnishing evidence, such as credits proofs-of-purchase, or coupons, of such purchase.

M. "Youth center" shall mean any designated indoor public, private or parochial facility, other than a private residence or a multiple dwelling unit, which contains programs that regularly provide activities or services for persons who have not yet reached that age of eighteen years including, but not limited to, community-based programs, after-school programs, weekend programs, violence prevention programs, leadership development programs, vocational programs, substance abuse prevention programs, individual or group counseling, case management, remedial, tutorial or other educational assistance or enrichment, music, art, dance and other recreational or cultural activities, physical fitness activities and sports programs.

Section Four. Tobacco advertisement restrictions.

A. It shall be unlawful for any person to place, cause to be placed, or to maintain a tobacco advertisement in any publicly visible location on or within 1,000 feet of the perimeter of any of the following:

1. school premises;
2. playground or playground area in a public park;
3. child day care center;
4. children's institution; or
5. youth center.

B. A sign poster, placard or label, no larger than six (6) square feet, may be placed or maintained on or within ten (10) feet of the exterior of a commercial establishment where tobacco products are sold or offered for sale.

C. The format of any tobacco advertisement which is placed or maintained in a publicly visible location within the premises of a commercial establishment where tobacco products are sold or offered for sale and which are not subject to the requirements of Subdivision A or B of this section shall be as otherwise permissible under Section 897.32 of Title 21 of the Code of Federal Regulations.

Section Five. Non-compliant advertisements to be removed.

The owner, operator or lessee of any location or premises where a tobacco advertisement is prohibited or restricted pursuant to this local law shall remove any non-compliant tobacco advertisement within thirty (30) days from the effective date of this Local Law.

Section Six. Tobacco product promotion restricted.

It shall be unlawful for any person, manufacturer or distributor of tobacco products to conduct a tobacco product promotion on or within 1,000 feet of the perimeter of any school premises, playground, child day care center, children's institution or youth center located within the County of Rensselaer.

Section Seven. Enforcement.

The Rensselaer County Sheriff's Department shall enforce the provisions of this Local Law within the geographical jurisdiction of such department. This Local Law shall also be subject to enforcement by any other law enforcement agency within the County of Rensselaer.

Section Eight. Violations and penalties.

A. Any person or business found to be in violation of this Local Law shall be liable for civil penalty of not more than Three Hundred (\$300.00) Dollars for the first violation, not more than Five Hundred (\$500.00) for the second violation within a two-year period, and not more than One Thousand (\$1,000.00) Dollars for the third and each subsequent violation within a two-year period.

B. Any person or business found to be in violation of this Local Law shall be further subject to the penalty of the removal of the tobacco advertisement and/or the cessation of the tobacco product promotion which gave rise to the violation.

Section Nine. Waiver application.

If necessary, within thirty (30) days of the date of enactment of this Local Law, the Rensselaer County Executive shall apply to the Secretary of the Department of Health and Human Services for a waiver pursuant to Section 360K(b) of Title Twenty-one of the United States Code, in relation to such provisions of this Local Law as may be more restrictive than

federal law or rules promulgated pursuant thereto concerning the distribution, sale, advertising or promotion of tobacco products.

Section Ten. Severability.

If any provision of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section Eleven.

This Local Law shall take effect sixty (60) days after the filing of this local law with the Secretary of State of the State of New York pursuant to the applicable provisions of the Municipal Home Rule Law of the State of New York.

Section Twelve.

This local law is meant to supercede, in its entirety, Rensselaer County Local Law No.4 for the Year 1997.

Local Law ADOPTED by the following vote:

Ayes: 19

Nays: 0

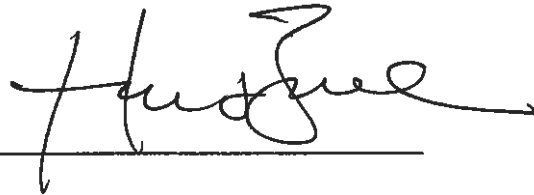
Abstain: 0

February 10, 1998

Approved by the County Executive:

Dated 2/26/98

Signature _____



(Use this form to file a local law with the Secretary of State.)

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

~~City~~~~Town~~~~Village~~

of ..RENSSELAER.....

Local Law No.2..... of the year 19 98..

A local lawINCREASING THE SALARY OF THE RENSSELAER COUNTY SHERIFF.....
(Insert Title)

By: KELLEHER

Be it enacted by the ...COUNTY LEGISLATURE.....of the
(Name of Legislative Body)

County

~~City~~~~Town~~~~Village~~

of ..RENSSELAER, NEW YORK..... as follows:

Section 1. The annual salary of the Rensselaer County Sheriff commencing with the year One Thousand Nine Hundred Ninety-Eight, shall be Seventy Thousand Dollars.

Section 2. This local law shall be subject to a referendum on petition as provided by Subdivision 2(h) of Section 24 of the Municipal Home Rule Law and shall take effect pursuant to the provisions of the Municipal Home Rule Law.

Local Law ADOPTED by the following vote:

Ayes: 14

Nays: 3 (McGreevy, O'Brien, Polsinello)

Abstain: 0

December 23, 1997

Approved by the County Executive:

Dated 1-6-98 Signed 

(If additional space is needed, attach pages the same size as this sheet, and number each.)

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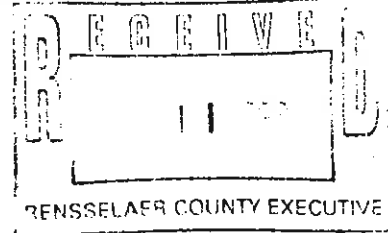
Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County

~~City~~~~Town~~~~Village~~

of RENSSELAER, NEW YORK

Local Law No. 3 of the year 19 98



A local law ESTABLISHING POSITION OF MEDICAL LEGAL DEATH INVESTIGATOR
(Insert Title)

BY: BREARTON

Be it enacted by the COUNTY LEGISLATURE of the
(Name of Legislative Body)

County

~~City~~~~Town~~~~Village~~

of RENSSELAER, NEW YORK

as follows:

Section One. Legislative Findings and Intent. Pursuant to Section 8.08 of the Rensselaer County Charter, the office of Medical Examiner has heretofore been established within the Rensselaer County Department of Health. Except as otherwise provided in Section 8.08 of the Rensselaer County Charter or by any other local law heretofore enacted by the County of Rensselaer, the duties and responsibilities of the Medical Examiner are as prescribed and set forth in Article 17-A of the County Law of the State of New York. However, this Legislative body finds that historically the Rensselaer County Medical Examiner has been, from time to time, unable to personally perform all of the duties and responsibilities required of such individual under the provisions of Article 17-A of the County Law. Accordingly, this Legislative body further finds and determines that it is in the best interests of the citizens of Rensselaer County to create the position of Medical - Legal Death Investigator in and for the County of Rensselaer.

Section Two. Duties and Responsibilities. The position of Medical - Legal Death Investigator is hereby created in and for the County of Rensselaer, within the limits of appropriations heretofore or hereafter made for such position by this Legislative body. The Medical - Legal Death Investigator shall, under the direction and supervision of the Rensselaer County Medical Examiner, investigate all deaths within the County of Rensselaer which are violent, sudden, unexpected, unattended or suspicious in nature, including deaths arising by fire, homicide, suicide and under circumstances when the deceased was not under the care of a physician and died unexpectedly at home, at work or in any other public place. The Medical - Legal Death Investigator shall respond to the scene of such deaths, speak with witnesses and, upon consultation with and direction from the Medical Examiner, order autopsies when necessary and appropriate. With the consent and direction of the Medical Examiner, the Medical - Legal Death Investigator shall also give permission for removal of the body of

(If additional space is needed, attach pages the same size as this sheet, and number each.)

the deceased when an autopsy is not required. Other duties and responsibilities of the Medical - Legal Death Investigator shall include, but shall not be limited to, notification of the deceased, taking physical possession of valuables of the decedent for safe keeping, securing the scene of death in conjunction with law enforcement personnel and, as a matter of general practice and procedure, cooperating with police agencies, the office of the Rensselaer County District Attorney and such other public agencies and offices as may be required.

