



<b>University of Pennsylvania Police Department</b> 4040 Chestnut Street, Philadelphia, Pa 19104		 
<b>Directive:</b> 109	<b>Subject:</b> Possession of Small Amounts of Marijuana; Philadelphia City Code Chapter §10-2100	<b>Effective Date:</b> 08/01/2016
<b>Order of:</b> Gary Williams, Chief of Police		<b>Amended Date:</b> 08/01/2023

## I. Background

- A. The Philadelphia City Council passed City Code Chapter §10-2100 relating to the possession of marijuana, effective 10-20-2014.
- B. The City of Philadelphia Law Department has determined that this civil ordinance is not preempted by the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act. Therefore, this ordinance is lawful and can be enforced by the Philadelphia Police Department as well as other Police Departments who process arrests through the Philadelphia Municipal Court System.
- C. The Municipal Court Criminal Division is the court for trials of misdemeanor cases and felony case preliminary hearings. All arrests made in Philadelphia County must at least initially be processed through Municipal Court.

## II. Policy

- A. It shall be the policy of the UPPD to abide by the procedures and guidelines set forth herein as established by the City of Philadelphia. Therefore, effective 10-20-2014, all persons found in possession of small amounts of marijuana will be issued a Code Violation Notice (CVN) and charged with the appropriate section of City Code Chapter §10-2100, with the following exemption:
  1. During school hours **only**, a student under the age of 18 years or currently still enrolled in the Philadelphia School System, who is found in possession of a small amount of marijuana on or about School District property, shall not be transported to a police facility and issued a Code Violation Notice, but will be processed in accordance with the Memorandum of Understanding regarding the Philadelphia Delinquency Diversion Program.
- B. The Code Violation Notice issued by Officers **will be** conducted on the street, similar to the procedure followed when issuing TVRs. The offense being cited is a City Code Violation.

Therefore, officers shall not take the offender into custody and transport to the police district of occurrence for issuance of the Code Violation Notice, unless exceptional circumstances exist such as:

1. The offender fails to produce identification **and** the officer reasonably believes the identification information provided by the offender is false.
2. When there is violence or imminent threat of violence; or
3. Where there is a likelihood that the offender will flee.

Note: It is the intent of this policy to ensure that offenders receive a Code Violation Notice on the street. Only under exceptional circumstances should individuals be transported to UPPD HQ or the PPD police district of occurrence. However, if an individual is transported to any facility the exceptional circumstances shall be documented on the UPPD Incident Report (UPPD-10), and the Code Violation Notice.

- C. On any investigation where the potential exists for a CVN to be issued for a violation of City Code Chapter §10-2100, and/or a confiscation of marijuana may take place a UPPD Supervisor will be notified or called to the scene.

### **III. City Code Chapter §10-2100 - Marijuana Possession**

#### **A. Definitions (§10-2101)**

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. "Small amount of Marijuana" means thirty (30) grams or less of Marijuana.

Note: This is equivalent to approximately one (1) ounce, seventy (70) cigarettes, sixty (60) \$5 bags or thirty (30) \$10 bags. This ordinance does not address or distinguish the packaging of marijuana.

3. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigarette, cigar, pipe or other such device which contains marijuana.
4. "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.

#### **B. Possession or Smoking of a Small Amount of Marijuana (§10-2102).**

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.

Note: For the purpose of this General Order, the term "Notice of Violation" referenced in the Philadelphia City Code shall mean a "Code Violation Notice (CVN)."

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;

Note: For the purpose of this General Order, the City Code Ordinance Language, "Temporarily Detain the Minor" means the minor/juvenile will be transported to the district of occurrence and processed from this location.

- b. Advise the parent or guardian that the minor was found in possession of a small amount of marijuana;
  - c. Issue the parent or guardian a Code Violation Notice 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) (Possession of a small amount of marijuana) 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) (Smoking marijuana in public) by an adult or minor under the age of eighteen (18) shall be a fine of one hundred dollars (\$100.00) for each violation.

#### **IV. Completion of The Code Violation Notice Form and Other Police Documentation**

- A. When citing an individual for possession of a small amount of marijuana **only**, as defined in section III, in the “Charge(s)” box of the Code Violation Notice, check the “other” box and insert “City Code Section. §10-2102(2)(a) \$25.”
- B. When citing an individual for smoking marijuana ONLY in a public place as defined in section III, in the “Charge(s)” box of the Code Violation Notice, check the “other” box and insert “City Code Section. §10-2102(2)(b) \$100”.
- C. When citing a parent or guardian of a minor who has violated §10-2102(2)(a) or (b), in the “Charge(s)” box of the Code Violation Notice, check the “other” box and insert the same City Code Section being issued to the minor.
- D. A UPPD Incident Report (UPPD-10) will be required for each Code Violation Notice issued and will be coded as follows:

1828 – Possession of Small Amount of Marijuana (§10-2102(2)(a) – Released at Scene

1829 – Smoking Marijuana – Public Place (§10-2102(2)(b) – Released at Scene

1830 – Possession of Small Amount of Marijuana (§10-2102(2)(a) – Transported to District

1831 – Smoking Marijuana – Public Place (§10-2102(2)(b) – Transported to District

**V. Procedure for Issuance of Code Violation Notice on the Street**

- A. The issuing officer will ensure that:
  - 1. The offender is identified through photo identification or the officer’s personal knowledge of the offender and record on the Complaint or Incident Report (UPPD-10 and 75-48).
  - 2. A check of the offender is conducted in NCIC/PCIC/CLEAN.
  - 3. A Code Violation Notice is properly prepared.

Note: Code Violation Notices issued for City Code Marijuana violations will NOT be entered into PARS or PIIN.

- 4. The Code Violation Notice is completed in its entirety with sufficient information (who, what, where, when, why and how) to articulate probable cause for the citing offense. Personnel may use the back of the Code Violation Notice for additional space.
- 5. The Code Violation Notice is signed by the issuing officer.
- 6. Detach the violator’s copy of the (CVN) and present it to the violator.

Note: If the offender refuses to accept the Code Violation Notice, the Refusal to accept will be noted on the "Comments" Section of the Code Violation Notice. Personnel may use the back of the Code Violation Notice for comments.

7. An incident report and 75-48 are prepared describing the circumstances for the Code Violation Notice.
8. The Code Violation Notice is submitted to the Operations Room Supervisor for review.

B. The Operations Room Supervisor will:

1. Examine the Code Violation Notice for accuracy, legibility, and completeness.
2. Ensure any missing information is included on the Code Violation Notice prior to transmittal.
3. Package all Code Violation Notices issued for City Code Marijuana violations separately from all other CVNs and submit to records.
4. On a daily basis, the traffic court liaison officer shall complete a transmittal list and forward a copy of the separate transmittal list for marijuana violations and the CVNs to:

a. Office of Administrative Review

Land Title Building

100 South Broad Street, 4th Floor.

## VI. Procedure for Violators Transported to the Police District of Occurrence

- A. When the offender is transported under exceptional circumstances as listed in General Order, to either UPPD HQ or the PPD district of occurrence, the arresting officer will prepare the Code Violation Notice.
- B. The Code Violation Notice will be completed in its entirety with sufficient information (who, what, where, when, why and how) to articulate probable cause for the citing offense. Additionally, it will include in the "Nature of Offense" section why transporting the offender to the district was warranted.
- C. When an offender has been transported to the district of occurrence, the officer shall promptly release the offender from custody when the following conditions have been met:
  1. The offender poses no threat of immediate physical harm to any person or to his/herself; and
  2. The offender has been satisfactorily identified.

## VII. Possession of Small Amounts of Marijuana and Other Offenses

- A. If an individual is found to be in violation of any provision of City Code Chapter §10-2100 **and also** in violation of any state summary offense, all violations shall be listed on the Non-Traffic Summary Citation form (03-8) along with all the facts to support each of the charges. PARS will not accept the City Code violations, so these Code Sections shall be listed in the narrative of the Non-Traffic Summary Citation form.
- B. Synthetic marijuana (cannabinoids) is not identified in the City Code §10-2100. Therefore, if an individual is found in possession of what the officer believes to be synthetic marijuana, regardless of the amount, the individual will be arrested and processed consistent with PPD procedures for arrests involving controlled substances.
- C. If an individual is found to be in violation of any provision of City Code Chapter §10-2100 and probable cause is also established that the individual is or has committed any **Misdemeanor or Felony**, the individual shall be arrested and processed by the appropriate investigative unit. A Code Violation Notice **Shall Not Be Issued** to the offender. The assigned investigator shall include the appropriate City Code Section (§10-2102(a) or (b) when submitting the case to the District Attorney's office for charging.

## VIII. Procedures for Handling Small Amounts of Marijuana Confiscated Pursuant to City Code §10-2100

- A. All amounts of marijuana seized will be weighed and placed on a PPD Property Receipt consistent with established PPD guidelines for property taken into custody.

NOTE: On the first line in the narrative section of the Property Receipt (75-3) the words "**City Code-Small Amount of Marijuana**", shall be inserted.

- B. The marijuana will not be field tested.
- C. The marijuana shall be deposited in the divisional locked safe box for transportation to the Forensic Sciences Laboratory. The evidence must be transported directly to the Forensic Sciences Laboratory if a locked safe box is not available.
- D. The Forensic Sciences Laboratory shall be responsible for the storage, testing and destruction of marijuana received pursuant to City Code §10-2100.

## IX. Procedures for Handling Amounts of Marijuana in Excess of A Small Amount Or Possibly Laced With Other Drugs

- A. A person found to be in possession of marijuana in what appears to be an amount in excess of a small amount (i.e., 30 grams), shall be arrested and processed in accordance with established PPD guidelines for an investigation of controlled substances.

1. If a person is arrested for possession of an amount of marijuana in excess of thirty (30) grams **ONLY** and it is later determined, when weighing the marijuana, that the actual amount is less than thirty (30) grams, the offender shall be issued a Code Violation Notice and cited for violating City Code Section §10-2102 (2)(a), Possessing a Small Amount of Marijuana, and released.
  2. If a person is issued a Code Violation Notice for possessing a small amount of marijuana, and it is later determined, when weighing the marijuana that the actual amount exceeds thirty (30) grams, the Code Violation Notice shall be voided, and the matter will be coded accordingly and investigated by the pertinent Detective Division.
- B. A person found to be in possession of any amount of marijuana that appears to be laced or otherwise combined with another illegal substance shall be arrested and processed in accordance with Directive Investigation of Controlled Substances.

**X. Purchasing or Knowing Receipt in Commerce of Marijuana (Thirty (30) Grams or Less)**

- A. The intentional purchase or knowing receipt through a sale or in commerce by any person of a controlled substance is a misdemeanor crime under the PA Controlled Substance, Drug, Device and Cosmetic Act, Section 780-113(a)(19). Marijuana is a controlled substance. Thus, the purchase or knowing receipt of marijuana through a sale or in commerce is a criminal violation which is **Not Subject to** City Code §10-2100 or Mayor’s Executive Order No. 6-14.
- B. When observing an individual **purchase** marijuana, regardless of the amount, the buyer shall be charged with the state offense of “Intentional Purchase or Receipt of Controlled Substance” (§780-113(a)(19)) of the PA Controlled Substance, Drug, Device and Cosmetic Act.
- C. If the amount of marijuana possessed by the buyer is thirty (30) grams or less (i.e., a small amount), the buyer **will not** be charged with the additional state offense of “Knowing and Intentional Possession of a Controlled Substance” (§780-113(a)(16)) of the PA Controlled Substance, Drug, Device and Cosmetic Act.
1. To avoid a double jeopardy challenge, when an arrest is made for purchasing marijuana **and** the amount possessed by the offender is thirty (30) grams or less (i.e., a small amount) the following will be done:
    - a. A Code Violation Notice (CVN) **will not be issued** to the buyer for possessing a small amount of marijuana (City Code §10-2100).
    - b. The assigned investigator shall include the appropriate City Code Section §10-2102(a) or (b) when submitting the case to the District Attorney’s Office for charging. This is consistent with PPD Directive 3.23, “Possession of Small Amounts of Marijuana (30 Grams or Less) city Code Chapter §10-2100.”

2. If the amount of marijuana possessed by the buyer is greater than thirty (30) grams, the offender shall be charged with the **additional** offense of “Knowing and Intentional Possession of a Controlled Substance.”
- D. Purchasing marijuana is a separate Pennsylvania misdemeanor offense (PA Controlled Substance, drug, Device and Cosmetic Act, Section §780-113(a)(19). Individuals observed purchasing marijuana regardless of weight will be arrested and processed according to the procedures outlined in this directive.
1. The proper coding for a Buyer/Recipient are as follows:
    - a. 1802 – Seller of Marijuana (INCT, PIIN/PARS) entry required.
    - b. 1840 – Buyer/Recipient of Marijuana (PARS) entry required.

## **XI. Compliance**

Violations of this directive, or portions thereof, may result in disciplinary action.

## **XII. Officers Assigned to Other Agencies**

Officers of this department assigned to or assisting other law enforcement agencies will be guided by this directive.

## **XIII. Application**

This directive constitutes department policy, and is not intended to enlarge the employer’s or employee’s civil or criminal liability in any way. It shall not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims insofar as the employer’s or employee’s legal duty as imposed by law. Violations of policy will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.