

**ORDINANCE NO. 212**  
**SMITHTON BOROUGH, WESTMORELAND COUNTY, PENNSYLVANIA**

AN ORDINANCE OF THE BOROUGH OF SMITHTON, WESTMORELAND COUNTY, PENNSYLVANIA, PROHIBITING STREET LOAFING ON THE PUBLIC STREETS OF THE BOROUGH OF SMITHTON AND ADJACENT THERETO AND PROVIDING THE PUNISHMENT THEREFORE, AND FURTHER PROHIBITING LOITERING WITH INTENT TO SELL PROHIBITED OR CONTROLLED SUBSTANCES.

**SECTION I.**

All idle persons who shall congregate and loiter or lounge or loaf on public streets of the Borough or in public places adjacent thereto, such as doorways, sidewalks, hallways or entrances of stores or buildings, other than private dwelling-houses, and shall behave themselves in the manner commonly called street-loafing, and shall not disperse when commanded to do so by any policeman or peace officer of the Borough, shall be deemed disorderly persons and be guilty of disorderly conduct and/or loitering under this ordinance.

**SECTION II.**

A. It shall be unlawful for any person to loiter, remain, wander, or prowl in a public place with the intent to sell, purchase, manufacture, possess, or transfer any controlled substance as that term is defined in the Controlled Substances, Drug, Device and Cosmetic Act, which intent is manifested by such person's overt acts or conduct. Overt acts or conduct which may manifest a person's intent to sell, purchase, manufacture, possess, or transfer a controlled substance include, but are not limited to, when a person:

(1) repeatedly beckons to, stops or attempts to stop, or repeatedly engages or attempts to engage in conversation with, pedestrians or motorists in a public place, with the intent to sell, purchase, manufacture, possess, or transfer any controlled substance; or

(2) repeatedly passes money, objects or written material to, or received money, objects or written material from, pedestrians or motorists in a public place, with the intent to sell, purchase, manufacture, possess, or transfer any controlled substance.

B. No arrest shall be made for a violation of subsection A unless the arresting officer first affords the person an opportunity to explain his or her conduct, and no person shall be convicted of violating the subsection A if it appears at trial that the explanation given was clearly true and disclosed a lawful purpose.

### **SECTION III. - DEFINITIONS**

As used in this chapter, the following terms shall have the meanings indicated, unless a different meaning clearing appears in the context:

(a) "CONTROLLED SUBSTANCE" means a drug, substance, or immediate precursor, as defined in the Pennsylvania Controlled Substance, Drug, Devise and Cosmetic Act, 35 P.S. §§7808-101, et seq. as hereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania.

(b) "DRUG PARAPHERNALIA" means any act, device, instrument, apparatus or contrivance, the primary and exclusive use of which is involved with the illegal use and possession of any and all controlled or contraband substances as defined by the laws of Pennsylvania.

(c) "IMMEDIATE PRECURSOR" means a substance which, under the regulations of the Pennsylvania Department of Health, is a principal compound commonly used or produced primarily as an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance or contraband substance.

### **SECTION IV. - PENALTY**

Any person who violates the provision of this chapter shall be subject to pay a fine of \$300.00 plus costs of prosecution or be sentenced to the Westmoreland County Correctional Facility for a period not to exceed thirty (30) days, plus pay costs of prosecution.

### **SECTION V. - SEVERABILITY**

If any sentence, clause, section, or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared as the intent of the Borough Council that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not have been included herein.

### **SECTION VI. - EFFECTIVE DATE**

This Ordinance shall become effective upon adoption.

ORDAINED AND ENACTED as an Ordinance of the Borough of Smithton this 11th  
day of June, 2012.

ATTEST:

BOROUGH OF SMITHTON

Melinda Pacheco  
Borough Secretary

By: Dan K. Baul  
President of Council

(Borough Seal)

By: Christine A. Putera  
Mayor