Section Three. Qualifications. Appointment to the position of Medical - Legal Death Investigator for the County of Rensselaer shall be made by the Public Health Director and shall require either (a) certification as a Medical - Legal Death Investigator by the New York State Association of Coroners and Medical Examiners, or (b) five (5) years experience as a police officer with at least three (3) years of full-time service in homicide and/or major crime investigation, and (c) such other qualifications as may be reasonably required to obtain surety bonding in connection with such appointment. For the purposes of qualification for appointment to the position of Rensselaer County Medical - Legal Death Investigator, any individual so appointed shall not be deemed to be a public officer of the County of Rensselaer within the meaning and intent of the Public Officers Law of the State of New York. Any person so appointed to the position of Medical - Legal Death Investigator shall serve at the pleasure of the Public Health Director.

Section Four. Effective Date. This local law shall take effect pursuant to the applicable provisions of the Municipal Home Rule Law of the State of New York.

Local Law ADOPTED by the following vote:

Ayes: 12

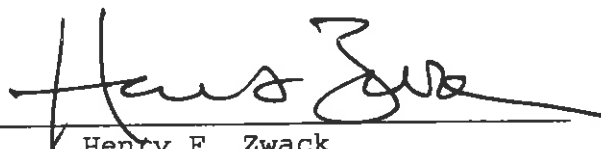
Nays: 6 (Dedrick, Hammond, Mahoney, McGreevy, Mirch, Polsinello)

Abstain: 0

March 10, 1998

Dated: March 24, 1998

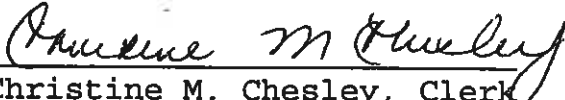
Signed: _____



Henry F. Zwack
County Executive

NOTICE OF ADOPTION OF LOCAL LAW

I, Christine M. Chesley, Clerk of the Rensselaer County Legislature, hereby certify that the following is a true and complete copy of a local law adopted by the Rensselaer County Legislature on 3/10/98 and approved by the Rensselaer County Executive on 3/24/98. This local law is not subject to referendum or petition.


Christine M. Chesley, Clerk
Rensselaer County Legislature

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

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

~~XXXX~~

~~XXXXX~~

~~XXXXXX~~

of RENSSELAER

Local Law No. 4 of the year 1998.

A local law Providing the Exclusion of Non-reimbursed Medical and Prescription
(Insert Title)
Drug Expenses from the Income of Senior citizens in Accordance with
the Provisions of Real Property Tax Law Section 467

BY: JIMINO, ENGEL, MCGREEVY, HERRINGTON

Be it enacted by the LEGISLATURE of the
(Name of Legislative Body)

County

~~XXXX~~

~~XXXXX~~

~~XXXXXX~~

of RENSSELAER

as follows:

SECTION 1

a. The purpose of this local law is to allow, as an exclusion to income, certain expenses when determining eligibility for the senior citizens exemption as authorized by Chapter 313 of the laws of New York for 1996.

b. Chapter 313 of the laws of New York for 1996 amended subdivision 3(a) of Section 467 of the New York State Real Property Tax Law allowing Rensselaer County to adopt a local law to exclude from income all medical and prescription drug expenses actually paid which were not reimbursed or paid for by insurance.

SECTION 2

This local law shall modify the definition of income as set forth in Section 4A of local law number 1 of the year 1991, which provides senior citizens of the County Rensselaer with the aged exemption pursuant to Section 467 of the New York State Real Property Tax Law.

Section 3

This local law shall take effect upon filing with the Secretary of State and the Comptroller of the State of New York, pursuant to the municipal home rule law.

Local Law ADOPTED by the following vote:

Ayes: 19

Nays: 0

Abstain: 0

May 12, 1998

Approved by the County Executive:

Date

May 28, 1998

Signature



(If additional space is needed, attach pages the same size as this sheet, and number each.)

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY 12231

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County

City

Town

Village

of RENSSELAER

Local Law No. 5 of the year 1998.

A local law to Adopt the 1998 Retirement Incentive Program (Chapter 47, Laws
(Insert Title)
of 1998)

BY: MR. SWARTZ

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

County

City

Town

Village

of Rensselaer, New York as follows:

1. The County of Rensselaer, New York hereby elects to provide all of its eligible employees with a retirement incentive program authorized by Chapter 47, Laws of 1998.
2. The commencement date of the retirement incentive program shall be September 28, 1998.
3. The open period during which eligible employees may retire and receive the additional retirement benefit, shall be ninety (90) days in length.
4. The actuarial present value of the additional retirement benefits payable pursuant to the provisions of this local law shall be paid in five annual installments. The amount of the annual payment shall be determined by the Actuary of the New York State and Local Employees' Retirement System, and it shall be paid by the County of Rensselaer, New York for each employee who receives the retirement benefits payable under this local law.
5. This act shall take effect September 3, 1998.

Local Law ADOPTED by the following vote:

Ayes: 19
Nays: 0
Abstain: 0
August 11, 1998

Approved by the County Executive:

Dated August 31, 1998 Signed 

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY 12231

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County

~~City~~ of RENSSELAER
~~Town~~
~~Village~~

Local Law No. 6 of the year 1998..

A local law REGULATING THE OPERATION OF TATTOO AND PIERCING PARLORS
(Insert Title)
WITHIN THE COUNTY OF RENSSELAER

SPONSORED BY: POLSINELLO
Be it enacted by the LEGISLATURE of the
(Name of Legislative Body)

County

~~City~~ of RENSSELAER as follows:
~~Town~~
~~Village~~

SECTION 1. LEGISLATIVE INTENT

It is the intent of the County Legislature that Tattoo and Piercing Parlors operated within the borders of Rensselaer County operate in a safe and sanitary environment.

SECTION 2. DEFINITIONS

The following words and phrases, as used in this Local Law shall have the indicated meaning:

- (a) "Department" shall mean the Rensselaer County Health Department.
- (b) "Health Officer" shall mean the Rensselaer County Public Health Director or his /her designee.
- (c) "Permit" shall mean the issuance of a document by the health officer having jurisdiction to a tattoo shop certifying that said shop, after inspection, was found to be in compliance with the applicable provisions of this act, and the rules and regulation promulgated thereunder.
- (d) "Tattoo" shall mean to mark or color the skin by pricking in coloring matter so as to form indelible marks or figures or by the production of scars.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

- (e) "Tattoo/Piercing artist" shall mean any person who actually performs the work of tattooing or piercing.
- (f) "Tattoo/Piercing operator" shall mean any person who controls, operates, conducts, or manages any tattoo/piercing shop whether actually performing the work of tattooing/piercing or not.
- (g) "Tattoo/Piercing shop" shall mean any room or space where tattooing/piercing is practiced or where the business of tattooing/piercing is conducted or any part thereof.
- (h) "Transient tattooist/piercer" shall mean any person who performs the work of tattooing on a temporary basis of not more than fourteen (14) consecutive days duration, usually at a special event or show.
- (i) "Body Piercing" shall mean to cut or pass through with a sharp instrument, or to penetrate a part of the body for the purpose of applying jewelry to various parts of the body by means of a piercing device.
- (j) "Piercing Device" shall mean any device used for the piercing of the skin for the purpose of applying jewelry.

SECTION 3. GENERAL PROVISIONS

PURPOSE: It is the purpose of these provisions to establish minimal standards of infection control to prevent the transmission of blood borne diseases during tattooing and body piercing.

APPLICATION: The requirements of this law shall apply within Rensselaer County.

