

PROPOSED

ORDINANCE NO. 2018-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, AMENDING SECTION 21-6 AND SECTION 8½-16 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE") TO CREATE A BROWARD COUNTY ADULT CIVIL CITATION PROGRAM; PROVIDING FOR DEFINITIONS; PROVIDING FOR ENFORCEMENT, ELIGIBILITY, AND ACCOUNTABILITY; ADDRESSING SEIZURE OF EVIDENCE; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by Commissioner Dale V.C. Holness)

WHEREAS, Florida law classifies certain Nonviolent Offenses (as defined below) as misdemeanors, punishable by imprisonment for up to one (1) year; and

WHEREAS, persons charged with a Nonviolent Offense, even if ultimately determined to be not guilty, may suffer numerous negative consequences, including the creation of an arrest record and the long lasting stigma and impact that an arrest can have on educational pursuits, financial aid, military service, employment, and licensing; and

WHEREAS, the goal of an adult civil citation program (which in other jurisdictions is sometimes referred to as a prearrest diversion program) for Nonviolent Offenses is to divert persons that pose no threat to the community out of the criminal justice system, and, following a screening, to offer appropriate behavioral health treatment, community service opportunities, or educational programs in an attempt to modify behavior to enable individuals to avoid repeat contact with the criminal justice system; and

1 WHEREAS, currently, a law enforcement officer only has discretion to make an
2 arrest, issue a Notice to Appear, or forgo any criminal intervention relating to a person
3 suspected of committing a Nonviolent Offense, and the adult civil citation program will
4 provide additional discretion and alternatives to law enforcement officers; and

5 WHEREAS, the Broward County Sheriff's Office and the Fort Lauderdale Police
6 Department have already expressed support for a local adult civil citation program; and

7 WHEREAS, many organizations, including, but not limited to, the Florida Sheriffs
8 Association, the Florida Association of Counties, the Florida Public Defender Association,
9 Inc., the American Civil Liberties Union of Florida, the Southern Poverty Law Center, the
10 American Bar Association, the President's Task Force on 21st Century Policing, and
11 Florida Tax Watch have also voiced overwhelming support for adult civil citation
12 programs; and

13 WHEREAS, local jurisdictions, including the cities of Coral Springs, Hallandale,
14 and Lauderhill, and Miami-Dade County, have already implemented similar prearrest
15 diversion programs for certain misdemeanor offenses; and

16 WHEREAS, the Board of County Commissioners of Broward County, Florida
17 ("Board"), has authority to enact ordinances under Broward County's home rule powers
18 and to prescribe consequences for violations of such ordinances, and has determined
19 that creation of a civil citation program is in the best interests of the public,
20

21 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
22 BROWARD COUNTY, FLORIDA:
23
24

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscored type are additions.

1 Section 1. Section 21-6 of the Broward County Code of Ordinances is hereby
2 amended to read as follows:

3 **Sec. 21-6. ~~Possession of twenty (20) grams or less of Cannabis~~ Broward**
4 **County Adult Civil Citation Program.**

5 (a) *Definitions.*

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

13 "Agreement" means the Adult Civil Citation Participation Agreement signed
14 by the Participant that indicates his or her desire to participate in the
15 Program, and includes the Adult Civil Citation Referral Form.

16 (2) "Behavioral Health Treatment" means clinical intervention for the purpose
17 of mitigating a substance abuse condition or a substance abuse condition
18 with a mental health disorder. The Human Services Department Director
19 shall designate a person, persons, division, or entity with appropriate
20 knowledge in the field of substance abuse to conduct the treatment in a
21 manner consistent with standards of that field.

22 (2) (3) ~~"Citation" means a notice of violation of this section, issued on a form~~
23 ~~approved by the County Administrator or designated representative Human~~

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1 Services Department Director and approved as to legal sufficiency by the
2 County Attorney.

3 (4) "Department" means the Broward County Human Services Department,
4 which serves as the lead agency responsible for the implementation,
5 coordination, and administration of a countywide adult civil citation process
6 that facilitates a single collaborative network to ensure efficiency and
7 continuity of community resources and service delivery.

8 (3) (5) "Educational Program Course" means a presentation of information about
9 the risks and effects of substance-abuse ~~the offense that led to the Citation~~
10 and any underlying related causes. The County Administrator ~~Human~~
11 Services Department Director shall designate a person, persons, ~~division,~~
12 or entity with appropriate knowledge of the ~~relevant field of substance abuse~~
13 to select or prepare the Educational Program Course in a manner consistent
14 with standards of that field.

