

**BOROUGH OF PROSPECT PARK
DELAWARE COUNTY, PENNSYLVANIA**

ORDINANCE NO. ~~1350~~ 1360

AN ORDINANCE OF THE BOROUGH OF PROSPECT PARK AMENDING THE PROSPECT PARK CODE OF ORDINANCES TO ADD A NEW ARTICLE TO PART II: GENERAL LEGISLATION, UNDER CHAPTER 164: "DRUGS AND DRUG PARAPHERNALIA" TO ESTABLISH A MECHANISM TO PROCESS THE MINOR NONVIOLENT OFFENSES OF PERSONAL POSSESSION OR PERSONAL USE OF A SMALL AMOUNT OF MARIJUANA AND PERSONAL POSSESSION OF MARIJUANA PARAPHERNALIA WITHIN THE LIMITS OF PROSPECT PARK BOROUGH; PROVIDING A SEVERABILITY CLAUSE; REPEALING ALL INCONSISTENT ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Borough of Prospect Park ("Borough") is a political subdivision of the Commonwealth of Pennsylvania operating in accordance with the Pennsylvania Borough Code ("Code"); and

WHEREAS, the Pennsylvania Borough Code, 8 Pa.C.S.A. §1203, vests the Borough of Prospect Park with the power to make and adopt all ordinances, bylaws, rules and regulations not inconsistent with the laws of the Commonwealth, as may be expedient or necessary for the proper management, care and control of the borough and its finances and the maintenance of peace, good government, safety and welfare of the borough and its trade, commerce and manufactures; and

WHEREAS, section 1202(5) of the Code further provides that in the exercise of any specific powers involving the enactment of any ordinance or the making of any regulation, restriction or prohibition, the Borough may provide for enforcement and penalties for violations, including but not limited to, the power to make regulations as may be necessary for the health, safety, morals, general welfare and safety of the borough; and

WHEREAS, numerous Pennsylvania municipalities have exercised their power and authority by ordinance to address the processing and handling of minor nonviolent offenses for the personal possession or personal use of a small amount of marijuana, and the personal possession of marijuana paraphernalia within municipal limits; and

WHEREAS, in accordance with the powers and duties vested in Prospect Park Borough Council by Pennsylvania law, including those inherent police powers for the enforcement and regulation of certain local offenses, the Borough now desires to enact an ordinance addressing the processing and handling of minor nonviolent offenses for the personal possession or personal use of a small amount of marijuana and the personal possession of marijuana paraphernalia within the limits of the Borough of Prospect Park, that Borough Council believes is for the benefit of the general safety and welfare of the residents of the Borough.

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Prospect Park as follows:

SECTION I: ADOPTION OF CHAPTER 164 TITLED "DRUGS AND DRUG PARAPHERNALIA."

The Borough of Prospect Park hereby adopts and establishes a new Chapter to the Prospect Park Borough Code of Ordinances titled "Drugs and Drug Paraphernalia" under Part II, General Legislation that shall state as follows:

§164-1. Legislative findings and intent.

The purpose and intent of this chapter is to promote the general safety and welfare of the public by establishing a mechanism to process the minor nonviolent offenses of personal possession or personal use of a small amount of marijuana and personal possession of marijuana paraphernalia within the limits of the Borough of Prospect Park and is not to promote or condone the possession or use of marijuana or marijuana paraphernalia.

§164-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

MARIJUANA

All forms or varieties of the genus Cannabis, whether growing or not, as defined by Pennsylvania's Controlled Substance, Drug, Device, and Cosmetic Act, 35 P.S. 780-101 *et seq*

MARIJUANA PARAPHERNALIA

Any device, instrument, apparatus or object used, intended to be used, or designed to be used for introducing marijuana into the human body or for storing, containing, concealing or transporting marijuana.

PERSONAL POSSESSION

Actual physical custody of or the ability to exercise control over or have access to, for the sole purpose of one's own personal use. The term "personal possession" does not include possession with intent to deliver, distribute, transfer or sell.

PERSONAL USE

Introducing marijuana into one's own body, which includes smoking, inhaling, exhaling, vaporizing, or burning any lighted cigar, cigarette, pipe or other such device which contains marijuana or marijuana extracts.

SMALL AMOUNT OF MARIJUANA

Thirty (30) grams or less of marijuana or eight (8) grams or less of hashish as set forth in Pennsylvania's Controlled Substance, Drug, Device, and Cosmetic Act, 35 P.S. 780- 113(a)(31).

SMOKING MARIJUANA

Inhaling, exhaling, burning or carrying any lighted cigarette, cigar, pipe or other such delivery device which contains marijuana.

§164-3. Personal possession or personal use of a small amount of marijuana.

A. 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.

B. The following shall be violations of this section of this chapter:

- (1) Personal possession of a small amount of marijuana; or
- (2) Personal use of a small amount of marijuana.
- (3) Smoking a small amount of marijuana in any public space; provided, however, that this Ordinance shall not apply to any of these violations to the extent that they take place within or on the grounds of any public library or any public, private or parochial elementary or secondary school.