SECTION 4. PERMIT

- (a) No person/tattoo/piercing shop shall engage in the practice of tattooing/piercing or act as a tattoo or piercing artist unless such person/business has a valid permit issued by the Rensselaer County Health Department.
- (b) Any person/tattoo piercing shop desiring to engage in the practice of tattooing/body piercing or act as a tattoo/piercing artist shall submit an application for a permit to the Director of Public Health in the form prescribed by the department.
- (c) The permit fee is one hundred and seventy-five dollars (\$175.00) for a permanent tattoo/piercing shop per year and fifty dollars (\$50.00) for any transient tattooist/piercer for a temporary permit (not more than 14 consecutive days in duration).
- (d) The permit is to be prominently displayed where it can be seen by the customer.

- (e) The permit will expire on December 31st of each year, renewable annually in December for the period next commencing January 1st.
- (f) No permit will be issued or renewed unless the tattoo/piercing shop/transient tattooist/piercer has been inspected and found to be in compliance with these provisions.

SECTION 5. TATTOO/BODY PIERCING PROCEDURES

The Department of Health is hereby authorized to promulgate such rules and regulations as may be necessary to guarantee compliance with Section 1^o of this act.

SECTION 6. RECORDS-CONSENT

- (a) Proper records of tattoos/and piercings administered shall be maintained by the tattoo/piercing operator or transient tattooist for each customer.
- (b) A record of each customer shall be prepared prior to any procedure being performed and shall include the customer's name, address, age, date tattooed/pierced, the tattoo design/piercing and location on the customer's body, the name of the tattoo/piercing artist who performed the work and the manner of verification of identity and age.
- (c) The customer's written consent for tattooing/piercing will be part of the record.
- (d) The record and consent form shall be maintained in a register by the tattoo/piercing operator/transient tattooist/piercer for a minimum period of two (2) years after each tattoo/piercing session.

SECTION 7. MISCELLANEOUS

- (a) Only articles considered necessary to the routine operation and maintenance of the tattoo/body piercing shop work room operation shall be permitted in the tattoo shop.
- (b) No live bird, turtle, snake, dog, cat or other animal shall be permitted in any area used for the conduct of tattooing and/or body piercing operations or in the immediate open adjacent areas, including the main waiting area and the public access to the toilet room.

SECTION 8. ENFORCEMENT

- (a) The Rensselaer County Public Health Director shall have the power to suspend or revoke the permit of any licensee permittee for any violation of this local law.

SECTION 9. ENFORCEMENT PROCEDURE

- (a) Unsatisfactory inspection of the permittee will necessitate the serving of a "Notice of Violation and Order to Abate" and an informal office conference.
- (b) At the informal office conference opportunity will be given to the permittee to review the findings of violations and propose an adequate abatement schedule.
- (c) Unsatisfactory reinspection and/or two (2) unsatisfactory inspections of the permittee within a year will result in an order for an appearance for a formal departmental hearing.
- (d) When a permittee is required to appear at a departmental hearing, fines and other punitive requirements will be levied according to the hearing procedures of the Rensselaer County Department of Health.

SECTION 10. FINE GUIDELINES

- (a) Minimum fine will be one hundred (\$100) dollars.
- (b) Maximum fine for a single violation shall not exceed one thousand (\$1000.) dollars.
- (c) Past history of the permittee may also be considered when fines are levied.
- (d) Fines may be increased if multiple hearings are necessary to insure compliance by one particular permittee.
- (e) Failure to pay any penalties or fines within 30 days will result in immediate revocation of operating permit.

SECTION 11. RELATED PUNITIVE REQUIREMENTS

- (a) Monthly inspection checks of the permittee in question can be required by the Hearing Officer.
- (b) Any structural equipment or procedural deficiencies may be addressed and corrective actions required as a result of the hearing determination.

SECTION 12. NON-COMPLIANCE PENALTY

- (a) Failure to appear on the scheduled hearing date may result in increased fines and/or revocation of the operating permit resulting in immediate closure to the establishment.
- (b) If, at the conclusion of the hearing, the Hearing Officer determines that the violations continue to present an imminent public health hazard, the facility owner will be subject to a maximum fine not to exceed one thousand (\$1000.) dollars per single violation and/or immediate revocation of the operating permit.

SECTION 13. SEVERABILITY

If any provision of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the particular provisions directly involved in the controversy.

SECTION 14. EFFECTIVE DATE

This Local Law shall take effect 60 days following its filing with the Secretary of State.

Local Law ADOPTED by the following vote:

Ayes: 19

Nays: 0

Abstain: 0

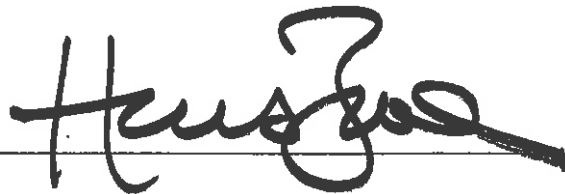
September 8, 1998

Approved by the County Executive:

Dated

9/24/98

Signed:



NOTICE OF ADOPTION OF LOCAL LAW

I, Christine M. Chesley, Clerk of the Rensselaer County Legislature, hereby certify that the following is a true and complete copy of a local law adopted by the Rensselaer County Legislature on September 8, 1998 and approved by the Rensselaer County Executive on September 24, 1998. This local law is not subject to referendum or petition.

Christine M. Chesley
Christine M. Chesley, Clerk
Rensselaer County Legislature

(This bill must be filed a local law with the Secretary of State.)

This bill should be given priority in the legislative process and should not be delayed by the inclusion of amendments or by the inclusion of new matter.

County
City of RENSSELAER
Town
Village

Local Law No. 6 of the year 1998..

A local law REGULATING THE OPERATION OF TATTOO AND PIERCING PARLORS
(Insert Title)
WITHIN THE COUNTY OF RENSSELAER

SPONSORED BY: POLSINELLO
Be it enacted by the LEGISLATURE of the

County
City of RENSSELAER
Town
Village as follows:

SECTION 1. LEGISLATIVE INTENT

It is the intent of the County Legislature that Tattoo and Piercing Parlors operated within the borders of Rensselaer County operate in a safe and sanitary environment.

SECTION 2. DEFINITIONS

The following words and phrases, as used in this Local Law shall have the indicated meaning:

- (a) "Department" shall mean the Rensselaer County Health Department.
- (b) "Health Officer" shall mean the Rensselaer County Public Health Director or his /her designee.
- (c) "Permit" shall mean the issuance of a document by the health officer having jurisdiction to a tattoo shop certifying that said shop, after inspection, was found to be in compliance with the applicable provisions of this act, and the rules and regulation promulgated thereunder.
- (d) "Tattoo" shall mean to mark or color the skin by pricking in coloring matter so as to form indelible marks or figures or by the production of scars.

(If additional provisions are necessary, they should be included here.)

- (e) "Tattoo/Piercing artist" shall mean any person who actually performs the work of tattooing or piercing.
- (f) "Tattoo/Piercing operator" shall mean any person who controls, operates, conducts, or manages any tattoo/piercing shop whether actually performing the work of tattooing/piercing or not.
- (g) "Tattoo/Piercing shop" shall mean any room or space where tattooing/piercing is practiced or where the business of tattooing/piercing is conducted or any part thereof.
- (h) "Transient tattooist/piercer" shall mean any person who performs the work of tattooing on a temporary basis of not more than fourteen (14) consecutive days duration, usually at a special event or show.
- (i) "Body Piercing" shall mean to cut or pass through with a sharp instrument, or to penetrate a part of the body for the purpose of applying jewelry to various parts of the body by means of a piercing device.
- (j) "Piercing Device" shall mean any device used for the piercing of the skin for the purpose of applying jewelry.

SECTION 3. GENERAL PROVISIONS

PURPOSE: It is the purpose of these provisions to establish minimal standards of infection control to prevent the transmission of blood borne diseases during tattooing and body piercing.

APPLICATION: The requirements of this law shall apply within Rensselaer County.