15 (6) "Eligible Offenses" means all Nonviolent Offenses that constitute
16 misdemeanors under state law or this Code including, but not limited to,
17 possession of twenty (20) grams or less of cannabis, possession of drug
18 paraphernalia, misdemeanor assault, misdemeanor battery (if the law
19 enforcement officer determines the encounter resulted in no or minor
20 injuries and, if it is determined that there is a minor injury, the victim
21 consents to the issuance of the Citation), retail theft of a shopping cart,
22 trespass on property other than a structure or conveyance, petit theft,
23 criminal mischief, disorderly conduct, littering, loitering, and possession of
24

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1 alcoholic beverages by persons under age 21, as those terms are defined
2 by state law.

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

6 (7) "Ineligible Offense" means the following offenses that do not qualify for the
7 Program under any circumstances: a felony; a misdemeanor offense
8 charged in connection with any charge that is a felony; an incident involving
9 domestic violence or violent crime; driving under the influence (DUI) and
10 other felony traffic-related offenses; and an offense that results in more than
11 a minor injury (if the law enforcement officer determines the encounter
12 resulted in injuries unsuitable for issuance of a Citation) or a minor injury
13 and the victim does not consent to issuance of a Citation, as and to the
14 extent those terms are defined under state law.

15 (8) "Nonviolent Offense" means an act that results in no or minor injury (as
16 determined by the law enforcement officer in his or her sole discretion).

17 (9) "Participant" means a person eighteen (18) years of age or older cited for
18 an Eligible Offense who has agreed to participate in the Program.

19 (10) "Program" means the Adult Civil Citation Program within the Department.

20 (11) "Program Fee" means the costs assessed to Participants, as provided on
21 the Citation, to help defray the administrative costs of operating the
22 Program.

23 (12) "Restorative Justice" means an approach to justice that emphasizes
24 repairing the harm caused by the violation, and is accomplished through

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1 meetings that include all affected persons, if possible, to develop a
2 collaborative plan for reparation.

3 (5) (13) "Screening" means evaluation of a person who receives a Citation under this
4 Ordinance, for the purpose of ~~determining the person's need for drug~~
5 ~~treatment or intervention~~ identifying the factors that led to the violation and
6 determining the appropriate intervention services. The County Administrator
7 shall designate a person, persons, or entity with appropriate knowledge of
8 the field of substance abuse to conduct the Screenings in a manner
9 consistent with 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) *{Violations.}*

19 It shall be a violation of this section for any person to ~~be in actual or constructive~~
20 ~~possession of twenty (20) grams or less of Cannabis~~ commit an Eligible Offense.

21 (c) *Enforcement--In general.*

22 (1) This section shall be enforceable throughout Broward County, except within
23 the boundaries of any municipality that, ~~by majority vote of the governing~~
24 ~~body of the municipality,~~ has enacted a conflicting ordinance or has formally

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1 ~~elected~~ taken formal action at a public meeting declaring its intention to not
2 be subject to the provisions of this section.

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

7 a. No Citation shall be issued under this section if the violation is an
8 Ineligible Offense.

9 a. b. No Citation shall be issued under this section if the ~~violation~~
10 occurred during an incident in which the ~~defendant~~ person also was
11 charged with any ~~felony, driving under the influence, a violent crime,~~
12 ~~or an incident of domestic violence, as those Violations are defined~~
13 ~~under state law~~ an Ineligible Offense.

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

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1 successfully complete the terms and conditions of the Program as
2 provided in subsection (e) below.

3 e. ~~Citations for First, Second, and Third Violations may be issued only~~
4 ~~as provided in subsections (d) and (e) below.~~

5 d. No Citation shall be issued to any person who:

6 1. ~~already h~~Has received a three (3) previous Citations for a
7 Third Violation of this section;

8 2. Elects not to participate in the Program;

9 3. Has a prior misdemeanor conviction, adjudication withheld, or
10 entered a nolo contendere plea within the previous twelve (12)
11 month period; or

12 4. Has a prior felony conviction, adjudication withheld, or entered
13 a nolo contendere plea within the previous thirty-six (36)
14 month period.

15 (3) Two (2) or more offenses stemming from the same incident or encounter
16 shall count as one (1) violation when determining whether the current
17 offense constitutes a first, second, or third violation.

