

ORDINANCE NO. _____

AN ORDINANCE RELATING TO THE USE AND POSSESSION OF MARIJUANA AND MARIJUANA PARAPHERNALIA; PROVIDING FOR ENFORCEMENT INCLUDING PENALTIES; AND OTHER MATTERS PERTAINING THERETO.

WHEREAS, the Board of Supervisors, pursuant to the Municipalities Planning Code (“MPC”), 53 P.S. §§ 10101, *et seq.*, has heretofore enacted an Ordinance, codified at Chapter 105, of the Code of Ordinances of the Township of Upper Merion (“Township”); and

WHEREAS, the Board of Supervisors have met the procedural requirements of the MPC and the Pennsylvania Second Class Township Code, 53 P.S. §65101, *et seq.*, for the adoption of this proposed Ordinance; and

WHEREAS, the Second Class Township Code authorizes the Board of Supervisors to make, amend, and adopt Ordinances that are consistent with the Constitution and Laws of the Commonwealth that it deems necessary for the proper management and control of the Township and the health, safety, and welfare of its citizens; and

WHEREAS, the Board of Supervisors has determined that it is necessary for the proper management and control of the Township and to support the health, safety, and welfare of its citizens to enact legislation as to the use and possession of marijuana and marijuana paraphernalia.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors of Upper Merion Township, and it is hereby ordained and enacted, by the authority of the same, to wit:

SECTION 1. CODE ADDITION.

A. CHAPTER 105 Marijuana is hereby added to the Upper Merion Township Codified Ordinances as follows:

§105-1. Intent of Article. The purpose and intent of this article 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 Upper Merion Township. Additionally, the purpose and intent of this article is not to promote or condone the possession or use of marijuana or marijuana paraphernalia.

§105-2. Definitions. As used in this article, 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

Thirty grams or less of marijuana or eight 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).

§105-3. Personal Possession or Personal Use of Small Amount.

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 article:

- (1)** Personal possession of a small amount of marijuana; or
- (2)** Personal use of a small amount of marijuana.

C. Any person who is found in violation of this section of this article shall be issued a nontraffic summary citation by the police 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 chapter 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) Provide the parent or guardian with contact information for a local agency where substance abuse educational and treatment programs are available.

§105-4. 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. § 780-101 et seq., no person shall be in possession of marijuana paraphernalia.

B. It shall be a violation of this section of this article 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 nontraffic summary citation by the police officer 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 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 marijuana paraphernalia;

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

§105-5. Violations and Penalties.

A. The penalty for a first, second, and third violation of § **105-3** of this article relating to personal possession of a small amount of marijuana shall be a fine of \$50.

B. The penalty for a first, second, and third violation of § **105-3** of this article relating to personal use of a small amount of marijuana shall be a fine of \$50.

C. The penalty for a first, second, and third violation of § **105-4** of this article relating to personal possession of marijuana paraphernalia shall be a fine of \$50.

D. Subsequent offenses. A person is only eligible to be charged under this article for three offenses within a five-year period. All subsequent offenses shall be charged in accordance with federal and Pennsylvania law.

E. 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 for a determination of guilt for personal possession of a small amount of marijuana or personal possession of marijuana paraphernalia as well as for personal use of a small amount of marijuana.

§105-6. Enforcement.

A. A nontraffic summary citation issued under this article shall be enforced in accordance with the procedures established by the Upper Merion Township Police Department for enforcement of summary violations.

B. This article shall not be construed to supersede any existing Pennsylvania or federal law. The Upper Merion Township Police Department and law enforcement officers retain the authority to enforce any applicable laws, and it is the Board of Supervisors' 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 2. REPEALER. All Ordinances or parts of Ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts are not addressed in the Ordinance including but not limited to language applying the stricter standard, are hereby specifically repealed.

SECTION 3. REVISIONS. The Upper Merion Township Board of Supervisors does hereby reserve the right, from time to time, to adopt modifications of, supplements to, or amendments of its Ordinance, including this provision.

SECTION 4. SEVERABILITY. In the event that any section, sentence, clause, phrase 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 enforcement of any of the remaining portions of this Ordinance.

SECTION 5. EFFECTIVE DATE. This Ordinance amendment shall become effective five (5) days after the date of enactment by the Board of Supervisors.

SECTION 6. FAILURE TO ENFORCE NOT A WAIVER. The failure of Upper Merion Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

ORDAINED AND ENACTED by the Board of Supervisors for Upper Merion Township, Montgomery County, Pennsylvania, this ____ day of _____, 2021.

ATTEST:

**UPPER MERION TOWNSHIP
BOARD OF SUPERVISORS:**

By: _____
William Jenaway, Chairperson