SECTION 4. PERMIT

- (a) No person/tattoo/piercing shop shall engage in the practice of tattooing/piercing or act as a tattoo or piercing artist unless such person/business has a valid permit issued by the Rensselaer County Health Department.
- (b) Any person/tattoo piercing shop desiring to engage in the practice of tattooing/body piercing or act as a tattoo/piercing artist shall submit an application for a permit to the Director of Public Health in the form prescribed by the department.
- (c) The permit fee is one hundred and seventy-five dollars (\$175.00) for a permanent tattoo/piercing shop per year and fifty dollars (\$50.00) for any transient tattooist/piercer for a temporary permit (not more than 14 consecutive days in duration).
- (d) The permit is to be prominently displayed where it can be seen by the customer.

- (e) The permit will expire on December 31st of each year, renewable annually in December for the period next commencing January 1st.
- (f) No permit will be issued or renewed unless the tattoo/piercing shop/transient tattooist/piercer has been inspected and found to be in compliance with these provisions.

SECTION 5. TATTOO/BODY PIERCING PROCEDURES

The Department of Health is hereby authorized to promulgate such rules and regulations as may be necessary to guarantee compliance with Section 1 of this act.

SECTION 6. RECORDS-CONSENT

- (a) Proper records of tattoos/and piercings administered shall be maintained by the tattoo/piercing operator or transient tattooist for each customer.
- (b) A record of each customer shall be prepared prior to any procedure being performed and shall include the customer's name, address, age, date tattooed/pierced, the tattoo design/piercing and location on the customer's body, the name of the tattoo/piercing artist who performed the work and the manner of verification of identity and age.
- (c) The customer's written consent for tattooing/piercing will be part of the record.
- (d) The record and consent form shall be maintained in a register by the tattoo/piercing operator/transient tattooist/piercer for a minimum period of two (2) years after each tattoo/piercing session.

SECTION 7. MISCELLANEOUS

- (a) Only articles considered necessary to the routine operation and maintenance of the tattoo/body piercing shop work room operation shall be permitted in the tattoo shop.
- (b) No live bird, turtle, snake, dog, cat or other animal shall be permitted in any area used for the conduct of tattooing and/or body piercing operations or in the immediate open adjacent areas, including the main waiting area and the public access to the toilet room.

SECTION 8. ENFORCEMENT

- (a) The Rensselaer County Public Health Director shall have the power to suspend or revoke the permit of any licensee permittee for any violation of this local law.

SECTION 9. ENFORCEMENT PROCEDURE

- (a) Unsatisfactory inspection of the permittee will necessitate the serving of a "Notice of Violation and Order to Abate" and an informal office conference.
- (b) At the informal office conference opportunity will be given to the permittee to review the findings of violations and propose an adequate abatement schedule.
- (c) Unsatisfactory reinspection and/or two (2) unsatisfactory inspections of the permittee within a year will result in an order for an appearance for a formal departmental hearing.
- (d) When a permittee is required to appear at a departmental hearing, fines and other punitive requirements will be levied according to the hearing procedures of the Rensselaer County Department of Health.

SECTION 10. FINE GUIDELINES

- (a) Minimum fine will be one hundred (\$100) dollars.
- (b) Maximum fine for a single violation shall not exceed one thousand (\$1000.) dollars.
- (c) Past history of the permittee may also be considered when fines are levied.
- (d) Fines may be increased if multiple hearings are necessary to insure compliance by one particular permittee.
- (e) Failure to pay any penalties or fines within 30 days will result in immediate revocation of operating permit.

SECTION 11. RELATED PUNITIVE REQUIREMENTS

- (a) Monthly inspection checks of the permittee in question can be required by the Hearing Officer.
- (b) Any structural equipment or procedural deficiencies may be addressed and corrective actions required as a result of the hearing determination.

SECTION 12. NON-COMPLIANCE PENALTY

- (a) Failure to appear on the scheduled hearing date may result in increased fines and/or revocation of the operating permit resulting in immediate closure to the establishment.
- (b) If, at the conclusion of the hearing, the Hearing Officer determines that the violations continue to present an imminent public health hazard, the facility owner will be subject to a maximum fine not to exceed one thousand (\$1000.) dollars per single violation and/or immediate revocation of the operating permit.

SECTION 13. SEVERABILITY

If any provision of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the particular provisions directly involved in the controversy.

SECTION 14. EFFECTIVE DATE

This Local Law shall take effect 60 days following its filing with the Secretary of State.

Local Law ADOPTED by the following vote:

Ayes: 19

Nays: 0

Abstain: 0

September 8, 1998

Approved by the County Executive:

Dated

9/24/98

Signed:


HENRY F. ZWACK

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

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

~~CITY~~

~~TOWN~~

~~VILLAGE~~

of Rensselaer

Local Law No. 7 of the year 1998

A local law Misdemeanor Forfeiture Law

(Insert Title)

BY: DURKEE, WALSH, POLSINELLO, MIRCH, MCGREEVY

Be it enacted by the Legislature of the

(Name of Legislative Body)

County

~~CITY~~

~~TOWN~~

~~VILLAGE~~

of Rensselaer

as follows:

SECTION I

1. **Legislative Intent.** The Rensselaer County Legislature has determined that successful law enforcement strategy cannot be based solely on incarceration. The Rensselaer County Legislature has further determined that forfeiture laws enable law enforcement personnel to remove a criminal's tools of trade and ability to reopen for business. In addition, forfeiture laws permit sanctions against persons who knowingly permit the use of their property for criminal enterprises. Lastly, forfeiture laws provide an additional deterrent in the reallocation of forfeited funds and property from criminal activity to law enforcement purposes and activities.

The Rensselaer County Legislature has determined that current statutory law permits forfeiture only in connection with felony grade crimes. Accordingly, by the adoption of this local law it is the intention of the Rensselaer County Legislature to allow and to create a procedure for the forfeiture of the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime, or to recover a money judgment equal to the property which constitutes the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime, where such crime is a misdemeanor.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

SECTION II

1. Definition of terms of general use: Except where different meanings are expressly stated in subsequent provisions of this law, the following terms have the following meanings:

a. "Property" means and includes personal property, money, negotiable instruments, securities or any interest in a thing of value, excepting real property.

b. "Proceeds of a crime" means any property obtained through the commission of a misdemeanor and includes any appreciation in value of such property.

c. "Substituted proceeds of a crime" means any property obtained by the sale or exchange of proceeds of a crime, and any gain realized by such sale or exchange.

d. "Instrumentality of a crime" means any property, other than real property and any building, fixtures, appurtenances, and improvements thereon, whose use contributes directly and materially to the commission of any misdemeanor.

e. "Misdemeanor" means a conviction of a person of a misdemeanor as that crime is defined by the New York State Penal law or where the accusatory instrument charges one or more of such crimes including conviction upon a plea of guilty to or by trial of any misdemeanor for which such plea or verdict is otherwise authorized by law, or a conviction of a person of a violation as that offense is defined in the New York State Penal Law in full satisfaction of an accusatory instrument charging one or more misdemeanor offenses as defined in the New York State Penal Law, including conviction upon a plea of guilty or by trial.

f. "Post-conviction forfeiture crime" means any misdemeanor or violation as defined in Section II, subdivision (1)(e) of this law.

g. "Pre-conviction forfeiture" means only those crimes as defined by New York State Penal Law §§220.03, 220.45, 220.50, 221.10, 221.15, 221.35, 221.40 or 240.36.

h. "Court" means the court where the criminal action is pending.

i. "Defendant" means a person against whom a forfeiture action is commenced and includes a "criminal defendant" and "non-criminal defendant".

j. "Criminal defendant" means a person who has a criminal liability for a crime defined in subdivisions "e", "f" or "g" of this section. For the purposes of this section, a person has criminal liability when

(i.) said person has been convicted of a post-conviction forfeiture crime,

or,

(ii.) the claiming authority proves by clear and convincing evidence that such person has committed an act as defined by the New York State Penal Law §§220.03, 220.45, 220.50, 221.10, 221.15, 221.35, 221.40 or 240.36.

k. "Non-criminal defendant" means a person, other than a criminal defendant, who possesses an interest in the proceeds of a crime, the substituted proceeds of a crime or in the instrumentality of a crime.

l. "Claiming Authority" means a person, other than a criminal defendant, who possesses an interest in the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime.

m. "Claiming Agent" means and shall include all persons described in subdivision 34 of section 1.20 of the Criminal Procedure Law.

n. "Fair consideration" means fair consideration given for property, or an obligation when in exchange for such property or obligation as a fair equivalent thereof and in good faith, property and/or money is conveyed.

o. "District Attorney" means and shall include all persons described in subdivision 32 of section 1.20 of the Criminal Procedure Law and any duly authorized District Attorney or Special Assistant District Attorney.