18 (d) *Eligibility and options of persons issued a Citation--In general.*

19 The Department shall create policies and procedures for processing referrals to the
20 Program. The Department shall confirm, upon receipt of the Citation, that the referred
21 person is eligible to participate in the Program. If a person is found ineligible, the
22 Department shall return the Citation to the issuing law enforcement agency within five (5)
23 business days of the determination of ineligibility. It shall be the responsibility of such law
24 enforcement agency to refer the case to the State Attorney for prosecution if so desired

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1 by the law enforcement agency. If a person is found eligible, the Department shall
2 conduct a Screening, explain the terms and conditions of the Program, and coordinate
3 intervention services. A person who was properly cited under subsection (c) above shall:

4 (1) Report to the Department for Screening within ten (10) days after issuance
5 of the Citation;

6 (2) Have and demonstrate sufficient ties to the community, as determined by
7 the Department, to ensure attendance at the Screening and successful
8 completion of the Program;

9 (3) Agree to pay the Program Fee, which may be set on a sliding scale, and
10 applicable costs for participation in any recommended Behavioral Health
11 Treatment or Educational Course;

12 (4) Not contest the Citation, and shall sign the Adult Civil Citation Participation
13 Agreement agreeing to the Department's recommendations; and

14 (5) Acknowledge that the Citation will be referred to the issuing law
15 enforcement agency for possible prosecution by the State Attorney for
16 failure to comply with Program recommendations or with the Agreement.

17 ~~(d)~~ (e) Enforcement—First or Second Violation Enforcement of Violations.

18 (1) Any person in violation of this section shall, for the ~~F~~first, ~~or S~~second, ~~or third~~
19 ~~V~~violation, be subject to penalties in accordance with Chapter 8½ of the
20 Broward County Code of Ordinances ("Code"), subject to the following
21 exceptions procedures.

22 a. ~~In lieu of paying the fine specified in Chapter 8½, a~~ A person in
23 violation of this section may elect request to participate in a
24 ~~community service program approved by the County Administrator or~~

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1 ~~designated representative Behavioral Health Treatment, Educational~~
2 ~~Courses, or Restorative Justice meetings. The number of hours of~~
3 ~~community service required shall be eight (8) hours for the First~~
4 ~~Violation and sixteen (16) hours for the Second Violation. A hearing~~
5 ~~officer also may permit a person found guilty of violating this section~~
6 ~~to participate in community service in lieu of a fine.~~

7 b. Immediately following the Participant's Screening, the Department
8 shall recommend the appropriate course of action for the Participant.
9 The Department's recommended action may be different from the
10 course of action requested by the Participant.

11 b. c. Alternatively, in lieu of paying the fine specified in Chapter 8½ or
12 performing the public service specified above, a person in violation of
13 this section may elect to participate in a drug Treatment or
14 Educational Program. Any The Participant must pay the cost of
15 participation in such a drug any recommended services such as
16 Behavioral Health Treatment or Educational Program Courses shall
17 be paid by the person cited at the service provider's fee, or, when
18 such services are provided by a Broward County agency, at the fees
19 approved by the County Administrator or designated representative.
20 Such fees may be set on a sliding scale. A hearing officer also may
21 permit a person found guilty of violating this section to participate in a
22 drug Treatment or Educational Program in lieu of a fine.

23 d. A person in violation of this section shall complete community service
24 hours. The number of hours of community service required shall be

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1 eight (8) hours for the first violation, sixteen (16) hours for the second
2 violation, and thirty-two (32) hours for the third violation.

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

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

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

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

14 (3) (2) Any person who receives a Citation for a Ffirst, or Ssecond, or third
15 Vviolation under this section but fails to either file an appeal pursuant to
16 Chapter 8½ of this Code within ten (10) days after receipt, pay the fine
17 within thirty (30) days after receipt, or participate in community service
18 within sixty (60) days after receipt, or who is adjudicated guilty under this
19 section pursuant to Chapter 8½ and fails to comply with the order of the
20 hearing officer, shall be reported to the agency that issued the Citation for
21 further action. shall be deemed unsuccessful and reported to the law
22 enforcement agency that issued the Citation if he or she:

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1 a. Fails to report to the Department for the Screening, or fails to
2 complete the recommended Behavioral Health Treatment and/or
3 Restorative Justice meetings;

4 b. Fails to complete the mandatory community service hours or
5 recommended Educational Courses within ninety (90) days after
6 receipt of the Citation; or

7 c. Fails to comply with the terms of the Agreement, including, but not
8 limited to, failing to timely pay the Program Fee.

