



BERTHA W. HENRY, County Administrator

115 S. Andrews Avenue, Room 409 • Fort Lauderdale, Florida 33301 • 954-357-7362 • FAX 954-357-7360

December 15, 2015

Municipal Managers

Re: Ordinance allowing for the issuance of a civil citation for the possession of twenty (20) grams or less of cannabis

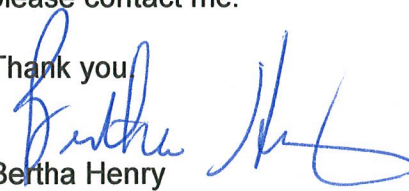
On November 10, 2015, the Board of County Commissioners approved an ordinance allowing for the issuance of a civil citation for the possession of twenty (20) grams or less of cannabis and associated financial penalties, community service, and educational and treatment programs.

Under this Ordinance, law enforcement officers could, at their discretion, issue a civil citation instead of filing a state misdemeanor criminal charge against a person found in possession of 20 grams or less of cannabis. Citations would be prohibited in certain situations, such as simultaneous charges of driving under the influence, any felony, any violent crime, or domestic violence, or when the recipient has not satisfied a previous citation. The ordinance allows for any municipality to "opt out" if by majority vote of the governing body of the municipality, has enacted a conflicting ordinance or has elected not to be subject to the ordinance.

To assist in developing the necessary components that are needed to enforce aspects of the County's program, I am inquiring whether your municipality will be opting out of the Broward County ordinance. Please forward your response to this request to Gretchen Cassini, Assistant to County Administrator at GCassini@broward.org by December 31, 2015.

For your use, attached is the ordinance approved by the Board. If you have any questions, please contact me.

Thank you.


Bertha Henry
County Administrator

BH:AJ:lr
Attachment

cc: Mayor and Board of County Commissioners
Rob Hernandez, Deputy County Administrator
Alphonso Jefferson, Jr., Assistant County Administrator
Gretchen Cassini, Assistant to the County Administrator

Broward County Board of County Commissioners
Mark D. Bogen • Beam Furr • Dale V.C. Holness • Marty Kiar • Chip LaMarca • Stacy Ritter • Tim Ryan • Barbara Sharief • Lois Wexler
www.broward.org

1 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
2 BROWARD COUNTY, FLORIDA:

3
4 Section 1. Section 21-5 of the Broward County Code of Ordinances is hereby
5 created to read as follows:

6 [Underlining omitted]

7 **Sec. 21-5. Possession of twenty (20) grams or less of Cannabis.**

8 (a) *Definitions.*

9 (1) "Cannabis" means all parts of any plant of the genus *Cannabis*, whether
10 growing or not, or the seeds thereof. The term does not include "low-THC
11 cannabis," as defined in Section 381.986, Florida Statutes, if manufactured,
12 possessed, sold, purchased, delivered, distributed, or dispensed in
13 conformance with that section. "Cannabis" also does not include the resin
14 extracted from the plants of the genus *Cannabis*, or any compound
15 manufacture, salt, derivative, mixture, or preparation of such resin.

16 (2) "Citation" means a notice of violation of this section, issued on a form
17 approved by the County Administrator or designated representative and
18 approved as to legal sufficiency by the County Attorney.

19 (3) "Educational Program" means a presentation of information about the risks
20 and effects of substance abuse. The County Administrator shall designate
21 a person, persons, or entity with appropriate knowledge of the field of
22 substance abuse to select or prepare the Educational Program in a manner
23 consistent with standards of that field.
24

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underscored type are additions.

1 (4) "First or Second Violation" means a violation of this section by a person who
2 has received no more than one (1) previous Citation under this section, not
3 counting Citations for which the person has been adjudicated not guilty.

4 (5) "Screening" means evaluation of a person who receives a Citation under
5 this Ordinance, for the purpose of determining the person's need for drug
6 treatment or intervention. The County Administrator shall designate a
7 person, persons, or entity with appropriate knowledge of the field of
8 substance abuse to conduct the Screenings in a manner consistent with
9 standards of that field.

