

BILL NO. 4 - 2016

Moved by: _____

An Ordinance amending Chapter 3-330 General Offenses, by adding Section 373 providing for the assessment of a fineS for the PERSONAL possession OR PERSONAL USE of small amounts of MARIJUANA ~~cannabis~~ AND THE PERSONAL POSSESSION OF MARIJUANA PARAPHERNALIA in the City of Harrisburg under certain ~~terms and~~ conditions.

WHEREAS, this Ordinance is consistent with the ~~“small amount” section of the~~ Controlled Substances, DRUG, DEVICE AND COSMETICS Act in that it assesses a penalty for the PERSONAL possession OR PERSONAL USE of MARIJUANA ~~cannabis~~ AND THE PERSONAL POSSESSION OF MARIJUANA PARAPHERNALIA which ~~remains~~ ARE illegal under Pennsylvania law; and

WHEREAS, Police officers for the City of Harrisburg are required to appear for a Court hearing in every case where PERSONAL possession OR PERSONAL USE of a “small amount”² of MARIJUANA ~~cannabis possession~~ OR THE PERSONAL POSSESSION OF MARIJUANA PARAPHERNALIA is charged; and

WHEREAS, the City of Harrisburg Police Bureau and the Office of the District Attorney of Dauphin County have ~~regularly and routinely~~ reduced “small amount”² of MARIJUANA ~~cannabis possession~~ AND USE CHARGES AND MARIJUANA PARAPHERNALIA charges to ~~an~~ ungraded misdemeanor offenseS with the payment of a fine; and

WHEREAS, making the PERSONAL POSSESSION OR PERSONAL USE OF A “small amount”² of MARIJUANA ~~cannabis possessory~~ AND THE PERSONAL POSSESSION OF MARIJUANA PARAPHERNALIA offenseS a lower level law enforcement priority will

29 reduce law enforcement expenditures and permit limited resources to be focused on more serious
30 violent crimes; and

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32 **WHEREAS**, BEING CHARGED WITH POSSESSION OF A “SMALL AMOUNT”
33 ~~CONTROLLED SUBSTANCES~~ OF MARIJUANA CAN RESULT IN THE LOSS OF
34 EMPLOYMENT, HOUSING OPPORTUNITIES, STUDENT FINANCIAL AID, AND OTHER
35 COLLATERAL CONSEQUENCES; AND

36

37 **WHEREAS**, the expungement procedure for ~~controlled substances~~ MARIJUANA
38 possession is lengthy and financially burdensome resulting in the offense remaining on a
39 person’s criminal history despite the charge having been resolved; and

40

41 ~~**WHEREAS**, being charged with a “small amount” controlled substances offense can
42 result in the loss of employment, housing opportunities, student financial aid, and other collateral
43 consequences; and~~

44

45 **WHEREAS**, MAKING THE PERSONAL POSSESSION OR PERSONAL USE OF A
46 SMALL AMOUNT OF MARIJUANA AND THE PERSONAL POSSESSION OF
47 MARIJUANA PARAPHERNALIA A LOWER LEVEL OFFENSE WILL REDUCE THE
48 SEVERITY OF THE CONSEQUENSES AND THE LONG-TERM EFFECTS ON THE
49 CITY’S RESIDENTS AND YOUTH; AND

50

51 **WHEREAS**, a growing number of cities within the Commonwealth of Pennsylvania,
52 including Philadelphia and Pittsburgh, have recently passed laws that pertain to the
53 decriminalization of small amounts of MARIJUANA ~~cannabis~~-possessed for non-medical
54 personal use; and

55

56 **WHEREAS**, it is the purpose and intent of this Ordinance to promote the general safety
57 and welfare of the public by establishing a mechanism to process the ~~minor~~-non-violent offenseS
58 OF ~~for~~-PERSONAL possession OR PERSONAL USE of a small amount of MARIJUANA
59 ~~cannabis for personal use~~ AND THE PERSONAL POSSESSION OF MARIJUANA
60 PARAPHERNALIA within the City of Harrisburg and not to promote or condone the possession
61 or use of MARIJUANA-~~cannabis~~-OR MARIJUANA PARAPHERNALIA; and

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63 **WHEREAS**, City Council directs the City of Harrisburg Police Bureau to enact policies
64 consistent with the purpose of this Ordinance within ninety (90) days of its effective date.

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66 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
67 **HARRISBURG, AND IT IS HEREBY ENACTED BY AUTHORITY OF THE SAME, AS**
68 **FOLLOWS:**

69

70 **SECTION 1.** Chapter Three of the Codified Ordinances for the City of Harrisburg is hereby
71 amended with the addition of the following.

72

73 Chapter 3-373: ~~Marijuana Possession~~-POSSESSION AND USE OF MARIJUANA AND
74 MARIJUANA PARAPHERNALIA

75 §3-373.1 Legislative finding and intent.