9 The Department may extend the compliance deadlines in this section if the
10 Participant demonstrates that the inability to timely comply is due to
11 unforeseen events beyond the control of the Participant. The Participant
12 must request such extension prior to expiration of the deadline.

13 (d) ~~Enforcement—Third Violation.~~

14 ~~(1) As a condition for receiving a civil Citation for a Third Violation under this~~
15 ~~section in lieu of a misdemeanor charge, the recipient must consent to~~
16 ~~participate in a Screening and then to either complete required Treatment~~
17 ~~and Educational Programs or pay a fine, depending on the result of the~~
18 ~~Screening. The recipient also must consent to pay for the cost of~~
19 ~~participation in Treatment and Educational Programs, if warranted by the~~
20 ~~Screening. The County Administrator or designated representative shall set~~
21 ~~the cost of participation. Such fees may be set on a sliding scale. In lieu of~~
22 ~~paying a fine when no Treatment or Educational Program is warranted, the~~
23 ~~recipient may elect to perform sixteen (16) hours of community service.~~

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

6 (f) Accountability.

7 (1) The Department shall close the file of a Participant who successfully
8 completes the Program, in which event the Department shall notify the
9 issuing law enforcement agency of the Participant's success and request
10 that the law enforcement agency close such Participant's case as cleared.

11 (2) Any person who received a Citation for a violation under this Ordinance but
12 who fails to comply with the Program requirements provided in
13 subsection (e) above shall be deemed unsuccessful. The Department shall,
14 within five (5) business days of the person's noncompliance or termination,
15 notify the issuing law enforcement agency and close the Participant's file as
16 unsuccessful. The issuing law enforcement agency may, within its sole
17 discretion, refer the case to the State Attorney for criminal prosecution.

18 (g) No criminal charges.

19 Issuance of a Citation for Eligible Offenses under this section does not result in a
20 criminal charge, and no criminal record shall arise as a result of the issuance of a
21 Citation(s).

22 (e) (h) Seizure, return, and destruction of contraband Cannabis evidence.

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

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1 ~~(2) Contraband Cannabis Evidence~~ seized pursuant to this section, ~~after its use~~
2 ~~as evidence is no longer required,~~ may be destroyed in the same manner
3 ~~used to destroy narcotics~~ dispose of such evidence, or it may be returned
4 to the lawful owner, as provided by law.

5 Section 2. Section 8½-16 of the Broward County Code of Ordinances is hereby
6 amended to read as follows:

7 ...

8 ~~(z) Violations of Section 21-6, Relating to Possession of Twenty (20) Grams or~~
9 ~~Less of Cannabis:~~

		<i>Fine</i>		
	<i>Violation</i>	<i>First Violation</i>	<i>Second Violation</i>	<i>Third Violation</i>
13	(1) Prohibited possession	\$100.00	\$250.00	\$500.00
14	of Cannabis (sec. 21-6)			

15 ~~These fines may be waived if the violator instead completes community service~~
16 ~~hours or participates in an Educational or Treatment Program as prescribed in~~
17 ~~Section 21-6 of the Code.~~

18 Section 3. SEVERABILITY.

19 If any portion of this Ordinance is determined by any Court to be invalid, the invalid
20 portion shall be stricken, and such striking shall not affect the validity of the remainder of
21 this Ordinance. If any Court determines that this Ordinance, or any portion hereof, cannot
22 be legally applied to any individual(s), group(s), entity(ies), property(ies), or
23 circumstance(s), such determination shall not affect the applicability hereof to any other
24 individual, group, entity, property, or circumstance.

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1 Section 4. INCLUSION IN CODE.

2 It is the intention of the Board of County Commissioners that the provisions of this
3 Ordinance shall become and be made a part of the Broward County Code; and that the
4 sections of this Ordinance may be renumbered or relettered and the word "ordinance"
5 may be changed to "section," "article," or such other appropriate word or phrase in order
6 to accomplish such intentions.

7 Section 5. EFFECTIVE DATE.

8 This Ordinance shall become effective as provided by law.

9
10 ENACTED

11 FILED WITH THE DEPARTMENT OF STATE

12 EFFECTIVE

PROPOSED

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15 Approved as to form and legal sufficiency:
16 Andrew J. Meyers, County Attorney

17 By /s/ Karen S. Gordon 12/22/17
18 Karen S. Gordon (Date)
19 Assistant County Attorney

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23 KSG/dp
12/22/17
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