

ORDINANCE NO. 2016-____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, RELATING TO POSSESSION OF 20 GRAMS OR LESS OF CANNABIS; CREATING CHAPTER 119 OF THE ALACHUA COUNTY CODE; MAKING POSSESSION OF 20 GRAMS OR LESS OF CANNABIS A CIVIL INFRACTION AND A VIOLATION OF ALACHUA COUNTY CODE; ESTABLISHING APPLICABILITY; PROVIDING DEFINITIONS; PROVIDING FOR ENFORCEMENT AND SEIZURE AND DESTRUCTION OF CONTRABAND CANNABIS; PROVIDING FOR DRUG SCREENING, EDUCATION, AND TREATMENT PROGRAMS; PROVIDING FOR PENALTIES; ESTABLISHING MECHANISM TO CONTEST A CIVIL CITATION ISSUED UNDER THIS CHAPTER; PROVIDING A REPEALING CLAUSE; ALLOWING FOR MODIFICATION OF THE LANGUAGE OF THE ORDINANCE DUE TO CONSIDERATIONS ARISING AT A PUBLIC HEARING; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Alachua County Board of County Commissioners has broad authority to enact ordinances and prescribe penalties for violations of those ordinances; and

WHEREAS, the area of drug abuse control is not preempted by either the Florida Constitution or Florida Statutes; and

WHEREAS, Alachua County may enact ordinances regulating drug abuse as long as the ordinances do not impose a penalty in excess of the penalty provided under state law; and

WHEREAS, Florida law makes possession of 20 grams or less of cannabis a misdemeanor of the first degree, punishable by imprisonment not exceeding one year and a fine not exceeding \$1,000; and

WHEREAS, individuals being charged, regardless of being adjudicated guilty, may suffer serious negative consequences at work, and encounter difficulty obtaining a license in some professions; and

WHEREAS, as shown by the 66 percent of participating Alachua County residents who voted in favor of medical marijuana in a recent referendum, many people support new approaches to regulation of this substance; and

WHEREAS, filing criminal charges for possession of 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 is costly to taxpayers; and

WHEREAS, effective drug treatment and education programs can help participants overcome drug abuse and related problems; and

WHEREAS, the use of civil citations and, where appropriate, the use of drug education or treatment programs for possession of 20 grams or less of cannabis provides a less severe penalty than provided under state law and will alleviate the time and cost burdens associated with arrests for misdemeanor cannabis possession,

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

Section 1. Chapter 119 of the Alachua County Code of Ordinances is hereby created to read as follows:

Chapter 119. POSSESSION OF TWENTY (20) GRAMS OR LESS OF CANNABIS

Sec. 119.01. – Applicability.

This Chapter shall be applicable within the unincorporated areas of Alachua County.

Sec 119.02. - Definitions.

For the purposes of this Chapter only, the following terms, phrases, words, and their derivations shall have the meanings given in this section:

- (a) “*Arrest*” means a physical arrest by a law enforcement officer or a Notice to Appear, which may result in criminal charges and a criminal record, if convicted.
- (b) “*Cannabis*” means all parts of any plant of the genus *Cannabis*, whether growing or not, or the seeds thereof. The term does not include “low-THC cannabis,” as defined in Section 381.986, Florida Statutes, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed in conformance with that section. “Cannabis” also does not include the resin extracted from the plants of the genus *Cannabis*, or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

- (c) "*Citation*" means a notice of violation of this Chapter, issued on a form approved by the County Manager, or designated representative, and approved as to legal sufficiency by the County Attorney.
- (d) "*Community Service*" means uncompensated labor for a not-for-profit corporation, community organization, charitable organization, public officer, the state or any political subdivision of the state, or any other body approved by the County Manager, or designated representative, the purpose of which is to improve the quality of life or social welfare of the community and which agrees to accept community service from persons.
- (e) "*Educational Program*" means a presentation of information about the risks and effects of substance abuse.
- (f) "*Screening*" means evaluation of a person who receives a citation under this Chapter, for the purpose of determining the person's need for drug treatment or intervention.
- (g) "*Treatment*" means a professional clinical intervention for the purpose of mitigating a substance abuse condition.

Sec. 119.03. – Civil Infraction, Possession of Cannabis.

It shall be a violation of this Chapter for any person, 18 years old or older, to be in actual or constructive possession of 20 grams or less of cannabis, provided that the violator is not arrested for any reason at the time of the violation.

Sec. 119.04 - Enforcement.

- (a) Any law enforcement officer in a jurisdiction in which this Chapter applies shall have the discretion to issue a civil citation for a violation of this Chapter, pursuant to Chapter 162, *Florida Statutes*, in lieu of arrest for misdemeanor marijuana possession, if the law enforcement officer has reasonable cause to believe that a person violated this Chapter.
 - (1) A violation of this Chapter shall be considered "irreparable or irreversible" within the meaning of Chapter 162, *Florida Statutes*, such that a citation may be issued immediately to any person found in violation by the law enforcement officer.
 - (2) For the purposes of this Chapter only, only law enforcement officers shall be deemed "code enforcement officers" within the meaning of Section 162.21, *Florida Statutes*, as amended.
 - (3) Civil citations issued under this Chapter shall contain all information required by Chapter 162, *Florida Statutes*, as amended.

