

MEMORANDUM

Substitute
Special Item No. 7

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: July 16, 2020

FROM: Abigail Price-Williams
County Attorney

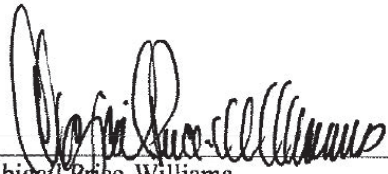
SUBJECT: Ordinance relating to civil penalties; amending section 28-81 of the Code; making violations of emergency orders eligible for enforcement through civil violation notices; amending section 8CC-5.1; providing for eligibility for civil diversion; amending section 8CC-10; providing schedule of civil penalties; amending section 8B-12; providing for alternative penalties for violation of emergency management orders; amending section 1-5; clarifying that injunctive relief may be sought notwithstanding any other penalties

This substitute item differs from the original item in that it:

1. Adds section 21-81(d)(9), providing for civil violation notices to be issued to commercial establishments who violate emergency orders or rules;
2. Clarifies section 21-81(d)(8) to apply to individuals who violate emergency orders or rules;
3. Specifies that sections 21-81(d)(8) and 21-81(d)(9) are enforceable by code inspectors, as that term is defined in chapter 8CC of the Code;
4. Amends section 8CC-10 of the Code to add a civil penalty for section 21-81(d)(9); and
5. Makes technical changes.

Rule 5.06(i) of the Board's Rules of Procedure provides that differences between an original item and a substitute item should be uniquely identified in the substitute by double underlining and double strike-through, or where such approach would not clearly show the difference or are not practical, by providing footnotes or comments on the item. Based on Rule 5.06(i), the preceding comprehensive description of the differences between the original item and substitute is provided in lieu of double underlining and double strike through.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.


Abigail Price-Williams
County Attorney

APW/cp

Memorandum



Date: July 16, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in blue ink, appearing to read "Carlos A. Gimenez". The signature is fluid and cursive, with a prominent initial "C".

Subject: Fiscal Impact Statement for Ordinance Relating to Civil Penalties; Making Violations of
Emergency Orders Eligible for Enforcement Through Civil Violation Notices

The implementation of this ordinance expands the Miami-Dade County's civil citation program, allowing civil violation notices to be issued when enforcing state and local emergency orders. Although a significant reduction in arrests and incarcerations is not expected specific to emergency order enforcement, a positive fiscal impact is anticipated but is undeterminable at this time as revenues are based on the number of civil citations issued.

A handwritten signature in blue ink, appearing to read "M. Kemp". The signature is cursive and stylized, with a large "M" and "K".

Maurice L. Kemp
Deputy Mayor

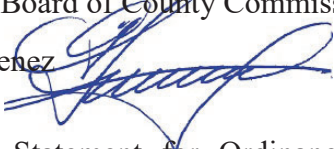
FIS05920

Memorandum



Date: July 16, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez 
Mayor

Subject: Social Equity Statement for Ordinance Making Violations of Emergency Orders
Eligible for Enforcement Through Civil Violation Notices

The proposed ordinance seeks to expand the civil citation program to provide that violations of state and local emergency orders be subject to civil enforcement proceedings as set forth in Chapter 8CC of the County Code.

This proposed ordinance will ensure high levels of compliance with emergency orders that aim to keep our community safe, particularly during the COVID-19 pandemic, and will provide a just and fair alternative to arrest when enforcing violations of emergency orders under State law and County Code.

A handwritten signature in blue ink, appearing to read "M. Kemp".

Maurice L. Kemp
Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: July 16, 2020

FROM: Abigail Price-Williams
County Attorney

Substitute
SUBJECT: Special Item No. 7

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Substitute
Special Item No. 7
7-16-20

ORDINANCE NO. _____

ORDINANCE RELATING TO CIVIL PENALTIES; AMENDING SECTION 21-81 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; MAKING VIOLATIONS OF EMERGENCY ORDERS ELIGIBLE FOR ENFORCEMENT THROUGH CIVIL VIOLATION NOTICES; AMENDING SECTION 8CC-5.1; PROVIDING FOR ELIGIBILITY FOR CIVIL DIVERSION; AMENDING SECTION 8CC-10; PROVIDING SCHEDULE OF CIVIL PENALTIES; AMENDING SECTION 8B-12; PROVIDING FOR ALTERNATIVE PENALTIES FOR VIOLATION OF EMERGENCY MANAGEMENT ORDERS; AMENDING SECTION 1-5; CLARIFYING THAT INJUNCTIVE RELIEF MAY BE SOUGHT NOTWITHSTANDING ANY OTHER PENALTIES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, section 1-5 of the Code of Miami-Dade County (the “County Code”) provides multiple methods to enforce the County Code, all independent and cumulative, at the County’s discretion; and

WHEREAS, section 1-5 authorizes lawsuits for injunctions against violators, and allows for recovery of costs and attorney’s fees, and penalties assessed by a civil court judge; and

WHEREAS, section 1-5 also provides that any person who violates or fails to comply with the County Code shall be subject to fines not to exceed \$500, imprisonment in the county jail for a period not to exceed 60 days, or both, as pronounced by a criminal court judge after issuance of a citation by a law enforcement officer; and

WHEREAS, section 1-5 also provides for enforcement by law enforcement officers and code inspectors, through the issuance of civil violation notices (“civil citations”) subject to specified fines relating to the type of violation in accordance with chapter 8CC; and

WHEREAS, the issuance of civil citations pursuant to the civil penalty schedule provided in section 8CC-10 provides an additional avenue for enforcement of the County Code and law enforcement officers greater flexibility in responding to and addressing violations of the County Code, as well as allowing persons to be held responsible for violations without burdening them with criminal records for less serious offenses and allowing commercial establishments to be held responsible for violations without the need to close such establishments or enjoin their operations; and

