

ORDINANCE 17-07

AN ORDINANCE OF THE CITY OF HOLMES BEACH, FLORIDA, AMENDING CHAPTER 42-1 TO PROVIDE A SUBSECTION (C) WHICH CREATES A CIVIL VIOLATION OPTION FOR POSSESSION OF CANNABIS IN AN AMOUNT OF 20 GRAMS OR LESS AND FOR POSSESSION OF DRUG PARAPHERNALIA; PROVIDING FOR ENFORCEMENT; CREATING SECTION 42-14 PROVIDING FOR CIVIL REMEDIES AND CITATION; CREATING SECTION 42-15 PROVIDING FOR PROCEEDINGS FOR CITATION; CREATING SECTION 42-16 PROVIDING FOR REFUSAL TO SIGN AND ACCEPT CITATION; CREATING SECTION 42-17 PROVIDING FOR APPEAL OF CITATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 42, Code of Ordinances of the City of Holmes Beach sets forth miscellaneous offenses; and

WHEREAS, subsection 893.13(6)(b), Florida Statutes provides that the possession of 20 grams or less of cannabis (marijuana) intended only for the consumption of the possessor is a first degree misdemeanor criminal offense; and

WHEREAS, subsection 893.147(1), Florida Statutes provides that the possession of drug paraphernalia as defined in Section 893.145, Florida Statutes, is a first degree misdemeanor criminal offense; and

WHEREAS, the City Commission finds that the state law criminal penalties and the creation of a criminal record may be disproportionate to the severity of the offense where the citizen's only know offense at the time of arrest is possession for personal use of a small amount of cannabis, or paraphernalia for administration thereof; and

WHEREAS, the City Commission finds that established civil penalties and procedures under the City's Code of Ordinances may be more commiserate with the offense of possession of 20 grams or less of cannabis or of drug paraphernalia in some circumstances.

NOW, THEREFORE, be it ordained by the City Commission of the City of Holmes Beach as follows:

Section 1. Section 42-1 of the City's Code of Ordinances shall be amended to add a subsection (c) which subsection shall read as follows:

"Section 42-1. Notwithstanding subsection (a) above, the following misdemeanors under state law are eligible to receive a civil notice violation at the discretion of a law enforcement officer, provided that such violations are not charged in conjunction with (1) any other charge that is a felony, (2) driving under the influence, (3) any incident involving domestic violence or violent crime, (4) the violation is 18 years or older, (5) the violation qualifies for release on his or her own recognizance, (6) the subject has no prior unpaid civil citations as those terms are defined under state law:

(1) Possession of cannabis (marijuana) in an amount of 20 grams or less as set forth in Section 893.13(6)(b), Florida Statutes, as such may be amended from time to time.

(2) Possession of drug paraphernalia as set forth in Section 893.146 and 893.147(b), Florida Statutes, as such may be amended from time to time.

An individual issued a civil violation notice for violation of subsection (c)(1) or (c)(2) will be subject to fines set forth in Section 42-13.

Section 2. Section 42-14 of the City's Code of Ordinances entitled Civil Remedies and Citations is adopted to read as follows:

"Section 42-14. Civil remedies and citations. In addition to the criminal penalties, citations enforcing this chapter may also be issued by City law enforcement officers, when, upon personal investigation, the enforcement officers have reasonable cause to believe a violation of this chapter has been committed.

(1) First violation: A City law enforcement officer may issue a civil citation carrying a fine of \$75.00 for a first violation if the officer

determines that the violator is subject to the City's jurisdiction for less than six months. Notwithstanding the foregoing, a City law enforcement officer may issue a warning notice for a first violation of this chapter. A warning notice does not carry a fine.

(2) Second violation: Within 365 days of a warning notice or a first violation carrying a fine, as the case may be, a City law enforcement officer shall issue a civil citation with a \$150.00 fine.

(3) Third violation: Within 365 days of the second violation, a City law enforcement officer shall issue a civil citation with a \$500.00 fine.

(4) Fourth violation: Within 365 days of the second civil citation but subsequent to the issuance of a citation for a third violation, a City law enforcement officer shall issue a civil citation a fine to be determined up to \$750.00."

Section 3. Section 42-15, entitled "Proceedings for Citation," is adopted to read as follows:

"Section 42-15. Proceedings for Citation.

(a) The violator shall pay the applicable civil penalty to the clerk within 15 days after receipt of the citation.

(b) If the violator elects to contest the citation, he or she, or if a non-natural violator, the violator's authorized representative, shall request a hearing through the City Clerk within 15 days after receipt of the citation. The Clerk shall schedule a hearing before the Special Magistrate and shall provide written notice of the hearing to the violator and the officer who issued the citation. The Special Magistrate shall conduct the hearing pursuant to Section 2-122, City of Holmes Beach Code of Ordinances.

(c) In any contested hearing authorized pursuant to this section, a violation must be proven by competent substantial evidence.

(d) The maximum civil penalty for any infraction is \$750.00.

(e) If, within 15 days after receipt of the citation, the violator neither pays the civil penalty nor contests the citation, he/she shall be deemed to have waived his or her right to contest the citation and, in such case, the violation shall be deemed admitted. The City may thereafter seek an order of the Special Magistrate imposing the fine, which may be enforced pursuant to Section 2-122, City of Holmes Beach Code of Ordinances.

(f) All civil fines and penalties shall be deposited into the City's general fund."

Section 4. Section 42-16, entitled "Refusal to Sign and Accept Citation," is adopted to read as follows:

"Section 42-16. Refusal to Sign and Accept Citation. Any person who willfully refuses to sign and accept a citation issued by an officer shall be guilty of a misdemeanor of the second degree pursuant to Florida Statutes, subsection 162.21(6), punished as provided in Florida Statutes subsections 775.82 and 775.083."

Section 5. Section 42-17, entitled "Appeal of Citation," is adopted to read as follows:

"Section 42-17. Appeal of Citation. An appeal of the order of the Special Magistrate shall be made in accordance with Section 2-122, Holmes Beach Code of Ordinances."

Section 6. Severability. If any section, sub-section, paragraph, sentence, clause or phrase in this Ordinance shall be held invalid by a court of competent jurisdiction, then such invalidity shall not affect the remaining portions hereof.

Section 7. Effective Date. This Ordinance shall take effect on adoption by the City Commission at the earliest to occur of the following: approval by the Mayor, or expiration of the time allowed for signature of the Mayor, in accordance with the Charter of the City of Holmes Beach.

PASSED AND ADOPTED, by the City Commission of the City of Holmes Beach, Florida, in regular session assembled, this 28th day of February 2017.

First Reading: 2-14-17

Publication Date: 2-18-17

Second Reading and Public Hearing Date: 2-28-17


Patrick Morton



Carol Soustek



Judy Titsworth


Jean Peelen


Marvin Grossman

APPROVED BY ME THIS 1st DAY OF March, 2017.


Bob Johnson, Mayor

ATTEST: 
Stacey Johnston, MMC, City Clerk