

ORDINANCE 2016-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA, PERTAINING TO POSSESSION OF TWENTY (20) GRAMS OR LESS OF CANNABIS; PERTAINING TO POSSESSION OF DRUG PARAPHERNALIA; CREATING SECTION ____ OF THE FLAGLER COUNTY CODE OF ORDINANCES OF FLAGLER COUNTY, FLORIDA; PROVIDING FOR DEFINITIONS; PROVIDING FOR ENFORCEMENT AND SEIZURE AND DESTRUCTION OF CONTRABAND CANNABIS; PROVIDING FOR PENALTIES; AND PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statute 893.13(6)(b) makes possession of twenty (20) grams or less of Cannabis a misdemeanor of the first degree, punishable by imprisonment for up to one (1) year; and

WHEREAS, Florida Statute 893.147 makes possession of drug paraphernalia a misdemeanor of the first degree, punishable as set forth in Florida Statute 775.083; and

WHEREAS, even if a person is found not guilty of such a charge, that person may, as a result of being charged with a crime, suffer serious negative consequences at work, securing employment, and encounter difficulty obtaining a license in some professions; and

WHEREAS, the County finds that civil penalties and procedures may be more commensurate with any social harm caused by the possession of small amounts of Cannabis or the possession of Cannabis paraphernalia; and

WHEREAS, filing criminal charges for possession of twenty (20) grams or less of Cannabis for personal use is time consuming for law enforcement officers, who might otherwise spend their time addressing more serious crimes; and

WHEREAS, the County finds and declares that this ordinance is in the best interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONES OF FLAGLER COUNTY, FLORIDA AS FOLLOWS:

SECTION 1. FINDINGS.

- A. The above recitals are incorporated herein as Findings of Fact.
- B. The Flagler County Board of County Commissioners finds as follows:
 - 1. It is the purpose and intent of the Flagler County Board of County Commissioners to set forth regulations regarding the possession of twenty (20) grams or less of Cannabis and the possession of Cannabis paraphernalia.

SECTION 2. CREATION OF ARTICLE ____ OF CHAPTER ____, FLAGLER COUNTY CODE OF ORDINANCES, POSSESSION OF TWENTY (20) GRAMS OR LESS OF CANNABIS AND CANNABIS PARAPHERNALIA.

- A. **Legislative authority.** This article is enacted pursuant to the authority vested in the Board of County Commissioners by Florida Statute Chapters 125 and 163, and through the powers granted to the County as a political subdivision of the State of Florida through Article VIII of the Constitution of the State of Florida.
- B. **Definitions.** The following words, terms, and phrases, when used in this Chapter have the meanings ascribed to them in this Section:
 - 1. *Cannabis* means all parts of any plant of the genus Cannabis, whether growing or not, or the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include “low-THC Cannabis” and medical Cannabis, as defined in Section 381.986 Florida Statutes.
 - 2. *Cannabis paraphernalia* means any object used, intended for use, or designed for use, in ingesting, inhaling, smoking, or otherwise introducing Cannabis into the human body; or any object used, intended for use, or designed for use in storing, containing, concealing, or transporting Cannabis.
- C. **Civil Citation Infraction.** The following State law misdemeanor violations are declared civil infractions and eligible to receive a civil citation, at the

discretion of a law enforcement officer, provided that such violations are not charged in conjunction with any criminal charge:

1. Possession, by a person 18 years of age or older, of Cannabis in an amount of 20 grams or less, as set forth in Section 893.13(6)(d), Florida Statutes, as may be amended from time to time; and
2. Possession, by a person 18 years of age or older, of Cannabis paraphernalia.

D. Enforcement, Seizure and Destruction and Fines.

1. This Ordinance shall be applicable within the unincorporated areas of the County and within any municipality that, by majority of the governing body of the municipality, has enacted to formally be subject to the provisions of this Ordinance.
2. This Ordinance is enforceable by all law enforcement officers.
3. No citation shall be issued if a violation occurred during an incident which the defendant also was charged with any felony, driving under the influence, violent crime, or an incident of domestic violence, as those violations are defined under the State law.
4. The County Court shall have jurisdiction over all violations of this Ordinance.
5. The Clerk of Court shall accept designated fines and issue receipts.
6. A person issued a civil citation shall comply with all directives on the citation.
7. First violation, a person who is issued a civil citation pursuant to this Ordinance shall be subject to a fine of \$100.
8. Second violation, a person who is issued a civil citation pursuant to this Ordinance shall be subject to a fine of \$250.

9. Third and subsequent offenses may include a notice to appear, arrest or pre-trial diversion program, if eligible.
10. A person who fails to make payment as provided on the citation, shall be deemed to have waived his or her right to pay the civil penalty as set forth on the citation.
11. A person who elects to appear before the court to contest the civil citation shall be deemed to have waived his or her right to pay the civil penalty. The court, after conducting a hearing, shall determine whether a violation has occurred and may impose a civil penalty not to exceed \$500 plus court cost.
12. If a person fails to pay the civil penalty or fails to appear in court to contest the citation, he or she shall be deemed to have waived his or her right to contest the citation, and in such case, a default judgment may be entered and the judge shall impose a fine at that time. If the fine is paid the case shall be disposed. If the fine is not paid, default judgement shall be entered up to a maximum of \$500 plus court cost.

E. Seizure and Destruction of Contraband Cannabis.

1. Any contraband Cannabis that is the subject of a violation of this section may be seized for evidentiary use.
2. Contraband Cannabis seized pursuant to this section, after its use as evidence is no longer required, may be destroyed in the same manner used to destroy narcotics as provided by law.

SECTION 3. REPEAL OF LAWS IN CONFLICT.

All local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 4. CODIFICATION AND SCRIVENER'S ERRORS.

- A. The provisions of this Ordinance shall be included and incorporated into the Code of Ordinances of Flagler County, Florida, as additions and amendments thereto, and shall be appropriately renumbered and

relettered to conform to the uniform numbering system of the Code. Scrivener's errors may be corrected as deemed necessary.

- B. Only Sections 2 and 3 herein shall be codified within the Flagler County Code of Ordinances. Sections not specifically amended herein shall remain unchanged by this Ordinance.

SECTION 5. SEVERABILITY.

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect upon filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA THIS ____ DAY OF _____, 2016.

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS

Barbara S. Revels, Chair

ATTEST:

APPROVED AS TO FORM:

Gail Wadsworth, Clerk of the Circuit Court and Comptroller

Al Hadeed, County Attorney