2. Except as provided in Article 13-A of the Civil Practice Law and Rules, proceeds of a crime, substituted proceeds of a crime or any instrumentality of a crime shall be subject to forfeiture as prescribed in this section.

3. The County of Rensselaer may commence a civil action for forfeiture to the County of Rensselaer of the proceeds of a crime, substituted proceeds of a crime or instrumentality of a crime seized incident to an arrest for a misdemeanor crime against any person having an interest in such property. The decision to commence such a civil action in the name of the County of Rensselaer may be made by the District Attorney or a duly authorized Special District Attorney or a Special Assistant District Attorney, without the need of a resolution by the

Rensselaer County Legislature.

4. Any person from whom property is seized incident to their arrest for a misdemeanor will receive written notice at the time the property is seized and inventoried or as soon thereafter as practicable and, in any event, such notice shall not be forwarded more than sixty (60) days after the date the property is seized, that the County of Rensselaer may commence an action for forfeiture of such property as the proceeds of a crime, substituted proceeds of a crime or instrumentality of a crime.

5. A civil forfeiture action brought pursuant to this section shall be commenced in the County of Rensselaer within one hundred twenty (120) days after the date of seizure of the property. Upon motion of the defendant or the claiming authority, the action may be stayed by the Court during the pendency of the criminal action relating to the property.

6. If a person charged with a misdemeanor crime is not convicted of any misdemeanor or violation as defined in Section II, subdivision (1)(e) or if the claiming authority fails to prove during the forfeiture hearing, by clear and convincing evidence, that such person has committed an act as defined by the New York State Penal Law, then any property seized incident to that person's arrest will be returned to said person by the claiming agent.

SECTION III

1. A civil action may be commenced by the appropriate claiming authority against a criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime or to recover a money judgment in an amount equivalent in value to the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, or the instrumentality of a crime. A civil action may be commenced against a non-criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime or the instrumentality of a crime provided, however, that a judgment of forfeiture shall be limited to the amount of the proceeds of the crime. Except as otherwise specifically provided by statute, such action under this article shall be governed by this law. An action under this law is not a criminal proceeding and may not be deemed to be a previous prosecution under Article 40 of the Criminal Procedure Law.

a. Action relating to post-conviction forfeiture crimes. An action relating to a post-conviction forfeiture crime must be based upon a conviction of a misdemeanor as defined in Section II, subdivision (1)(f). A civil forfeiture action may be commenced prior to such conviction having occurred. However, the Court may not grant forfeiture until a conviction has

occurred in the criminal matter. The Court may grant any provisional remedy provided pursuant to this law. A civil forfeiture action commenced pursuant to this section shall be deemed abandoned and dismissed should the claiming authority fail to prosecute the civil forfeiture action within sixty (60) days after the date of conviction.

b. Actions relating to pre-conviction forfeiture crimes. An civil forfeiture action relating to a pre-conviction forfeiture crime need not be based upon conviction of a pre-conviction forfeiture crime, provided, however, that if the civil forfeiture action is not grounded upon such a conviction, it shall be necessary in the civil forfeiture action for the claiming authority to prove the commission of a pre-conviction forfeiture crime by clear and convincing evidence. A civil forfeiture action under this paragraph shall be stayed during the pendency of a criminal action to which it is related, provided that such stay shall not prevent the granting or continuance of any provisional remedy provided under this local law or under any other provision of law governing provisional remedies.

2. All defendants in a civil forfeiture action brought pursuant to this local law shall have the right to trial by jury on any issue of fact.

3. In a civil forfeiture action pursuant to this section the following burdens of proof shall apply:

a. In a civil forfeiture action commenced by a claiming authority against a criminal defendant, except for those issues required by this local law to be proven by clear and convincing evidence, the burden shall be upon the claiming authority to prove, by a preponderance of the evidence, the facts necessary to establish a claim for civil forfeiture.

b. In a civil forfeiture action commenced by a claiming authority against a non-criminal defendant:

(i). In an action relating to a pre-conviction forfeiture crime, the burden shall be upon the claiming authority to prove by clear and convincing evidence the commission of the crime by a person, provided, however, that it shall not be necessary to prove the identity of such person.

(ii). If the action relates to the proceeds of a crime, except as provided in subparagraph 3(b)(i)

hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for civil forfeiture and that the non-criminal defendant either:

(A) knew or should have known that the proceeds were obtained through the commission of a crime, or

(B) fraudulently obtained his or her interest in the proceeds to avoid civil forfeiture.

(iii). If the action relates to the substituted proceeds of a crime, except as provided in subparagraph (3)(b)(i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either:

(A) knew that the property sold or exchanged to obtain an interest in the substituted proceeds was obtained through the commission of a crime, or

(B) fraudulently obtained his or her interest in the substituted proceeds to avoid forfeiture.

(iv). If the action relates to an instrumentality of a crime, except as provided for in subparagraph (3)(b)(i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either:

(A) knew that the instrumentality was or would be used in the commission of a crime or

(B) knowingly obtained his or her interest in the instrumentality to avoid forfeiture.

(c) In a forfeiture action commenced by a claiming authority against a non-criminal defendant the following rebuttable presumptions shall apply:

(i). A non-criminal defendant who did not pay fair consideration for the proceeds of a crime, the substituted proceeds of a crime or the

instrumentality of a crime shall be presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime.

(ii). A non-criminal defendant who obtains an interest in the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime with knowledge of an order of provisional remedy relating to said property issued pursuant to this local law, shall be presumed to know that such property was the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime.

(iii). In an action relating to a pre-conviction forfeiture crime, a non-criminal defendant who the claiming authority proves by clear and convincing evidence has criminal liability under section 20.00 of the penal law for the crime or for criminal activity arising from a common scheme or plan of which such crime is a part and who possesses an interest in the proceeds, the substituted proceeds, or an instrumentality of such criminal activity is presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(iv). A non-criminal defendant who participated in or was aware of a scheme to conceal or disguise the manner in which said non-criminal obtained his or her interest in the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime is presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime.

d. In a forfeiture action commenced by a claiming authority against a defendant, the following rebuttable presumption shall apply: all currency or negotiable instruments payable to the bearer shall be presumed to be the proceeds of a pre-conviction forfeiture crime when such currency or negotiable instruments are:

(i). found in close proximity to a controlled substance unlawfully possessed by the defendant in an amount sufficient to constitute a misdemeanor as defined by the New York State Penal law, or

(ii). found in close proximity to any quantity of a controlled substance or marijuana unlawfully possessed by such defendant in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, distribute, package or otherwise prepare for sale such controlled substance or marijuana.

e. The presumption set forth pursuant to paragraph (d) of this subdivision shall be rebutted by credible and reliable evidence which tends to show that such currency or negotiable instrument payable to the bearer is not the proceeds of a pre-conviction forfeiture crime. In a civil forfeiture action tried before a jury, the jury shall be so instructed. Any sworn testimony of a defendant offered to rebut the presumption and any other evidence which is obtained as a result of such testimony shall be inadmissible in any subsequent proceeding relating to the civil forfeiture action, or in any other civil or criminal action, except in a prosecution for a violation of article 210 of the New York State Penal Law. In an action tried before a jury, at the commencement of the trial, or at such other time as the court reasonable directs, the claiming authority shall provide notice to the court and to the defendant of its intent to request that the court charge such presumption.

4. Nothing contained in this local law shall affect the validity of any settlement of any civil forfeiture action negotiated between the claiming authority and a criminal defendant contemporaneously with the taking of a plea of guilty in a criminal action to any misdemeanor as defined in this local law.

5. A civil forfeiture action shall be commenced by service of a summons with notice or summons and verified complaint.

6. In addition to any other relief provided pursuant to this local law, any person claiming an interest in the property subject to the civil forfeiture action who did not receive actual notice of the forfeiture action may, at any time within one year after the entry of a judgement of forfeiture, petition the Court where the civil forfeiture action was commenced, for a rescinding or mitigation of the forfeiture and restoration of the property or the proceeds of any sale resulting from the forfeiture, or such part thereof, as may be claimed. The Court may restore said property upon such terms and conditions as it deems reasonable and just provided:

a. the petitioning party establishes that he or she was without actual knowledge of the forfeiture action or any

related proceeding for a provisional remedy and did not know or would not have known that the forfeited property was connected to a crime or was fraudulently conveyed, and

b. the Court determines that restoration of the property would serve the ends of justice.

7. The total amount that may be recovered by the claiming authority against all criminal defendants in a forfeiture action or actions involving the same crime shall not exceed the value of the proceeds of the crime or substituted proceeds of the crime, whichever amount is greater, and, in addition, the value of any forfeited instrumentality used in the crime. Any such recovery against criminal defendants for the value of the proceeds of the crime or substituted proceeds of the crime shall be reduced by an amount which equals the value of the same proceeds of the same crime or the same substituted proceeds of the same crime recovered against all non-criminal defendants. Any such recovery for the value of an instrumentality of a crime shall be reduced by an amount which equals the value of the same instrumentality recovered against any non-criminal defendant.

The total amount that may be recovered against all non-criminal defendants in a forfeiture action or actions involving the same crime shall not exceed the value of the proceeds of the crime, or the substituted proceeds of the crime, whichever amount is greater, and, in addition, the value of any forfeited instrumentality used in the crime. Any such recovery against the non-criminal defendant(s) for the value of the proceeds of the crime or substituted proceeds of the crime shall be reduced by an amount which equals the value of the proceeds of the crime or substituted proceeds of the crime recovered against all criminal defendants. A judgment against a non-criminal defendant pursuant to this local law shall be limited to the amount of the proceeds of the crime. Any recovery for the value of an instrumentality of the crime shall be reduced by an amount equal to the value of the same instrumentality recovered against any criminal defendant.

8. Any stipulation or settlement agreement between the parties to a civil forfeiture action shall be filed with the clerk of the Court in which the forfeiture action is pending.

SECTION IV

1. The provisional remedies of attachment, injunction and receivership shall be available in all actions for a money judgment under this local law.

2. On a motion for such provisional remedy, the claiming authority shall state whether any other provisional remedy has previously been sought in the same action against the same

defendant. The court may require the claiming authority to elect between those provisional remedies to which it would otherwise be entitled.

3. A court may grant an application for a provisional remedy when it determines that:

a. there is a substantial probability that the claiming authority will prevail on the issue of forfeiture and that failure to enter the order may result in the property being destroyed, removed from the jurisdiction of the court, or otherwise unavailable for forfeiture, or

b. the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order may operate.

4. Upon motion of any party against whom a provisional remedy is in effect, the Court may issue an order modifying or vacating such provisional remedy if the Court determines such order necessary to permit the moving party to obtain funds for the payment of reasonable living expenses, other costs or expenses related to the maintenance, operation, or preservation of property which is the subject of any such provisional remedy, or is otherwise reasonable. Any such motion shall be supported by an affidavit establishing the unavailability of other assets of the moving party which are not the subject of such provisional remedy for payment of such expenses or fees.

5. Except to the extent inconsistent with the provisions contained herein, the Civil Practice Law and Rules shall govern the procedure in actions commenced under this local law.

SECTION V

1. Should any provision of this local law or the application hereof to any person or circumstance be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder hereof, but shall be confined in its operation to such provision, or in its application to the person or circumstance directly involved in the controversy in which such judgment shall have been rendered.

SECTION VI

1. Except for property that the District Attorney determines would aid law enforcement within Rensselaer County and therefore retains, all property forfeited pursuant to the procedures established by this local law shall be sold at public auction,

after having been advertised by the appropriate claiming agency in the official newspaper of the county once per week for a period of four (4) weeks and by written notice conspicuously posted for a period of four (4) weeks in the Rensselaer County Courthouse.

2. The proceeds of all sale of property and any other moneys realized as a consequence of any forfeiture pursuant to this local law shall be allocated in the following descending order of priority:

a. Any amount ordered to be paid by the Court in satisfaction of any lien or claim against the property forfeited. A fine imposed pursuant to the Penal Law shall not be deemed to constitute a lien or claim for purposes of this section.

b. Amounts ordered to be paid by the defendant in any other action or proceeding as restitution, reparations or damages to a victim of a crime, which crime constitutes the basis upon which forfeiture was effected under this local law, to the extent such amounts remain unpaid.

c. Amounts actually expended by a claiming authority or claiming agent, which amounts are substantiated by vouchers or other evidence for the maintenance, operation, storage, sale and the like which is required by circumstances attendant to either the commission of the crime or the forfeiture action.

d. All remaining funds to be distributed to the claiming authority shall be paid into the District Attorney Misdemeanor Forfeiture Fund.

3. All moneys distributed to the claiming authority shall be used to enhance law enforcement efforts and not in supplement of ordinary budgetary items, including, but not limited to, salaries of personnel and expenses of the claiming authority or claiming agent.

SECTION VII

1. Effective Date. This local law shall take effect pursuant to the provisions of the Municipal Home Rule Law of the State of New York.

Local Law ADOPTED by the following vote:

Ayes: 17

Nays: 1 (Dedrick)

Abstain: 0

October 13, 1998

Approved by the County Executive:

Dated OCTOBER 27, 1998 Signed: 

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

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

~~CHX~~

~~TRXX~~

~~XXXX~~

of Rensselaer

Local Law No. 7 of the year 1998.

A local law Misdemeanor Forfeiture Law
(Insert Title)

BY: DURKEE, WALSH, POLSINELLO, MIRCH, MCGREEVY

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

County

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~~TRXX~~

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of Rensselaer

as follows:

SECTION I

1. **Legislative Intent.** The Rensselaer County Legislature has determined that successful law enforcement strategy cannot be based solely on incarceration. The Rensselaer County Legislature has further determined that forfeiture laws enable law enforcement personnel to remove a criminal's tools of trade and ability to reopen for business. In addition, forfeiture laws permit sanctions against persons who knowingly permit the use of their property for criminal enterprises. Lastly, forfeiture laws provide an additional deterrent in the reallocation of forfeited funds and property from criminal activity to law enforcement purposes and activities.