10 (6) "Third Violation" means a violation of this section by a person who has been
11 found in violation of, or pleaded guilty to, violating this section on two (2)
12 previous occasions.

13 (7) "Treatment" means a professional clinical intervention for the purpose of
14 mitigating a substance abuse condition. The County Administrator shall
15 designate a person, persons, or entity with appropriate knowledge of the
16 field of substance abuse to conduct the Treatment in a manner consistent
17 with standards of that field.

18 (b) It shall be a violation of this section for any person to be in actual or
19 constructive possession of twenty (20) grams or less of Cannabis.

20 (c) *Enforcement – In general.*

21 (1) This section shall be enforceable throughout Broward County, except within
22 the boundaries of any municipality that, by majority vote of the governing
23 body of the municipality, has enacted a conflicting ordinance or has formally
24 elected not to be subject to the provisions of this section.

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1 (2) Any law enforcement officer in a jurisdiction in which this section applies
2 shall have the discretion to issue a civil Citation under this section in lieu of
3 a state misdemeanor charge for the same Violation, subject to the following
4 limitations:

5 a. No Citation shall be issued under this section if the Violation occurred
6 during an incident in which the defendant also was charged with any
7 felony, driving under the influence, a violent crime, or an incident of
8 domestic violence, as those Violations are defined under state law.

9 b. No Citation shall be issued under this section if the recipient has
10 failed, in connection with a prior Citation, to either file an appeal
11 pursuant to Chapter 8½ of this Code within ten (10) days after
12 receipt, pay the fine within thirty (30) days after receipt, or participate
13 in community service within sixty (60) days after receipt, or
14 participate in a Screening and an Educational Program, and any
15 required Treatment, as provided for in this section, unless the
16 recipient was adjudicated not guilty in an appeal under Chapter 8½.
17 Further, no Citation shall be issued under this section to any person
18 who has been adjudicated guilty under this section pursuant to
19 Chapter 8½ and failed to comply with the order of the hearing officer.

20 c. Citations for First, Second, and Third Violations may be issued only
21 as provided in subsections (d) and (e) below.

22 d. No Citation shall be issued to any person who already has received
23 a Citation for a Third Violation.
24

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1 (d) *Enforcement – First or Second Violation.*

2 (1) Any person in violation of this section shall, for the First or Second Violation,
3 be subject to penalties in accordance with Chapter 8½ of the Broward
4 County Code of Ordinances ("Code"), subject to the following exceptions.

5 a. In lieu of paying the fine specified in Chapter 8½, a person in violation
6 of this section may elect to participate in a community service
7 program approved by the County Administrator or designated
8 representative. The number of hours of community service required
9 shall be eight (8) hours for the First Violation and sixteen (16) hours
10 for the Second Violation. A hearing officer also may permit a person
11 found guilty of violating this section to participate in community
12 service in lieu of a fine.

13 b. Alternatively, in lieu of paying the fine specified in Chapter 8½ or
14 performing the public service specified above, a person in violation
15 of this section may elect to participate in a drug Treatment or
16 Educational Program. Any cost of participation in such a drug
17 Treatment or Educational Program shall be paid by the person cited
18 at fees approved by the County Administrator or designated
19 representative. Such fees may be set on a sliding scale. A hearing
20 officer also may permit a person found guilty of violating this section
21 to participate in a drug Treatment or Educational Program in lieu of
22 a fine.

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1 (2) Enforcement procedures for First or Second Violations shall be as provided
2 in Sections 125.69 and 162.21, Florida Statutes, and Chapter 8½ of this
3 Code.

4 a. A violation of this section shall be considered "irreparable or
5 irreversible" within the meaning of Chapter 8½ of this Code, such
6 that a Citation may be issued immediately to any person found in
7 violation.

8 b. Law enforcement officers shall be deemed "code inspectors" within
9 the meaning of Chapter 8½ of the Code.

10 c. Regardless of what agency issues a Citation under this section, the
11 County shall administer adjudication.

12 (3) Any person who receives a Citation for a First or Second Violation under
13 this section but fails to either file an appeal pursuant to Chapter 8½ of this
14 Code within ten (10) days after receipt, pay the fine within thirty (30) days
15 after receipt, or participate in community service within sixty (60) days after
16 receipt, or who is adjudicated guilty under this section pursuant to Chapter
17 8½ and fails to comply with the order of the hearing officer, shall be reported
18 to the agency that issued the Citation for further action.

19 (d) *Enforcement – Third Violation.*

20 (1) As a condition for receiving a civil Citation for a Third Violation under this
21 section in lieu of a misdemeanor charge, the recipient must consent to
22 participate in a Screening and then to either complete required Treatment
23 and Educational Programs or pay a fine, depending on the result of the
24 Screening. The recipient also must consent to pay for the cost of

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1 participation in Treatment and Educational Programs, if warranted by the
2 Screening. The County Administrator or designated representative shall set
3 the cost of participation. Such fees may be set on a sliding scale. In lieu of
4 paying a fine when no Treatment or Educational Program is warranted, the
5 recipient may elect to perform sixteen (16) hours of community service.

6 (2) Any person who withdraws consent to participate in a Screening or
7 Treatment or an Educational Program, or who fails to comply with the terms
8 of a Citation issued under this section within a reasonable period of time, as
9 set by the County Administrator and stated in the Citation, shall be reported
10 to the agency that issued the Citation for further action.

11 (e) *Seizure and destruction of contraband Cannabis.*

12 (1) Any contraband Cannabis that is the subject of a violation of this section
13 may be seized for evidentiary use.

14 (2) Contraband Cannabis seized pursuant to this section, after its use as
15 evidence is no longer required, may be destroyed in the same manner used
16 to destroy narcotics as provided by law.

17 Section 2. Section 8½-16 of the Broward County Code of Ordinances is hereby
18 amended as follows:

19 [Underlining omitted]

20 ...

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22
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underscored type are additions.

1 (z) *Violations of Section 21-5, Relating to Possession of Twenty (20) Grams or*
2 *Less of Cannabis:*

| | | <i>Fine</i> | | |
|---|---------------------------|------------------------|-------------------------|------------------------|
| | <i>Violation</i> | <i>First Violation</i> | <i>Second Violation</i> | <i>Third Violation</i> |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | (1) Prohibited possession | \$100.00 | \$250.00 | \$500.00 |
| 7 | of Cannabis (sec. 21-5) | | | |

8 These fines may be waived if the violator instead completes community service
9 hours or participates in an Educational or Treatment Program as prescribed in
10 Section 21-5 of the Code.

11
12 Section 3. SEVERABILITY.

13 If any portion of this Ordinance is determined by any Court to be invalid, the invalid
14 portion shall be stricken, and such striking shall not affect the validity of the remainder of
15 this Ordinance. If any Court determines that this Ordinance, or any portion hereof, cannot
16 be legally applied to any individual(s), group(s), entity(ies), property(ies), or
17 circumstance(s), such determination shall not affect the applicability hereof to any other
18 individual, group, entity, property, or circumstance.

19
20 Section 4. INCLUSION IN CODE.

21 It is the intention of the Board of County Commissioners that the provisions of this
22 Ordinance shall become and be made a part of the Broward County Code; and that the
23 sections of this Ordinance may be renumbered or relettered and the word "ordinance"
24

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1 may be changed to "section," "article," or such other appropriate word or phrase in order
2 to accomplish such intentions.

3
4 Section 5. EFFECTIVE DATE.

5 This Ordinance shall become effective as provided by law.

6
7 ENACTED November 10, 2015

8 FILED WITH THE DEPARTMENT OF STATE November 17, 2015

9 EFFECTIVE November 17, 2015

10
11
12 Approved as to form and legal sufficiency:
13 Joni Armstrong Coffey, County Attorney

14 By /s/Scott Andron 11/17/15
15 Scott Andron (Date)
16 Assistant County Attorney

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23 SA/dp
11/17/15
Cannabis Ordinance Wexler.doc
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