



County Attorney's Office
2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

TO: Frank Abbate, County Manager

THRU: Morris Richardson, County Attorney 

FROM: Greg Hughes, Assistant County Attorney 

SUBJ: Citizen Efficiency and Effectiveness Recommendation (CEER) #2024020

DATE: 04/01/2024

CEER #2024020 was submitted to Brevard County by Robert Klimkowski of Launchpad Solutions, LLC.

Citizen Statement:

Cannabis criminalized in Brevard, takes up jail space that should be reserved for violent crimes, cost taxpayers' money to house offenders at county jail @ roughly \$150 /day. BCSO has an internal policy that is similar just would align and codify.

Citizen Recommendation:

Motion 2024-xx – Motion to Endorse Resolution 2024-xx in support of Ordinance 2024-xx, making misdemeanor possession of cannabis or drug paraphernalia a violation of county code, with option for civil fine instead of incarceration. [See Mr. Klimkowski's proposed Cannabis Resolution 2024-XX W_Supp attached].

Staff Analysis:

The applicable state statute pertaining to possession of cannabis is section 893.13(6)(b), Florida Statutes, which provides that "[I]f the offense is the possession of 20 grams or less of cannabis, as defined in this chapter, the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083." The statutory penalties include up to one (1) year in prison and/or a fine of up to \$1,000.¹

The applicable state statute pertaining to possession of cannabis paraphernalia is section 893.147(1)(b), Florida Statutes, which provides that "[I]t is unlawful for any person to use, or to possess with intent to use, drug paraphernalia: ... [T]o inject, ingest, inhale, or otherwise

introduce into the human body a controlled substance in violation of this chapter. Any person who violates this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.” Again, the statutory penalties include up to one (1) year in prison and/or a fine of up to \$1,000.

While local governments are not able to “decriminalize” the possession of cannabis, because possession of cannabis is currently prohibited under state law, there is some existing authority for local governments to pass ordinances that provide for an optional civil citation in lieu of arrest and prosecution for a criminal offense. The relevant case law that considered this issue specifically dealt with Chapter 893, and the court held that “[A] local ordinance does not conflict with a state statute merely because it provides for a less severe penalty.”² The state has not expressly preempted this area of the law concerning penalties for violations involving possession of small quantities of cannabis. Several local jurisdictions in Florida have already enacted ordinances that address possession of cannabis in small quantities or possession of cannabis paraphernalia by making a civil citation an optional penalty for law enforcement.³

Notwithstanding that it is legally possible to pass an ordinance such as that proposed in CEER #2024020, it is understood that there are various political, economic, and other policy considerations that relate to this question. However, such policy considerations are not within the purview of this memorandum.

Recommended Action:

It is recommended that the Board of County Commissioners reject CEER #2024020 as the possession of cannabis and cannabis paraphernalia is addressed by state law.

¹ See, Fla. Stat. § 775.082(4)(a) [A person who has been convicted of a designated misdemeanor may be sentenced as follows: (a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year;], and

Fla. Stat. § 775.083(1)(d) [Fines for designated crimes and for noncriminal violations shall not exceed: (d) \$1,000, when the conviction is of a misdemeanor of the first degree.].

² *Edwards v. State*, 422 So.2d 84 (Fla. 2d DCA 1982).

³ For example, Alachua County (2016), Broward County (2015), City of Cocoa Beach (2019), City of Key West (2015), City of Miami Beach (2015), Miami-Dade County (2015), City of Orlando (2016), Osceola County (2016), Palm Beach County (2015), City of Port Richey (2016), City of Sarasota (2019), City of Tampa (2016), Volusia County (2016), and the City of West Palm Beach (2015).

Mover-Robert Klimkowski Jr

Motion 2024-xx – Motion to Endorse Resolution 2024-xx in support of Ordinance 2024-xx, making misdemeanor possession of cannabis or drug paraphernalia a violation of county code.

Resolution 2024-xx

Whereas, A community will only allow a crime to rise to the level it will tolerate,

Whereas, A majority of that community no longer sees Cannabis usage as a crime.

Whereas, 7 other counties in Florida and several other cities have passed similar text.

Whereas, allocation of earmarked resources to violent crimes have proven to be a better use of taxpayers funds.

Whereas, based on evidence from our neighboring counties and cities, caging people for a plant does not make people safer.

Whereas, Brevard County should join the growing number of Florida counties and cities that recognize the individual liberties of their constituents, meaning that the constitution is “we the people”, of Brevard’s internal policy on cannabis.