76 The purpose and intent of this Ordinance is to promote the general safety and welfare of the
77 public by establishing a mechanism to process the minor non-violent offenseS OF ~~for~~
78 PERSONAL possession OR PERSONAL USE of a small amount of MARIJUANA ~~cannabis for~~
79 ~~personal use~~ AND PERSONAL POSSESSION OF MARIJUANA PARAPHERNALIA within
80 the City of Harrisburg and not to promote or condone the possession or use of MARIJUANA OR
81 MARIJUANA PARAPHERNALIA-~~cannabis~~.

82 §3-373.2 Definitions.

- 83 A. "Marijuana" means all forms or varieties of the genus *Cannabis* whether growing or
84 not, as defined by Pennsylvania's "Controlled Substance, Drug, Device and
85 Cosmetics Act" as set forth at 35 Pa.C.S.A. §§780-101, et seq.
- 86 B. "Small Amount" means 30 grams or less of Marijuana or 8 grams or less of hashish
87 as set forth in 35 Pa.C.S.A. §780-113(a)(31).
- 88 C. "PERSONAL Possession" means actual physical custody of or the ability to exercise
89 control over or have access to. ~~This is limited to possession~~ for the sole purpose of
90 one's own personal use. ~~and~~ THIS does not include possession with intent to deliver,
91 distribute, transfer, or sell.
- 92 D. "PERSONAL USE" MEANS INTRODUCING MARIJUANA INTO ONE'S OWN
93 BODY, WHICH INCLUDES SMOKING, INHALING, EXHALING,
94 VAPORIZING, OR BURNING ANY LIGHTED CIGAR, CIGARETTE, PIPE OR
95 OTHER SUCH DEVICE WHICH CONTAINS MARIJUANA OR MARIJUANA
96 EXTRACTS.
- 97 E. "MARIJUANA PARAPHERNALIA" MEANS ANY DEVICE, INSTRUMENT,
98 APPARATUS OR OBJECT USED, INTENDED TO BE USED, OR DESIGNED
99 TO BE USED FOR INTRODUCING MARIJUANA INTO THE HUMAN BODY
100 OR FOR STORING, CONTAINING, CONCEALING, OR TRANSPORTING
101 MARIJUANA.

102 §3-373.3 PERSONAL Possession OR PERSONAL USE of a small amount of marijuana.

- 103 A. So long as marijuana shall be listed as a controlled substance in "The Controlled
104 Substance, Drug, Device and Cosmetic Act," 1972, April 14, P.L. 233, No. 64, § 1 et
105 seq., 35 P.S. § 780-101 et seq., no person shall be in possession of a small amount of
106 marijuana ~~as defined in said act.~~
- 107 B. ~~THE~~ THE FOLLOWING shall be a violationS of this Section:
- 108 (i) ~~to be in~~ PERSONAL Possession of a Small Amount of Marijuana; OR
109 (ii) PERSONAL USE OF A SMALL AMOUNT OF MARIJUANA.
- 110 C. Any person who is found in violation of this Section shall be issued a non-traffic
111 summary citation by the police or other authorized law enforcement officer.

112 Alternatively, the officer can obtain the subject's name and address and later send the
113 citation by First Class Mail.

114 D. Any officer who observes a violation of this Section by a person under eighteen (18)
115 years of age shall:

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

118 (ii) Advise the parent or guardian that the minor was found in Personal
119 Possession of a Small Amount of Marijuana OR TO HAVE BEEN
120 ENGAGING IN PERSONAL USE OF A SMALL AMOUNT OF
121 MARIJUANA;

122 (iii) Issue a copy of the citation to the parent or guardian advising that he or she
123 is responsible for the payment of the violation fine; and

124 (iv) Provide the parent or guardian with contact information for a local agency
125 where substance abuse educational and treatment programs are available.

126 §3-373.4 PERSONAL POSSESSION OF MARIJUANA PARAPHERNALIA.

127 A. SO LONG AS DRUG PARAPHERNALIA INCLUDES OBJECTS USED IN
128 CONNECTION WITH MARIJUANA POSSESSION OR USE IN "THE
129 CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT," 1972,
130 APRIL 14, P.L. 233, NO. 64, § 1 ET SEQ., 35 P.S. § 780-101 ET SEQ., NO
131 PERSON SHALL BE IN POSSESSION OF MARIJUANA PARAPHERNALIA.

132 B. IT SHALL BE A VIOLATION OF THIS SECTION TO BE IN PERSONAL
133 POSSESSION OF MARIJUANA PARAPHERNALIA.

134 C. ANY PERSON WHO IS FOUND IN VIOLATION OF THIS SECTION SHALL BE
135 ISSUED A NON-TRAFFIC SUMMARY CITATION BY THE POLICE OR
136 OTHER AUTHORIZED LAW ENFORCEMENT OFFICER. ALTERNATIVELY,
137 THE OFFICER CAN OBTAIN THE SUBJECT'S NAME AND ADDRESS AND
138 LATER SEND THE CITATION BY FIRST CLASS MAIL.

139 D. ANY OFFICER WHO OBSERVES A VIOLATION OF THIS SECTION BY A
140 PERSON UNDER EIGHTEEN (18) YEARS OF AGE SHALL:

- 141 (i) TEMPORARILY DETAIN THE MINOR AND FOLLOW ALL EXISTING
142 PROCEDURES FOR THE HANDLING OF SUMMARY OFFENSES
143 COMMITTED BY A MINOR;
- 144 (ii) ADVISE THE PARENT OR GUARDIAN THAT THE MINOR WAS
145 FOUND IN PERSONAL POSSESSION OF MARIJUANA
146 PARAPHERNALIA;
- 147 (iii) ISSUE A COPY OF THE CITATION TO THE PARENT OR GUARDIAN
148 ADVISING THAT HE OR SHE IS RESPONSIBLE FOR THE PAYMENT
149 OF THE VIOLATION FINE; AND
- 150 (iv) PROVIDE THE PARENT OR GUARDIAN WITH CONTACT
151 INFORMATION FOR A LOCAL AGENCY WHERE SUBSTANCE
152 ABUSE EDUCATIONAL AND TREATMENT PROGRAMS ARE
153 AVAILABLE.

154 ~~§3-373.4~~ §3-373.5 Penalties.

- 155 A. ~~First Offense. The penalty for a first violation of §3-373.3 shall be a fine of one~~
156 ~~hundred dollars (\$100.00).~~ THE PENALTY FOR A FIRST AND SECOND
157 VIOLATION OF §3-373.3(B)(I) FOR PERSONAL POSSESSION OF A SMALL
158 AMOUNT OF MARIJUANA SHALL BE A FINE OF SEVENTY-FIVE DOLLARS
159 (\$75.00).
- 160 B. ~~Second Offense. The penalty for a second violation of 3-373.3 shall be a fine of two~~
161 ~~hundred dollars (\$200.00).~~ THE PENALTY FOR A FIRST AND SECOND
162 VIOLATION OF 3-373.3(B)(II) FOR PERSONAL USE OF MARIJUANA SHALL
163 BE A FINE OF ONE HUNDRED FIFTY DOLLARS (\$150.00).
- 164 C. THE PENALTY FOR A FIRST AND SECOND VIOLATION OF §3-373.4(B) FOR
165 PERSONAL POSSESSION OF MARIJUANA PARAPHERNALIA SHALL BE A
166 FINE OF SEVENTY-FIVE DOLLARS (\$75.00).
- 167 ~~C~~.D. Subsequent Offenses. A person is only eligible to be charged under ~~this Section~~
168 §3-373 for a ~~first and second~~ TWO offenseS WITHIN A FIVE YEAR PERIOD. All
169 subsequent offenses shall be charged in accordance with Federal and Pennsylvania
170 law.

171 D.E. The court may in its discretion suspend the fine imposed under ~~3-373.4(A) or~~
172 ~~3-373.4(B)~~ THIS SECTION if the person found ~~liable~~ GUILTY agrees to and does in
173 fact perform such community service as the court deems appropriate, up to nine
174 hours.

175 E.F. Enforcement.

176 (i) A non-traffic summary citation issued under ~~this Chapter~~ §3-373 shall be
177 enforced in accordance with the procedures established by the Police Bureau
178 for enforcement of summary violations.

179 (ii) ~~This Chapter~~ SECTION 3-373 shall not be construed to supersede any
180 existing Pennsylvania or Federal law. Harrisburg police officers retain the
181 authority to enforce any applicable laws and it is Council's intent that police
182 officers may undertake custodial arrests where there is probable cause to
183 believe that a criminal offense other than ~~simple~~ PERSONAL possession
184 OR PERSONAL USE of a Small Amount of Marijuana OR PERSONAL
185 POSSESSION OF MARIJUANA PARAPHERNALIA has been or is being
186 committed.

187 (iii) It is the intent that any revenue collected pursuant to ~~this Chapter~~ §3-373 be
188 allocated to ~~Public Safety Special Reserve~~ THE POLICE PROTECTION
189 Fund or any future fund that may be established for the direction of such
190 revenue AND USED FOR THE PURPOSE OF DRUG AWARENESS
191 AND PREVENTION.

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193 **SECTION 2.** DELEGATION. Appropriate City officials are authorized to take such actions as
194 are necessary to effectuate this ordinance.

195

196 **SECTION 3.** SEVERABILITY. If any provision, sentence, clause, section or part of this
197 ordinance or the application thereof to any person or circumstance is for any reason found to be
198 unconstitutional, illegal or invalid by a court of competent jurisdiction, such unconstitutionality,
199 illegality or invalidity shall not affect or impair any of the remaining provisions, sentences,
200 clauses, sections or parts of this ordinance. It is hereby declared as the intent of the Council of

201 the City of Harrisburg that this ordinance would have been adopted had such unconstitutional,
202 illegal or invalid provision, sentence, clause, section or part not been included herein.

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204 **SECTION 4.** REPEALER. All ordinances or provisions of ordinances in conflict with the
205 provisions of this ordinance are hereby repealed in so far as they are inconsistent herewith.

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207 **SECTION 5.** EFFECTIVE DATE. This ordinance shall take effect in accordance with the law.

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210 Seconded by: _____

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212 Passed by Council: _____

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214 Signed by the Mayor: _____