

**ORDINANCE NO. 032 - 2016**

**AN ORDINANCE OF THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS CREATING SECTION 17-7 OF THE MONROE COUNTY CODE, PROHIBITING THE POSSESSION OF CANNABIS (MARIJUANA) BY ADULTS IN AMOUNTS OF TWENTY (20) GRAMS OR LESS AND THE POSSESSION OF DRUG PARAPHERNALIA RELATED TO THE INGESTION OF CANNABIS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, under Article VIII, §1(f), Fla. Const., the Board of County Commissioners has the authority to legislate on any matter that impacts the health, safety and welfare of its citizens on a county-wide basis except where a municipality has adopted an ordinance in conflict with the County Code or where otherwise prohibited by state law; and

**WHEREAS**, §§ 893.13(6)(b), 893.146, and 893.147(1)(b), Fla. Stat. prohibit a person from possessing small amounts of marijuana and paraphernalia, which impose punishments for those convicted of incarceration for up to a year, fines of up to \$1,000.00, and revocation of driver licenses for up to a year; and

**WHEREAS**, the Board finds that the public interest would be served by providing an alternative to such penalties that do not result in a criminal record; and

**WHEREAS**, § 775.08(2), Fla. Stat. expressly excludes violations of county ordinances from the definitions of the terms “misdemeanor” and “non-criminal violation” and by implication from the definition of the term “crime” therefore a violation of a county ordinance is not necessarily a crime or criminal offense in the state of Florida, *see* Op. Att’y Gen. Fla. 76-192 (1976); and

**WHEREAS**, although not “crimes,” § 943.051(2), Fla. Stat. and Fla. Admin. Code R. 11C-4.003(1) expressly require law enforcement agencies to capture biometric data (e.g. fingerprints) on any adult arrested for or convicted of a violation of a County ordinance comparable to a violation of a State statute, which generates a criminal record; and

**WHEREAS**, for violations specified in this Ordinance, law enforcement officers shall have the discretion to charge alleged adult offenders under a County ordinance in lieu of charging those offenders under similar provisions of state law; and

**WHEREAS**, because the Legislature has already established a mechanism for punishing juvenile offenders in a manner different than adults, the Board expressly excludes juvenile offenders from the class of offenders eligible to be charged under this ordinance; and

WHEREAS, the Board of County Commissioners finds that the public interest would be best served by enacting an Ordinance that allows a court of competent jurisdiction to impose non-criminal penalties for offenses such as possession of marijuana under twenty (20) grams and for possession of drug paraphernalia associated with ingesting marijuana that would not create a criminal record.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, AS FOLLOWS:

[Words added are shown with underlining. Words deleted are shown with ~~strike-throughs~~.]

SECTION 1. A new Section 17-7 of the Monroe County Code, entitled "Personal Possession of Marijuana" is created, which shall read as follows:

**Sec. 17-7. Personal Possession of Marijuana.**

- (a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
- (1) Adult shall mean any person 18 years of age or older.
  - (2) Cannabis shall mean all parts of any plant of the genus Cannabis, whether growing or not; 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," as defined in F.S. 381.986, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with F.S. 381.986.
  - (3) Marijuana shall have the same meaning as the term "cannabis".
  - (4) Drug paraphernalia shall have the same meaning as that term has been defined in § 893.145, Fla. Stat. In determining whether an object is drug paraphernalia, a court or other authority or jury shall consider, in addition to all other logically relevant factors, the factors identified in § 893.146, Fla. Stat.
- (b) Prohibition. No adult shall possess:
- (1) Cannabis (Marijuana) in an amount of twenty (20) grams or less, as set forth in § 893.13(6)(b), Fla. Stat.; or
  - (2) Drug paraphernalia used in ingesting cannabis, as set forth in §§ 893.146 and 893.147(1)(b), Fla. Stat.
- (c) Enforcement and Remedies.
- (1) The Monroe County Sheriff and deputies, any municipal police officer, and any other law enforcement officer authorized to enforce County ordinances shall have the authority to enforce the provisions of this section by means of the issuance of a citation to the alleged violator.
  - (2) Applicability. A law enforcement officer may not charge a person in violation of this prohibition if the officer also intends to charge the person with violating a comparable state statute for the same event, as referenced in Section 17-7(b)(1) and (2).