THEREFORE, BE IT RESOLVED that as of ____ Brevard County, Florida supports Ordinance 2024-xx, which amends county ordinance making misdemeanor possession of cannabis or drug paraphernalia a violation of county code.

Ordinance 2022-10

AN ORDINANCE OF BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE COUNTY OF BREVARD BY AMENDING CHAPTER 74 OFFENSES AND MISCELLANEOUS PROVISIONS BY CREATING SECTION 74-9 TO PROHIBIT POSSESSION OF CANNABIS AND DRUG PARAPHERNALIA IN UNINCORPORATED COUNTY; PROVIDING FOR SEVERABILITY; BY PROVIDING FOR CONFLICTING ORDINANCES; AUTHORIZING INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AS FOLLOWS:

SECTION I: Chapter 74 of the Code of Ordinances, County of Brevard is amended to read as follows:

Section 74-9. Possession of Cannabis and Drug Paraphernalia.

{a) Prohibitions. It shall be unlawful for any person to possess 20 grams or less of cannabis as defined in F.S §893.02(3). or its successor. or drug paraphernalia as defined in F.S.. §893.145, or its successor.

(b) Jurisdiction. This section shall be applicable only within the unincorporated areas of the county.

(c) Penalty. Violations of this section are punishable as provided in section 1-7- as provided solely in Section 1(c) of this ordinance which is penalized as follows; A person convicted of a violation of this Code shall be punished by a fine up to and not to exceed \$50.00.

SECTION II: AUTHORIZING INCLUSION IN CODE - The provisions of this ordinance shall be included and incorporated into the Code of Ordinances of the County of Brevard, as additions or amendments thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the code.

SECTION III: SEVERABILITY - Should any word, phrase, sentence, subsection or section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word, phrase, sentence, subsection or section so held shall be severed from this ordinance and all other words, phrases, sentences, subsections, or sections shall remain in full force and effect.

SECTION IV: CONFLICTING ORDINANCES - All ordinances, or part thereof, in conflict herewith are, to the extent of such conflict, repealed.

SECTION V: EFFECTIVE DATE-This Ordinance shall take effect xx __, 2024.

AS APPROVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY,
FLORIDA, THIS DAY OF __A.D.____, 2024.

*Supplemental information

Please see attached Section 1-7

Sec. 1-7. General penalty; continuing violations.

(a) In this section "violation of this Code" means:

(1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.

(2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.

(3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

(b) In this section "violation of this Code" does not include the failure of a county officer or county employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section.

(c) Except as otherwise provided by law or ordinance, a person convicted of a violation of this Code shall be punished by a fine not to exceed \$500.00 or by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment. With respect to violations of this Code that are continuous with respect to time, each day the violation continues is a separate offense.

(d) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise, the imposition of civil fines or other administrative actions, including action pursuant to F.S. ch. 162.

(e) The board of county commissioners is authorized and empowered to institute legal proceedings in the circuit court of the county for the purpose of obtaining injunctive relief and such other relief as may be proper under the law against violators of this Code. The imposition of a penalty does not prevent equitable relief.

State law reference(s)—Penalty for violation of county ordinances, F.S. § 125.69.

Recommendation Details

Contact Information

Full Name:	Robert klimkowski	Email Address:	Rklimjr92@gmail.com
Mailing Address:	329 RHEINE RD NW PALM BAY fl 32907	Alt Email Address:	Rklimjr92@gmail.com
		Phone Number	321-468-7128

Group/Organization
Launchpad Solutions LLC

Recommendation Information

Recommendation Title: Cannabis Resolution 2024-XX
Areas Affected: Community Involvement & Government Oversight

Department:
BOARD OF COUNTY COMMISSIONERS

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Problem Description:

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Recommendation Description

Attachments

No. Type Name

1		Cannabis Resolution 2024-XX W_ Supp.pdf
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Administrative Action

Evaluation

Recommendation Timeline

User	Status	Date	Remarks
CEER WebUser	Citizen Submitted	Dec 17, 2023	
Karen Conde	Department	Dec 20, 2023	COUNTY ATTORNEY Assigned

Mover-Robert Klimkowski Jr

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(b) In this section "violation of this Code" does not include the failure of a county officer or county employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section.

(c) Except as otherwise provided by law or ordinance, a person convicted of a violation of this Code shall be punished by a fine not to exceed \$500.00 or by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment. With respect to violations of this Code that are continuous with respect to time, each day the violation continues is a separate offense.

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