The Rensselaer County Legislature has determined that current statutory law permits forfeiture only in connection with felony grade crimes. Accordingly, by the adoption of this local law it is the intention of the Rensselaer County Legislature to allow and to create a procedure for the forfeiture of the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime, or to recover a money judgment equal to the property which constitutes the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime, where such crime is a misdemeanor.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

SECTION II

1. Definition of terms of general use: Except where different meanings are expressly stated in subsequent provisions of this law, the following terms have the following meanings:

a. "Property" means and includes personal property, money, negotiable instruments, securities or any interest in a thing of value, excepting real property.

b. "Proceeds of a crime" means any property obtained through the commission of a misdemeanor and includes any appreciation in value of such property.

c. "Substituted proceeds of a crime" means any property obtained by the sale or exchange of proceeds of a crime, and any gain realized by such sale or exchange.

d. "Instrumentality of a crime" means any property, other than real property and any building, fixtures, appurtenances, and improvements thereon, whose use contributes directly and materially to the commission of any misdemeanor.

e. "Misdemeanor" means a conviction of a person of a misdemeanor as that crime is defined by the New York State Penal law or where the accusatory instrument charges one or more of such crimes including conviction upon a plea of guilty to or by trial of any misdemeanor for which such plea or verdict is otherwise authorized by law, or a conviction of a person of a violation as that offense is defined in the New York State Penal Law in full satisfaction of an accusatory instrument charging one or more misdemeanor offenses as defined in the New York State Penal Law, including conviction upon a plea of guilty or by trial.

f. "Post-conviction forfeiture crime" means any misdemeanor or violation as defined in Section II, subdivision (1)(e) of this law.

g. "Pre-conviction forfeiture" means only those crimes as defined by New York State Penal Law §§220.03, 220.45, 220.50, 221.10, 221.15, 221.35, 221.40 or 240.36.

h. "Court" means the court where the criminal action is pending.

i. "Defendant" means a person against whom a forfeiture action is commenced and includes a "criminal defendant" and "non-criminal defendant".

j. "Criminal defendant" means a person who has a criminal liability for a crime defined in subdivisions "e", "f" or "g" of this section. For the purposes of this section, a person has criminal liability when

(i.) said person has been convicted of a post-conviction forfeiture crime,

or,

(ii.) the claiming authority proves by clear and convincing evidence that such person has committed an act as defined by the New York State Penal Law §§220.03, 220.45, 220.50, 221.10, 221.15, 221.35, 221.40 or 240.36.

k. "Non-criminal defendant" means a person, other than a criminal defendant, who possesses an interest in the proceeds of a crime, the substituted proceeds of a crime or in the instrumentality of a crime.

l. "Claiming Authority" means a person, other than a criminal defendant, who possesses an interest in the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime.

m. "Claiming Agent" means and shall include all persons described in subdivision 34 of section 1.20 of the Criminal Procedure Law.

n. "Fair consideration" means fair consideration given for property, or an obligation when in exchange for such property or obligation as a fair equivalent thereof and in good faith, property and/or money is conveyed.

o. "District Attorney" means and shall include all persons described in subdivision 32 of section 1.20 of the Criminal Procedure Law and any duly authorized District Attorney or Special Assistant District Attorney.

2. Except as provided in Article 13-A of the Civil Practice Law and Rules, proceeds of a crime, substituted proceeds of a crime or any instrumentality of a crime shall be subject to forfeiture as prescribed in this section.

3. The County of Rensselaer may commence a civil action for forfeiture to the County of Rensselaer of the proceeds of a crime, substituted proceeds of a crime or instrumentality of a crime seized incident to an arrest for a misdemeanor crime against any person having an interest in such property. The decision to commence such a civil action in the name of the County of Rensselaer may be made by the District Attorney or a duly authorized Special District Attorney or a Special Assistant District Attorney, without the need of a resolution by the

Rensselaer County Legislature.

4. Any person from whom property is seized incident to their arrest for a misdemeanor will receive written notice at the time the property is seized and inventoried or as soon thereafter as practicable and, in any event, such notice shall not be forwarded more than sixty (60) days after the date the property is seized, that the County of Rensselaer may commence an action for forfeiture of such property as the proceeds of a crime, substituted proceeds of a crime or instrumentality of a crime.

5. A civil forfeiture action brought pursuant to this section shall be commenced in the County of Rensselaer within one hundred twenty (120) days after the date of seizure of the property. Upon motion of the defendant or the claiming authority, the action may be stayed by the Court during the pendency of the criminal action relating to the property.

6. If a person charged with a misdemeanor crime is not convicted of any misdemeanor or violation as defined in Section II, subdivision (1)(e) or if the claiming authority fails to prove during the forfeiture hearing, by clear and convincing evidence, that such person has committed an act as defined by the New York State Penal Law, then any property seized incident to that person's arrest will be returned to said person by the claiming agent.

SECTION III

1. A civil action may be commenced by the appropriate claiming authority against a criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime or to recover a money judgment in an amount equivalent in value to the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, or the instrumentality of a crime. A civil action may be commenced against a non-criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime or the instrumentality of a crime provided, however, that a judgment of forfeiture shall be limited to the amount of the proceeds of the crime. Except as otherwise specifically provided by statute, such action under this article shall be governed by this law. An action under this law is not a criminal proceeding and may not be deemed to be a previous prosecution under Article 40 of the Criminal Procedure Law.

a. Action relating to post-conviction forfeiture crimes. An action relating to a post-conviction forfeiture crime must be based upon a conviction of a misdemeanor as defined in Section II, subdivision (1)(f). A civil forfeiture action may be commenced prior to such conviction having occurred. However, the Court may not grant forfeiture until a conviction has

occurred in the criminal matter. The Court may grant any provisional remedy provided pursuant to this law. A civil forfeiture action commenced pursuant to this section shall be deemed abandoned and dismissed should the claiming authority fail to prosecute the civil forfeiture action within sixty (60) days after the date of conviction.

b. Actions relating to pre-conviction forfeiture crimes. An civil forfeiture action relating to a pre-conviction forfeiture crime need not be based upon conviction of a pre-conviction forfeiture crime, provided, however, that if the civil forfeiture action is not grounded upon such a conviction, it shall be necessary in the civil forfeiture action for the claiming authority to prove the commission of a pre-conviction forfeiture crime by clear and convincing evidence. A civil forfeiture action under this paragraph shall be stayed during the pendency of a criminal action to which it is related, provided that such stay shall not prevent the granting or continuance of any provisional remedy provided under this local law or under any other provision of law governing provisional remedies.

2. All defendants in a civil forfeiture action brought pursuant to this local law shall have the right to trial by jury on any issue of fact.

3. In a civil forfeiture action pursuant to this section the following burdens of proof shall apply:

a. In a civil forfeiture action commenced by a claiming authority against a criminal defendant, except for those issues required by this local law to be proven by clear and convincing evidence, the burden shall be upon the claiming authority to prove, by a preponderance of the evidence, the facts necessary to establish a claim for civil forfeiture.

b. In a civil forfeiture action commenced by a claiming authority against a non-criminal defendant:

(i). In an action relating to a pre-conviction forfeiture crime, the burden shall be upon the claiming authority to prove by clear and convincing evidence the commission of the crime by a person, provided, however, that it shall not be necessary to prove the identity of such person.

(ii). If the action relates to the proceeds of a crime, except as provided in subparagraph 3(b)(i)

hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for civil forfeiture and that the non-criminal defendant either:

(A) knew or should have known that the proceeds were obtained through the commission of a crime, or

(B) fraudulently obtained his or her interest in the proceeds to avoid civil forfeiture.

(iii). If the action relates to the substituted proceeds of a crime, except as provided in subparagraph (3)(b)(i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either:

(A) knew that the property sold or exchanged to obtain an interest in the substituted proceeds was obtained through the commission of a crime, or

(B) fraudulently obtained his or her interest in the substituted proceeds to avoid forfeiture.

(iv). If the action relates to an instrumentality of a crime, except as provided for in subparagraph (3)(b)(i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either:

(A) knew that the instrumentality was or would be used in the commission of a crime or

(B) knowingly obtained his or her interest in the instrumentality to avoid forfeiture.

(c) In a forfeiture action commenced by a claiming authority against a non-criminal defendant the following rebuttable presumptions shall apply:

(i). A non-criminal defendant who did not pay fair consideration for the proceeds of a crime, the substituted proceeds of a crime or the

instrumentality of a crime shall be presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime.

