

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 42 OF THE CODE OF ORDINANCES, ENTITLED "MISCELLANEOUS OFFENSES" BY AMENDING SECTION 42-1, TO PROVIDE FOR CIVIL PENALTIES FOR THE POSSESSION OF CANNABIS (MARIJUANA) FOR AMOUNTS UNDER 20 GRAMS AND POSSESSSION OF DRUG PARAPHERNALIA; SETTING FORTH PENALTIES AND ENFORCEMENT RESPONSIBILITIES FOR A VIOLATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Key West City Charter grants the Mayor and City Commission with home rule power to enact an ordinance that does not conflict with State law; and

WHEREAS, the City has adopted Section 42-1, which presently specified that it "shall be unlawful for any person to commit, within the city limits, any act which is or shall be recognized by the laws of the state as an offense."

WHEREAS, a person convicted for commission of an act defined as a misdemeanor pursuant to current section 42-1 will be punished by a fine or imprisonment or both, but in no case shall the fine and/or imprisonment imposed be greater than the maximum fine or penalty for the same offense under the Florida Statutes; and

WHEREAS, several states and municipalities have modified their drug laws to create civil violations for possession of de

minimis amounts of marijuana, which is only enforceable by a monetary fine and does not subject that person to arrest or criminal prosecution; and

WHEREAS, this ordinance will provide an alternative and additional mechanism under the City's Code to enforce these violations that are based upon the commission of certain enumerated misdemeanors; and

WHEREAS, the Mayor and the City Commission have an interest in enacting monetary civil penalties for certain violations of section 42-1(b), which civil penalties will act as an additional deterrent to such violations when encountering by the Key West Police Department Officers for a misdemeanant who has committed the offense of possession of 20 grams or less of marijuana or paraphernalia; and

WHEREAS, the Key West Police Department shall have the discretion to issue a civil citation pursuant to this ordinance, or arrest or not arrest a person for the commission of a misdemeanor under State Law;

WHEREAS, the amendment of section 42-1 to the Code of Ordinances will promote the welfare of the citizens and visitors of the City of Key West.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 42-1 is hereby amended to the Code of Ordinances follows*:

Sec. 42-1. Offenses under state law.

~~It shall be unlawful for any person to commit, within the city limits, any act which is or shall be recognized by the laws of the state as an offense.~~

(a) It shall be unlawful for any person to commit within the city any act that is or shall be recognized by the laws of the state as a misdemeanor, and the commission of such acts is hereby forbidden.

(b) Whoever shall violate the provisions of this section, upon conviction thereof, shall be punished by the same penalty as is provided by the laws of the State.

(c) Notwithstanding subsection (a), the following misdemeanors under State law are eligible to receive a civil violation notice, at the discretion of a law enforcement officer, provided that such violations are not charged in conjunction with any charge that is a felony, driving under the influence, incident involving domestic violence, or violent crime, as those terms are defined under State law;

(1) Possession of Cannabis in an amount of 20 grams or less, as set forth in section 893.13(6) (b) of the Florida Statutes, as such may be amended from time to time; and/or

(2) Possession of Drug Paraphernalia, as set forth in Section 893.146 and 893.147(1) (b) of the Florida Statutes, as such may be amended from time to time, which is associated with the use of cannabis

An individual issued a civil violation notice for a violation of subsection (c) (1) or (2) will be subject to the fine set forth herein.

(3) Penalties and enforcement.

(a) A person violating subsection (c) (1) or (2) shall receive a civil fine of \$100.00.

(b) Enforcement. The Key West Police Department shall enforce this section. This shall not preclude other law enforcement agencies from any action to assure compliance with this section and all applicable laws. If a police officer finds a violation of (c) (1) or (C) (2), the police officer will be authorized to issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying

the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violations, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

(c) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals form decisions of the special master.

a. A violator who has been served with a notice of violation must elect to either:

i. pay the civil fine in the manner indicated on the notice of violation; or

ii. request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violations.

b. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in section 30-72 and 30-73 of this Code. Applications for hearings much be accompanied by a fee as approved by a resolution

of the city commission, which shall be refunded if the named violator prevails in the appeal.

c. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the police officer. The failure of the named violator to appeal the decision of the police officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.

d. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgement by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgement except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.

e. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

f. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.

g. The special master shall not have discretion to alter the penalties described herein.

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

*(Coding: Added language for first reading is underlined; deleted language is ~~struck through~~. Language added during first reading is double underlined)

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 18 day of August, 2015.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2015.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2015.

Filed with the Clerk _____, 2015.

Mayor Craig Cates	_____
Vice Mayor Mark Rossi	_____
Commissioner Teri Johnston	_____
Commissioner Clayton Lopez	_____
Commissioner Billy Wardlow	_____
Commissioner Jimmy Weekley	_____
Commissioner Tony Yaniz	_____

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK