



Memorandum

City Prosecutor's Office

TO: Cynthia A. Everett, City Attorney

FROM: Dina Kaizen, Assistant City Attorney

DATE: January 15, 2016

RE: Broward County Ordinance allowing for the issuance of a civil citation for the possession of twenty grams or less of cannabis

On November 10, 2015, the Broward County Board of County Commissioners adopted Ordinance No. 2015-45, which created Section 21-5 of the Broward County Code effective November 17, 2015. The ordinance provides for the issuance of a civil citation for possession of twenty grams or less of cannabis, and provides for associated financial penalties, community service, and educational and treatment programs.

Pursuant to the County ordinance, law enforcement officers may, in 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. No citation may be issued in certain situations, such as during an incident in which the defendant is charged with any felony, driving under the influence, a violent crime, or an incident of domestic violence. In addition, no citation may be issued when the recipient has failed to take certain actions in connection with a previous citation.

Subsection 21-5(c)(1) of the Broward County ordinance provides that the Section "shall be enforceable throughout Broward County, except within the boundaries of any municipality that, by majority vote of the governing body of the municipality, has enacted a conflicting ordinance or has formally elected not to be subject to the provisions of this section." Similarly, Section 11.01 of the Broward County Charter provides,

Any County ordinance in conflict with a Municipal ordinance shall not be effective within the Municipality to the extent that a conflict exists regardless of whether such Municipal ordinance was adopted or enacted before or after the County ordinance. A County ordinance shall prevail over Municipal ordinances whenever the County acts with respect to the following:

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- A. Sets minimum standards protecting the environment through the prohibition or regulation of air or water pollution, or the destruction of resources in the County belonging to the general public.
- B. Land use planning.
- C. Regulates the conduct of elected officials, appointed officials, and public employees through an enacted Code of Ethics.

In the event a County ordinance and a Municipal ordinance shall cover the same subject matter without conflict, both the Municipal ordinance and the County ordinance shall be effective.

The City of Fort Lauderdale does not have a conflicting ordinance. Accordingly, the City Commission should decide whether 1) to implement its own civil citation program by creating a new ordinance; or 2) formally elect not to be subject to the provisions of Section 21-5; or, 3) participate in the County's program.

It is my recommendation that the City formally elect not to be subject to the provisions of Section 21-5 of the Broward County Code and create its own program.

The County ordinance presents several issues, to wit: Subsection 21-5(c)(2) gives law enforcement officers the discretion to issue a county civil citation in lieu of a state misdemeanor charge. It is silent as to a city ordinance charge. Therefore, it is unclear whether an officer has discretion to charge someone with a city ordinance violation if the City participates in the County program. In addition, the County ordinance has a procedure which requires the County to notify the issuing agency when the offender does not comply, so that the issuing agency can take "further action." This provision creates two issues. First, since the offender has already had a hearing on the merits (County hearing officer), it could be argued that double jeopardy has attached, in which case the City would be prevented from taking any "further action" on the violation. Second, if jeopardy has not attached, there will be speedy trial issues with the filing of the case.

The City Prosecutor's Office has a diversion program and a system that can be tailored to meet the needs of a civil citation program. Thousands of participants have had the opportunity to benefit from the City's Diversion Program over the years. Besides dismissal of the charges, other benefits include retaining employment status, avoiding a loss of student loans, and the potential risk of immigration consequences. The purpose of this opportunity is to help individuals have a fresh start without the weight of a criminal background hampering their ability to integrate into the community and workforce. The same can be accomplished by a civil citation program through the City Prosecutor's Office, thereby avoiding such legal issues as double jeopardy and speedy trial inasmuch as the civil citations would originate directly through the City Prosecutor's office. Additionally, if the City elects not to be subject to the County ordinance the City will directly benefit from the revenue generated by civil fines, whereas if the City chooses to participate in the County program then any and all fines related to the civil citation program will remain with the County.

For the above stated reasons, it is my recommendation that the City of Fort Lauderdale elect not to be subject to the County ordinance and create the City's own program. It is also my recommendation that the City Manager present his proposal regarding a City program to the City Commission.