C. Any person who is found in violation of this section of this chapter shall be issued a Non-Traffic Citation issued by the Prospect Park Borough Police Department or other authorized law enforcement officer or, alternatively, the officer can obtain the subject's name and address and later send the Citation by first-class mail, all to be in accordance with the Pennsylvania Rules of Criminal Procedure.

D. Any police officer or other authorized law enforcement officer who observes a violation of this section of this article by a person under 18 years of age shall:

- (1) Temporarily detain the minor and follow all existing procedures for the handling of summary offenses committed by a minor;
- (2) Advise the parent or guardian that the minor was found in personal possession of a small amount of marijuana or to have been engaging in personal use of a small amount of marijuana;
- (3) Issue a copy of the citation to the parent or guardian advising that he or she is responsible for the payment of the violation fine; and,
- (4) Provide the parents or guardian with contact information for a local agency where substance abuse educational and treatment programs are available.

§164-4. Personal possession of marijuana paraphernalia.

- A. So long as drug paraphernalia includes objects used in connection with marijuana possession or use in the Controlled Substance, Drug, Device, and Cosmetic Act, 1972, April 14, P.L. 233, No. 64, 1 et seq., 35 P.S. 780101 et seq., no person shall be in possession of marijuana paraphernalia.
- B. It shall be a violation of this section of this chapter to be in personal possession of marijuana paraphernalia.
- C. Any person who is found in violation of this section of this article shall be issued a Non-Traffic Citation by the Borough of Prospect Park Police Department or other authorized law enforcement officer or, alternatively, the officer can obtain the subject's name and address and later send the citation by first-class mail, all to be in accordance with the Pennsylvania Rules of Criminal Procedure.

D. Any law enforcement officer who observes a violation of this section by a person under 18 years of age shall:

- (1) Temporarily detain the minor and follow all existing procedures for the handling of summary offenses committed by a minor;
- (2) Advise the parent or guardian that the minor was found in personal possession of a small amount of marijuana or to have been engaging in personal use of a small amount of marijuana;
- (3) Issue a copy of the citation to the parent or guardian advising that he or she is responsible for the payment of the violation fine; and
- (4) Provide the parents or guardian with contact information for a local agency where substance abuse educational and treatment programs are available.

§164-5. Penalties.

- A. The penalty for first violation, and all subsequent violations, of Section 164-3 of this article relating to personal possession of a small amount of marijuana shall be a fine of \$100.00.
- B. The penalty for first violation, and all subsequent violations, of Section 164-3 of this article relating to personal use of a small amount of marijuana shall be a fine of \$100.00.
- C. The penalty for first violation, and all subsequent violations, of Section 164-4 of this article relating to personal possession of marijuana paraphernalia shall be a fine of \$100.00.
- D. The court may, in its discretion, suspend the fine imposed under this section if the person found guilty agrees to and does, in fact, perform such community service as the court deems appropriate, of as much as twenty-five (25) hours for a determination of guilt for possession of a small amount of marijuana or personal possession of marijuana paraphernalia and twenty-five (25) hours for personal use of a small amount of marijuana.

§164-6. Enforcement.

A. A nontraffic summary citation issued under this section shall be enforced in accordance with the procedures established by the Borough of Prospect Park Police Department for enforcement of summary violations.

B. The Chief of Police or his or her designee shall report to the Borough of Prospect Park regarding implementation of this article on an annual basis for the first three (3) years following adoption of this article.

C. This article shall not be construed to supersede any existing Pennsylvania or federal law. Borough of Prospect Park Police and law enforcement officers retain the authority to enforce any applicable laws, and it is the Borough Council's intent that such law enforcement officers may undertake custodial arrests where there is probable cause to believe that a criminal offense other than personal possession or personal use of a small amount of marijuana or personal possession of marijuana paraphernalia has been or is being committed.

SECTION II: SEVERABILITY

If any section, sentence, clause, or word of this Ordinance shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude or otherwise foreclose the validity of the remaining portions of this Ordinance.

SECTION III: REPEALER

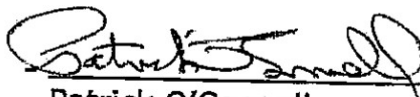
All ordinances or resolutions or parts thereof inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specially repealed.

SECTION IV: EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after its approval as required by the law.

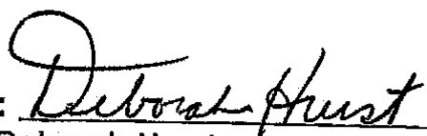
ADOPTED, this 10th day of August, 2021.

BY:



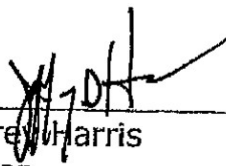
Patrick O'Connell
President

(SEAL)

Attest: 

Deborah Hurst
Secretary

APPROVED:



Jeffrey Harris
Mayor