- (3) The citation shall contain at least the following:
- (a) The date and time of issuance;
  - (b) The name and address of the person to whom the citation was issued;
  - (c) The date on which the infraction was occurred;
  - (d) The name and title of the law enforcement officer or code enforcement officer;
  - (e) The procedure for the person to follow in order to pay the penalty or to contest the citation;
  - (f) The applicable penalty if the person elects to contest the citation;
  - (g) A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, or fails to appear in court, as required by the citation, the person shall be deemed to have waived his right to contest the citation, and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty of \$500.00. In addition, if a person fails to pay the civil penalty, or fails to appear in court to contest the citation, or fails to appear in court as required by the citation the court may issue an order to show cause upon the request of the governing body of the county. This order shall require such persons to appear before the court to explain why action on the citation has not been taken. If any person who is issued such order fails to appear in response to the court's directive, that person may be held in contempt of court.
- (4) Any person who willfully refuses to sign and accept a citation shall be guilty of a misdemeanor of the second degree, punishable as provided in §§ 775.082 or 775.083, Fla. Stat.
- (d) Penalty. Upon conviction, any person violating this section shall be punished as provided by law.
- (1) Notwithstanding any other provision of this section, a violation of Section 17-7(b) shall be punishable by a fine. The minimum penalty for a violation shall be a fine in the amount of at least \$100.00 but not to exceed \$500.00.
  - (2) Civil Infraction. Violations of any provision of this section shall constitute a civil infraction.
  - (3) Court cost, surcharges and other special charges. Court costs, surcharges and other special charges shall be added by the clerk of the circuit court in the same manner and amounts as provided for class 1 non-criminal violations.

- (4) Uncontested citation. If the party cited does not contest the citation, the penalty given shall be \$100.00, which shall be paid at the Clerk's office. The Clerk is authorized to establish procedures for accepting payment by mail for uncontested citations.
- (e) Applicability. Juvenile offenders are not be eligible to be charged under this ordinance.

**SECTION 2. SEVERABILITY.** Should any provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this Ordinance as whole, or any part thereof, other than the part declared to be invalid. If this ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstances, such holding shall not affect its applicability to any other person, property or circumstances.

**SECTION 3. CONFLICT WITH OTHER ORDINANCES.** All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of said conflict.

**SECTION 4. INCLUSION IN THE CODE OF ORDINANCES.** The provisions of this Ordinance shall be included and incorporated in the Code of Ordinances of the County of Monroe, Florida, as an addition or amendment thereto, and shall be appropriately renumbered as needed to conform to the uniform numbering system of the code.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall take effect upon filing with the Department of State, as provided in § 125.66(2), Fla. Stat.

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the 14<sup>th</sup> day of December, 2016.

Mayor George Neugent	<u>Yes</u>
Mayor Pro Tem David Rice	<u>Yes</u>
Commissioner Danny Kolhage	<u>Yes</u>
Commissioner Heather Carruthers	<u>Yes</u>
Commissioner Sylvia J. Murphy	<u>Yes</u>



Attest: AMY HEAVILIN, Clerk  
 Amy Robertson  
 Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
 OF MONROE COUNTY, FLORIDA

By George L. Neugent  
 Mayor/Chairperson

MONROE COUNTY ATTORNEY  
 APPROVED AS TO FORM:

Robert B. Shillinger, Jr.  
 COUNTY ATTORNEY

Date 12-15-16

To reflect changes during  
 12/14/16 Public Hearing

NOTICE TO CONSIDER ADOPTION OF COUNTY ORDINANCE

RECEIVED

DEC - 9 2016

NOTICE IS HEREBY GIVEN TO WHOM IT MAY CONCERN that on December 14, 2016 at 3:00 P.M. at the Board of County Commissioners...



STATE OF FLORIDA MONROE COUNTY ATTORNEY COUNTY OF MONROE

Before the undersigned authority personally appeared Paul Clarin, who on oath says that he is Publisher of the Key West Citizen, a daily newspaper published in Key West, in Monroe County, Florida; that the attached copy of advertisement, being a legal notice in the matter of

Notice of Intent to Adopt Ordinance - Non-Criminal Penalty - MARIJUANA

was published in said newspaper in the issue(s) of November 30, 2016

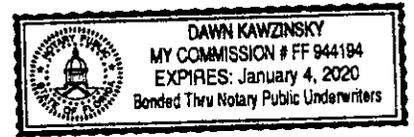
Affiant further says that the Key West Citizen is a newspaper published in Key West, in said Monroe County, Florida and that the said newspaper has heretofore been continuously published in said Monroe County, Florida every day, and has been entered as second-class mail matter at the post office in Key West, in said Monroe County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

[Signature] Signature of Affiant

Sworn and subscribed before me this 30 day of November, 2016

Notary Public:

[Signature: Dawn Kawzinsky]



Dawn Kawzinsky Expires: 1/4/2020

Notary Seal

Personally Known x Produced Identification Type of Identification Produced

ADA ASSISTANCE: If you are a person with a disability who needs special accommodations in order to participate in this proceeding, please contact the County Administrator's Office, by phoning (305) 292-4441.

between the hours of 8:30 a.m. - 5:00 p.m., no later than five (5) calendar days prior to the scheduled meeting; if you are hearing or voice impaired, call "711".