- (b) No citation shall be issued for a violation of this Chapter if the recipient, in connection with a previous citation issued under this Chapter, has failed to pay the required penalty, perform the required community service, or challenge the previously issued citation in county court pursuant to Section 119.08 of this Chapter.
- (c) No person may receive more than three civil citations pursuant to this Chapter. To be eligible to receive a third civil citation, the recipient must consent to satisfy the requirements of Section 119.05 of this Chapter.

Sec. 119.05 – Drug Screening, Education, and Treatment.

- (a) To be eligible to receive a civil citation for a third violation of this Chapter, the recipient must consent to participate in a drug screening. If the recipient passes the screening, then no further treatment or education is required and the recipient shall only be required to satisfy the original penalty, as specified in Section 119.06 of this Chapter. If the recipient fails the screening, the recipient must satisfy the original citation, through monetary payment, community service, or a combination of both, and pay for and complete treatment and educational programs, as provided for in this Section.
 - (1) The County Manager shall designate a person, persons, agency, organization, or entity with appropriate knowledge of the field of substance abuse to conduct drug screenings required under this Chapter in a manner consistent with standards of that field.
 - (2) The violator may only receive treatment, as required by this Section, from a person, persons, agency, organization, or entity that has been approved by the County Manager, or designated representative.
 - (3) The County Manager shall designate a person, persons, agency, organization, or entity with appropriate knowledge of the field of substance abuse to select, prepare, or implement an Educational Program in a manner consistent with standards of that field.
 - (4) The County Manager, or designated representative, shall set the cost of participation in the screening, education programs, and treatment.
- (b) Any person who withdraws consent to participate in a screening or treatment or an educational program, or who fails to comply with the terms of a citation issued under this Chapter within a reasonable period of time, as set by the County Manager and stated in

the citation, shall be reported to the law enforcement agency that issued the citation for further action.

Sec. 119.06 – Penalties

- (a) Violation of this Chapter is a civil infraction, subject to the following penalties:
 - (1) For the first violation of this Chapter, the violator shall pay \$100.00 or complete eight hours of community service.
 - (2) For the second violation of this Chapter, the violator shall pay \$150.00 or complete 12 hours of community service.
 - (3) For the third violation of this Chapter, the violator shall pay \$200.00, or complete 16 hours of community service, and satisfy the requirements of Section 119.05 of this Chapter.
 - (4) A combination of monetary payment and community service, credited at \$12.50 per hour, may be used to satisfy the penalties imposed under this Section.
- (b) The recipient of a civil citation issued under this Chapter shall pay the fine, or complete the required community service, within 30 calendar days from the date the citation was received.
- (c) The Clerk of Court shall accept designated fines and issue receipts and accept proof of satisfactory completion of community service.
- (d) In addition to the civil fines assessed under this Section, a person violating any provision of this Chapter shall pay filing fees, costs, and an additional \$10.00 administrative surcharge. The surcharge shall be used by the County to defray costs of enforcement of this Chapter. Upon collection of the surcharge, the Clerk is directed to disperse the \$10.00 surcharge to the County Manager to defray the costs of enforcement of this Chapter and shall disperse all other amounts as provided by law.
- (e) Any person who receives a citation for a violation under this Chapter, but fails to pay the citation, or perform community service, within 30 calendar days after receipt may be reported to the law enforcement agency that issued the citation for further action.
- (f) If the person receiving the civil citation fails to pay the citation, or perform the required hours of community service, a default judgment may be entered up to the maximum civil penalty of \$500.00, plus court costs.

Sec. 119.07 - Seizure and destruction of contraband Cannabis.

- (a) Any contraband cannabis that is the subject of a violation of this Chapter shall be seized for evidentiary use.
- (b) Contraband cannabis seized pursuant to this section, after its use as evidence is no longer required, shall be destroyed in the same manner used to destroy narcotics, as provided by law.

Sec. 119.08 –Contesting the Citation.

- (a) The County Court shall have jurisdiction over all violations of this Article.
- (b) To contest a civil citation issued under this Chapter, the recipient must appear at the Office of the Clerk of Court within 7 calendar days of receiving the citation in order to receive a hearing date.
- (c) After a hearing, if the Court finds that a violation of this Chapter has occurred, fines of up to \$500.00, plus court costs, may be imposed by the Court.

Section 2. Repealing Clause. All ordinances or portions thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 3. Modification. It is the intent of the Board of County Commissioners that the provisions of this ordinance may be modified as a result of considerations that may arise during public hearings. Such modifications shall be incorporated into the final version of the ordinance adopted by the Board and filed by the Clerk to the Board.

Section 4. Severability. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application hereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provisions or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

Section 5. Inclusion in the Code. It is the intent of the Board of County Commissioners of Alachua County, Florida, and it is hereby provided that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Alachua County, Florida; that the section of this ordinance may be renumbered or re-lettered to accomplish such intent and that the word “ordinance” may be changed to “section”, “article”, or other appropriate designation.

Section 6. Effective Date. This Ordinance shall take effect on the tenth (10th) day following its adoption.

DULY ADOPTED in regular session, this ___ day of _____, 2016.

BOARD OF COUNTY COMMISSIONERS OF
ALACHUA COUNTY, FLORIDA

ATTEST:

BY: _____
Robert Hutchinson, Chair

J.K Irby, Clerk

APPROVED AS TO FORM

County Attorney

(SEAL)

DRAFT