

Legislation Text

File #: 140377-A, **Version:** 2

Amending Title 10 of The Philadelphia Code, entitled "Regulation of Individual Conduct and Activity," by adding a new Chapter 10-2100, entitled "Marijuana Possession," to create a civil penalty for the possession of certain items and to provide for penalties and enforcement procedures for violations of such provisions, all under certain terms and conditions.

WHEREAS, In Philadelphia, approximately 4,000 persons are arrested each year for possessing a small amount of non-medical marijuana (SAM), otherwise defined as 30 grams or approximately one ounce. These arrests require - at substantial cost to the taxpayers - a significant dedication of law enforcement, court and prison resources; and

WHEREAS, Non-violent drug and alcohol abuse is proven to cause long-term health risks and should be dealt with as a public health issue, not as a criminal issue. Using criminal means for SAM violations does nothing to deter drug and alcohol abuse but does increase the number of people with life-changing criminal records, while incidents with criminal means only burdens taxpayers and damages an individual's chances for prosperity in the process; and

WHEREAS, There is evidence that minorities are disproportionately impacted by the enforcement of marijuana laws, with African Americans 5.19 times more likely to be arrested for SAM violations in Philadelphia than Caucasians despite evidence showing nearly identical use across both communities. Of those arrested in Philadelphia for SAM possession in 2012, 82 percent were African American; and

WHEREAS, A growing number of States and Cities have recently passed laws as it pertains to the decriminalization possession of non-medical marijuana, and specifically SAM possession. In 2012, Chicago, IL moved to decriminalize possession of a small amount of marijuana, allowing police to issue tickets for the offense instead of mandatory arrests. In early 2014, Washington, DC passed a similar ordinance which created a \$25 fine for possession of a small amount of marijuana; and

WHEREAS, There are issues related to the enforcement of the marijuana possession laws that impact Philadelphia County differently than other counties throughout the Commonwealth of Pennsylvania, including but not limited to the critical need in Philadelphia to deploy law enforcement in the investigation of violent criminal offenses, and serious concerns related to the racially disparate treatment of those found in possession of small amounts of marijuana; and

WHEREAS, Counties throughout the Commonwealth of Pennsylvania have adopted various means to eliminate the need for custodial arrests in cases involving the possession of small amounts of marijuana. In neighboring Montgomery County, and many other counties, law enforcement officers issue summons and impose fines in most cases involving the possession of small amounts of marijuana. Philadelphia has among the most punitive arrest policies of any county in the Commonwealth of Pennsylvania for those in possession of small amounts of marijuana; and

WHEREAS, Philadelphia has begun to engage in meaningful marijuana reform, primarily under the

leadership of the Philadelphia District Attorney’s “Small Amounts of Marijuana” (SAM) program. As the SAM program provides for the issuance of a fine and the opportunity to seek expungement of the arrest record, there is no rational basis for mandatory custodial arrests of persons who are not going to be criminally prosecuted; and

WHEREAS, Many marijuana users are productive citizens who work, pay taxes, and should be spared a criminal record that can seriously hamper opportunities for education and employment; now, therefore

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 10 of The Philadelphia Code is hereby amended as follows:

TITLE 10. REGULATION OF INDIVIDUAL CONDUCT AND ACTIVITY.

* * *

CHAPTER 10-2100. MARIJUANA POSSESSION.

§ 10-2101. Definitions.

(1) “*Marijuana*” or “*Marihuana*” means all forms and/or varieties of the genus *Cannabis*, whether growing or not, as defined by “*The Controlled Substance, Drug, Device and Cosmetic Act,*” 1972, April 14, P.L. 233, No. 64, § 1 et seq., 35 P.S. § 780-101 et seq.

(2) “*Public Space*” means a street, alley, park, sidewalk, a vehicle in or upon any street, alley, park or parking area, or any other place to which the public is invited.

(3) “*Small amount of Marijuana*” means thirty (30) grams or less of Marijuana.

(4) “*Smoking*” means inhaling, exhaling, burning or carrying any lighted cigarette, cigar, pipe or other such device which contains marijuana.

§ 10-2102. Possession or Smoking of a Small Amount of Marijuana.

(1) So long as marijuana shall be listed as a controlled substance in “*The Controlled Substance, Drug, Device and Cosmetic Act,*” 1972, April 14, P.L. 233, No. 64, § 1 et seq., 35 P.S. § 780-101 et seq., no person shall be in possession of a small amount of marijuana as defined in said act.

(2) *The following shall be a civil violation of this Section:*

(a) *Possessing a small amount of marijuana.*

(b) *Smoking a small amount of marijuana in any public space.*

(3) *Persons who are found in violation of this Section shall be issued a Notice of Violation by the police or other authorized law enforcement officer. Alternatively, the officer can obtain the subject’s name and address and later send a Notice of Violation by First Class Mail.*

(4) *The parent or guardian of a minor under the age of eighteen (18) years who violates this Section 10-2102 shall also be in violation of this Section. The officer who observes a violation of this Section by a minor shall:*

(a) *Temporarily detain the minor and follow all existing procedures for the handling of summary offenses committed by a minor;*

(b) *Advise the parent or guardian that the minor was found in possession of a small amount of marijuana;*

(c) *Issue a Notice of Violation to the minor and to the parent or guardian, and advise the parent or guardian that he or she is responsible for the payment of the violation fine; and*

(d) *Provide the parent or guardian with contact information for the Philadelphia Office of Behavioral Health or similar agency where substance abuse educational and treatment programs are available.*

(5) *Penalties.*

(a) *The penalty for a violation of subsection (2)(a) of this Section by an adult or minor under the age of eighteen (18) shall be a civil fine of twenty-five dollars (\$25.00) for each violation.*

(b) *The penalty for a violation of subsection (2)(b) by an adult or minor under the age of eighteen (18) shall be a civil fine of one hundred dollars (\$100.00) for each violation. The court may in its discretion suspend the fine imposed under this subsection (5)(b) if the person found liable agrees to and does in fact perform such community service as the court deems appropriate, up to nine hours.*

(6) *Enforcement.*

(a) *A Notice of Violation issued under this Chapter 10-2100 shall be enforced in accordance with the procedures established by the Police Department for enforcement of summary violations. The procedures set forth in § 1-112 of this Code shall not apply to violations of this Section.*

(7) *This Chapter shall not be construed to supersede any existing Pennsylvania or Federal law. Philadelphia police officers retain the authority to enforce any applicable laws and it is Council's intent that police officers may undertake custodial arrests where there is probable cause to believe that a criminal offense other than simple possession of a small amount of marijuana has been or is being committed.*

(8) *It is the intent of Council that the Director of Finance direct that any revenue collected pursuant to this Chapter be used to fund existing or future programs conducted by the Department of Health pertaining to drug treatment and addiction prevention.*

* * *

SECTION 2. This Ordinance shall take effect on October 20, 2014.

Explanation:

Italics indicate matter added.