Dated at Key West, Florida, this 23rd day of November, 2016. AMY HEAVILIN, Clerk of the Circuit Court and ex officio Clerk of the Board of County Commissioners of Monroe County, Florida

FLORIDA KEYS RECEIVED  
**KEYNOTER**  
Published Twice Weekly  
Marathon, Monroe County, Florida  
DEC - 8 2016  
MONROE COUNTY ATTORNEY

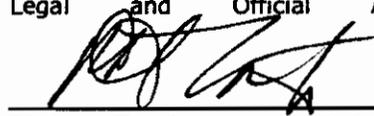
**PROOF OF PUBLICATION**

**STATE OF FLORIDA  
COUNTY OF MONROE**

Before the undersigned authority personally appeared **RICHARD TAMBORRINO** who on oath, says that he is **PUBLISHER of the FLORIDA KEYS KEYNOTER**, a twice weekly newspaper published in Marathon, in Monroe County, Florida: that the attached copy of advertisement was published in said newspaper in the issues of: (date(s) of publication)

12/3/16

Affiant further says that the said FLORIDA KEYS KEYNOTER is a newspaper published at Marathon, in said Monroe County, Florida, and that the said newspaper has heretofore been continuously published in said Monroe County, Florida, twice each week (on Wednesday and Saturday) and has been entered as a second class mail matter at the post office in Marathon, in Monroe County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement. The affiant further says that he has neither paid nor promised any person, firm, or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper(s) and that The Florida Keys Keynoter is in full compliance with Chapter 50 of the Florida State Statutes on Legal and Official Advertisements.

  
Richard Tamborrino, Publisher

Sworn to and subscribed before me this  
3 Day of December, 2016

  
Notary  
(SEAL)



**NOTICE OF INTENTION TO  
CONSIDER ADOPTION OF  
COUNTY ORDINANCE**

NOTICE IS HEREBY GIVEN TO WHOM IT MAY CONCERN that on December 14, 2016 at 3:00 P.M., or as soon thereafter as may be heard, in the Murray E. Nelson Government Center, 102050 Overseas Highway, Key Largo, Monroe County, Florida, the Board of County Commissioners of Monroe County, Florida, intends to consider the adoption of the following County ordinance:

**AN ORDINANCE OF THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS CREATING SECTION 17-7 OF THE MONROE COUNTY CODE, PROHIBITING THE POSSESSION OF CANNABIS (MARIJUANA) BY ADULTS IN AMOUNTS OF FIVE (5) GRAMS OR LESS AND THE POSSESSION OF DRUG PARAPHERNALIA RELATED TO THE INGESTION OF CANNABIS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.**

Pursuant to Section 286.0105, Florida Statutes, notice is given that if a person decides to appeal any decision made by the Board with respect to any matter considered at such hearings or meetings, he will need a record of the proceedings, and that, for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

**ADA ASSISTANCE:** If you are a person with a disability who needs special accommodations in order to participate in this proceeding, please contact the County Administrator's Office, by phoning (305) 292-4441, between the hours of 8:30 a.m. - 5:00 p.m., no later than five (5) calendar days prior to the scheduled meeting; if you are hearing or voice impaired, call "711".

Dated at Key West, Florida, this 23rd day of November, 2016.

AMY HEAVILIN, Clerk of the Circuit Court (SEAL) and ex officio Clerk of the Board of County Commissioners of Monroe County, Florida

Published December 3, 2016  
Florida Keys Keynoter

**NOTICE OF INTENTION TO CONSIDER ADOPTION OF COUNTY ORDINANCE**

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**CONFLICT; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.**

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Dated at Key West, Florida, this 23rd day of November, 2016.

AMY HEAVILIN, Clerk of the Circuit Court (SEAL) and ex officio Clerk of the Board of County Commissioners of Monroe County, Florida

Published December 2, 2016  
The Reporter

RECEIVED

# THE REPORTER

DEC - 8 2016  
MONROE COUNTY ATTORNEY

Published Weekly  
Tavernier, Monroe County, Florida

## PROOF OF PUBLICATION

### STATE OF FLORIDA COUNTY OF MONROE

Before the undersigned authority personally appeared **RICHARD TAMBORRINO** who on oath, says that he is **PUBLISHER** of **THE REPORTER**, a weekly newspaper published in Tavernier, in Monroe County, Florida: that the attached copy of advertisement was published in said newspaper in the issues of: (date(s) of publication)

12/2/16

Affiant further says that the said **THE REPORTER** is a newspaper published at Tavernier, in said Monroe County, Florida, and that the said newspaper has heretofore been continuously published in said Monroe County, Florida, each week (on Friday) and has been entered as a second class mail matter at the post office in Tavernier, in Monroe County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement. The affiant further says that he has neither paid nor promised any person, firm, or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper(s) and that **THE REPORTER** is in full compliance with Chapter 50 of the Florida State Statutes on Legal and Official Advertisements.

Richard Tamborrino, Publisher

Sworn to and subscribed before me this

2 Day of December, 2016

Notary  
(SEAL)