(ii). A non-criminal defendant who obtains an interest in the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime with knowledge of an order of provisional remedy relating to said property issued pursuant to this local law, shall be presumed to know that such property was the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime.

(iii). In an action relating to a pre-conviction forfeiture crime, a non-criminal defendant who the claiming authority proves by clear and convincing evidence has criminal liability under section 20.00 of the penal law for the crime or for criminal activity arising from a common scheme or plan of which such crime is a part and who possesses an interest in the proceeds, the substituted proceeds, or an instrumentality of such criminal activity is presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(iv). A non-criminal defendant who participated in or was aware of a scheme to conceal or disguise the manner in which said non-criminal obtained his or her interest in the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime is presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime.

d. In a forfeiture action commenced by a claiming authority against a defendant, the following rebuttable presumption shall apply: all currency or negotiable instruments payable to the bearer shall be presumed to be the proceeds of a pre-conviction forfeiture crime when such currency or negotiable instruments are:

(i). found in close proximity to a controlled substance unlawfully possessed by the defendant in an amount sufficient to constitute a misdemeanor as defined by the New York State Penal law, or

(ii). found in close proximity to any quantity of a controlled substance or marijuana unlawfully possessed by such defendant in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, distribute, package or otherwise prepare for sale such controlled substance or marijuana.

e. The presumption set forth pursuant to paragraph (d) of this subdivision shall be rebutted by credible and reliable evidence which tends to show that such currency or negotiable instrument payable to the bearer is not the proceeds of a pre-conviction forfeiture crime. In a civil forfeiture action tried before a jury, the jury shall be so instructed. Any sworn testimony of a defendant offered to rebut the presumption and any other evidence which is obtained as a result of such testimony shall be inadmissible in any subsequent proceeding relating to the civil forfeiture action, or in any other civil or criminal action, except in a prosecution for a violation of article 210 of the New York State Penal Law. In an action tried before a jury, at the commencement of the trial, or at such other time as the court reasonable directs, the claiming authority shall provide notice to the court and to the defendant of its intent to request that the court charge such presumption.

4. Nothing contained in this local law shall affect the validity of any settlement of any civil forfeiture action negotiated between the claiming authority and a criminal defendant contemporaneously with the taking of a plea of guilty in a criminal action to any misdemeanor as defined in this local law.

5. A civil forfeiture action shall be commenced by service of a summons with notice or summons and verified complaint.

6. In addition to any other relief provided pursuant to this local law, any person claiming an interest in the property subject to the civil forfeiture action who did not receive actual notice of the forfeiture action may, at any time within one year after the entry of a judgement of forfeiture, petition the Court where the civil forfeiture action was commenced, for a rescinding or mitigation of the forfeiture and restoration of the property or the proceeds of any sale resulting from the forfeiture, or such part thereof, as may be claimed. The Court may restore said property upon such terms and conditions as it deems reasonable and just provided:

a. the petitioning party establishes that he or she was without actual knowledge of the forfeiture action or any

related proceeding for a provisional remedy and did not know or would not have known that the forfeited property was connected to a crime or was fraudulently conveyed, and

b. the Court determines that restoration of the property would serve the ends of justice.

7. The total amount that may be recovered by the claiming authority against all criminal defendants in a forfeiture action or actions involving the same crime shall not exceed the value of the proceeds of the crime or substituted proceeds of the crime, whichever amount is greater, and, in addition, the value of any forfeited instrumentality used in the crime. Any such recovery against criminal defendants for the value of the proceeds of the crime or substituted proceeds of the crime shall be reduced by an amount which equals the value of the same proceeds of the same crime or the same substituted proceeds of the same crime recovered against all non-criminal defendants. Any such recovery for the value of an instrumentality of a crime shall be reduced by an amount which equals the value of the same instrumentality recovered against any non-criminal defendant.

The total amount that may be recovered against all non-criminal defendants in a forfeiture action or actions involving the same crime shall not exceed the value of the proceeds of the crime, or the substituted proceeds of the crime, whichever amount is greater, and, in addition, the value of any forfeited instrumentality used in the crime. Any such recovery against the non-criminal defendant(s) for the value of the proceeds of the crime or substituted proceeds of the crime shall be reduced by an amount which equals the value of the proceeds of the crime or substituted proceeds of the crime recovered against all criminal defendants. A judgment against a non-criminal defendant pursuant to this local law shall be limited to the amount of the proceeds of the crime. Any recovery for the value of an instrumentality of the crime shall be reduced by an amount equal to the value of the same instrumentality recovered against any criminal defendant.

8. Any stipulation or settlement agreement between the parties to a civil forfeiture action shall be filed with the clerk of the Court in which the forfeiture action is pending.

SECTION IV

1. The provisional remedies of attachment, injunction and receivership shall be available in all actions for a money judgment under this local law.

2. On a motion for such provisional remedy, the claiming authority shall state whether any other provisional remedy has previously been sought in the same action against the same

defendant. The court may require the claiming authority to elect between those provisional remedies to which it would otherwise be entitled.

3. A court may grant an application for a provisional remedy when it determines that:

a. there is a substantial probability that the claiming authority will prevail on the issue of forfeiture and that failure to enter the order may result in the property being destroyed, removed from the jurisdiction of the court, or otherwise unavailable for forfeiture, or

b. the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order may operate.

4. Upon motion of any party against whom a provisional remedy is in effect, the Court may issue an order modifying or vacating such provisional remedy if the Court determines such order necessary to permit the moving party to obtain funds for the payment of reasonable living expenses, other costs or expenses related to the maintenance, operation, or preservation of property which is the subject of any such provisional remedy, or is otherwise reasonable. Any such motion shall be supported by an affidavit establishing the unavailability of other assets of the moving party which are not the subject of such provisional remedy for payment of such expenses or fees.

5. Except to the extent inconsistent with the provisions contained herein, the Civil Practice Law and Rules shall govern the procedure in actions commenced under this local law.

SECTION V

1. Should any provision of this local law or the application hereof to any person or circumstance be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder hereof, but shall be confined in its operation to such provision, or in its application to the person or circumstance directly involved in the controversy in which such judgment shall have been rendered.

SECTION VI

1. Except for property that the District Attorney determines would aid law enforcement within Rensselaer County and therefore retains, all property forfeited pursuant to the procedures established by this local law shall be sold at public auction,

after having been advertised by the appropriate claiming agency in the official newspaper of the county once per week for a period of four (4) weeks and by written notice conspicuously posted for a period of four (4) weeks in the Rensselaer County Courthouse.

2. The proceeds of all sale of property and any other moneys realized as a consequence of any forfeiture pursuant to this local law shall be allocated in the following descending order of priority:

a. Any amount ordered to be paid by the Court in satisfaction of any lien or claim against the property forfeited. A fine imposed pursuant to the Penal Law shall not be deemed to constitute a lien or claim for purposes of this section.

b. Amounts ordered to be paid by the defendant in any other action or proceeding as restitution, reparations or damages to a victim of a crime, which crime constitutes the basis upon which forfeiture was effected under this local law, to the extent such amounts remain unpaid.

c. Amounts actually expended by a claiming authority or claiming agent, which amounts are substantiated by vouchers or other evidence for the maintenance, operation, storage, sale and the like which is required by circumstances attendant to either the commission of the crime or the forfeiture action.

d. All remaining funds to be distributed to the claiming authority shall be paid into the District Attorney Misdemeanor Forfeiture Fund.

3. All moneys distributed to the claiming authority shall be used to enhance law enforcement efforts and not in supplement of ordinary budgetary items, including, but not limited to, salaries of personnel and expenses of the claiming authority or claiming agent.

SECTION VII

1. Effective Date. This local law shall take effect pursuant to the provisions of the Municipal Home Rule Law of the State of New York.

Local Law ADOPTED by the following vote:

Ayes: 17

Nays: 1 (Dedrick)

Abstain: 0

October 13, 1998

Approved by the County Executive:

Dated OCTOBER 27, 1998 Signed: 