WHEREAS, section 8CC-10 enumerates civil penalties for sections of the County Code which may be enforced pursuant to the provisions of chapter 8CC through the issuance of civil citations (“civil citation program”); and

WHEREAS, section 21-81(d) enumerates certain criminal misdemeanor violations that are eligible to receive civil citations as an alternative to criminal sanctions; and

WHEREAS, section 252.50, Florida Statutes, relates to state and local emergency orders, and provides that any person violating any provision of, or any rule or order made pursuant to, sections 252.31 through 252.90, Florida Statutes, is guilty of a misdemeanor of the second degree; and

WHEREAS, this Board desires to expand the civil citation program and provide that violations of state and local emergency orders may be subject to civil enforcement proceedings as set forth in chapter 8CC in order to provide authorized officers, including police officers and code inspectors, with an additional option for addressing violations by individuals and by commercial establishments; and

WHEREAS, this Board further wishes to expand the Miami-Dade County Diversion Program, as provided for in section 8CC-5.1 and Implementing Order 2-12, to allow violators of emergency orders who have received civil citations, where those violators are individual persons,

to satisfy those civil penalties through alternative means, including community service in lieu of any payment,

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
MIAMI-DADE COUNTY, FLORIDA:**

Section 1. Section 21-81 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 21-81. Misdemeanor; adoption of State law; penalties.

* * *

(d) The following misdemeanor violations, as such may be amended from time ~~>>~~to time<<, are eligible to receive a civil violation notice pursuant to chapter 8CC of the Code of Miami-Dade County, Florida, 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 (DUI), incident involving domestic violence, or violent crime, as those terms are defined under State law:

* * *

>>(8) Violations of any provision of, or any rule or order made pursuant to, sections 252.31 through and including 252.90, Florida Statutes, as such may be amended from time to time, including, but not limited to, any emergency order or other rule or order issued pursuant to chapter 8B of the Code, where the violator is an individual. This section is enforceable by code inspectors, as defined in chapter 8CC of the Code.

(9) Violations of any provision of, or any rule or order made pursuant to, sections 252.31 through and including 252.90, Florida Statutes, as such may be

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

amended from time to time, including, but not limited to, any emergency order or other rule or order issued pursuant to chapter 8B of the Code, where the violator is a commercial establishment. This section is enforceable by code inspectors, as defined in chapter 8CC of the Code.<<

Section 2. Section 8CC-5.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 8CC-5.1. Miami-Dade County Diversion Program.

Notwithstanding the provisions of Section 8CC-5, a violator who has been served with a civil violation notice may enter the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners, provided the civil violation notice is issued for the violation of an ordinance listed in the table below, which may be amended from time to time.

The "descriptions of violations" below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, except to the extent that different types of violations of the same Code section may carry different civil penalties. To determine the exact nature of any activity proscribed or required by this Code, the relevant Code section must be examined.

Code Section	Description of Violation
* * *	
21-81(d)(7)	Possession of drug paraphernalia
>>21-81(d)(8)	<u>Violation of emergency order by individual violator<<</u>
21-118	Theft of plants and fruits and trespass

Section 3. Section 8CC-10 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 8CC-10. Schedule of Civil Penalties.

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

The “descriptions of violations” below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, except to the extent that different types of violations of the same Code section may carry different civil penalties. For each Code section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this Chapter 8CC, regardless of whether all activities proscribed or required within that particular section are described in the “Description of Violation” column. To determine the exact nature of any activity proscribed or required by this Code, the relevant Code section must be examined.

Code Section	Description of Violation	Civil Penalty
*	*	*
21-81(d)(7)	Possession of drug paraphernalia	100.00
>>21-81(d)(8)	<u>Violation of emergency order by individual violator</u>	<u>100.00</u>
<u>21-81(d)(9)</u>	<u>Violation of emergency order by commercial establishment violator</u>	<u>500.00</u> <<
21-112	Failure to properly fill abandoned well	100.00

Section 4. Section 8B-12 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 8B-12. - Penalties.

It is unlawful for anyone to fail or refuse to obey any such order issued by the Mayor >>or designee<<, >>or<< the Board, [~~the Manager, or the Director or their designee~~] pursuant to this chapter>>, and violators shall be subject to penalties provided in

~~section 1-5 and chapter 8CC of the Code<<. [[Anyone convicted of a violation of this section is punishable by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than one hundred and eighty (180) days, or both.]]~~

Section 5. Section 1-5 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 1-5. General penalty; compliance; civil liability; criminal liability; penalties.

* * *

(c) ~~[[Any]]~~ >>Notwithstanding any provision of the Code, any<< person who violates a provision of this Code or any lawful rule, regulation or written order promulgated under this Code is subject to injunction or other equitable relief to enforce compliance with or prohibit the violation of the Code. Further, such person is liable for any damage to Miami-Dade County caused by such violation, and for the reasonable costs and expenses incurred by Miami-Dade County in enforcing the provisions of this Code, including but not limited to the costs of enforcement inspections, preparation of enforcement reports, photographs, title searches, postage and other demonstrable administrative costs for enforcement and collection. All such sums shall become immediately due and payable upon expenditure by the County and shall become delinquent if not paid within thirty (30) days after receipt by the violator of a department's bill itemizing the enforcement costs incurred in enforcing the provisions of this Code (the "due date"). All such delinquent sums shall bear interest at the rate of twelve (12) percent per annum.

* * *

Section 6. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 7. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 8. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Anita Viciano Zapata

Prime Sponsor: Commissioner Sally A. Heyman

Handwritten signatures in black ink. The top signature appears to be 'APW' and the bottom signature appears to be 'AVZ'. Both signatures are written over horizontal lines.