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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 11(A)(29)

TO: Honorable Chairman Jean Monestime and Members, Board of County Commissioners

DATE: November 3, 2015

FROM: Abigail Price-Williams County Attorney

SUBJECT: Resolution amending Implementing Order 2-12 relating to the Miami-Dade County Diversion Program; revising offenses eligible for the Diversion Program to include sale, offer for sale, purchase with intent to sell or public display for sale of synthetic cannabinoid herbal incense and bath salts and other synthetic stimulants pursuant to sections 21-22 and 21-22.1 of the Code of Miami-Dade County, Florida; approves and adopts Implementing Order No. 2-12 as amended and authorizes the Mayor to execute Implementing Order No. 2-12 as amended

Resolution No. R-1019-15

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

Abigail Price-Williams
County Attorney

APW/lmp

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: November 3, 2015

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 11(A)(29)

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**

✓ **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 ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(29)
11-3-15

RESOLUTION NO. R-1019-15

RESOLUTION AMENDING IMPLEMENTING ORDER 2-12 RELATING TO THE MIAMI-DADE COUNTY DIVERSION PROGRAM; REVISING OFFENSES ELIGIBLE FOR THE DIVERSION PROGRAM TO INCLUDE SALE, OFFER FOR SALE, PURCHASE WITH INTENT TO SELL OR PUBLIC DISPLAY FOR SALE OF SYNTHETIC CANNABINOID HERBAL INCENSE AND BATH SALTS AND OTHER SYNTHETIC STIMULANTS PURSUANT TO SECTIONS 21-22 AND 21-22.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; APPROVES AND ADOPTS IMPLEMENTING ORDER NO. 2-12 AS AMENDED AND AUTHORIZES THE MAYOR OR THE MAYOR'S DESIGNEE TO EXECUTE IMPLEMENTING ORDER NO. 2-12 AS AMENDED

WHEREAS, on July 3, 2012, the Board enacted Ordinance No. 12-44, which created section 21-22 of the Code of Miami-Dade County to prohibit the sale, offer for sale, purchase with intent to sell or public display for sale of synthetic cannabinoid herbal incense; and

WHEREAS, also on July 3, 2012, the Board enacted Ordinance No. 12-45, which created section 21-22.1 of the Code of Miami-Dade County to prohibit the sale, offer for sale, purchase with intent to sell or public display for sale of prohibited synthetic stimulant bath salts, synthetic cathinones, synthetic amphetamines and other synthetic stimulants that mimic illegal drugs; and

WHEREAS, Ordinance No. 12-44 and Ordinance No. 12-45 impose penalties of (i) a fine not to exceed $500.00, (ii) imprisonment in the county jail for a period not to exceed 60 days, (iii) both a fine and imprisonment, (iv) fines in accordance with Chapter 8CC of the Code of Miami-Dade County, or (v) completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners; and

WHEREAS, Implementing Order 2-12 sets forth the guidelines and parameters of the Miami-Dade County Diversion Program, but currently does not include reference to sale, offer for sale, purchase with intent to sell or public display for sale of synthetic cannabinoid herbal incense and synthetic stimulant bath salts, synthetic cathinones, synthetic amphetamines and other synthetic stimulants that mimic illegal drugs as prohibited by sections 21-22 and 21-22.1 of the Code; and

WHEREAS, the Board desires to amend Implementing Order 2-12 to include synthetic cannabinoid herbal incense and stimulant bath salt and other synthetic stimulant violations of sections 21-22 and 21-22.1 of the Code as offenses eligible for the Miami-Dade County Diversion Program,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Incorporates and adopts the foregoing recitals as if fully set forth herein.

Section 2. Amends Implementing Order No. 2-12, to revise the offenses eligible for the Miami-Dade County Diversion Program to include sale, offer for sale, purchase with intent to sell or public display for sale of synthetic cannabinoid herbal incense and bath salts and other synthetic stimulants prohibited by sections 21-22 and 21-22.1 of the Code.

Section 3. Approves and adopts Implementing Order No. 2-12 as amended and authorizes the County Mayor or the County Mayor's designee to execute Implementing Order No. 2-12 as amended in substantially the form attached

The Prime Sponsor of the foregoing resolution is Commissioner Sally A. Heyman. It was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman **aye**
Esteban L. Bovo, Jr., Vice Chairman **nay**

Bruno A. Barreiro	**aye**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**nay**	Xavier L. Suarez	**aye**
Juan C. Zapata	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of November, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: *Christopher Agrippa*
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. JMM

Jess M. McCarty

Implementing Order

Implementing Order No.: 2-12

Title: MIAMI-DADE COUNTY DIVERSION PROGRAM

Ordered: [~~06-30-15~~] >>[_____]<<[1] **Effective:** [~~07-10-15~~] >>[_____]<<

AUTHORITY:
Section 1.01, 2.02 and 5.03(D) of the Miami-Dade County Home Rule Amendment and Charter.

SUPERSEDES:
This Implementing Order (I.O.) supersedes previous I.O. 2-12, ordered [~~May 5, 2015, and effective May 15, 2015~~] >>June 30, 2015, and effective July 10, 2015.<<

POLICY:
On June 20, 2009, the Board of County Commissioners (Board) passed Resolution R-868-09 directing the Mayor or designee to study whether cost savings can be achieved through de-criminalizing selected Miami-Dade County ordinance violations. The resulting Diversion Program is based on findings included in the report requested by the Board. In 2015 the Board amended 8CC-10 to make additional misdemeanor offenses eligible for civil penalties and has amended 8CC-5.1 to make those additional offenses eligible for the Diversion Program. This amendment to 8CC-10 does not decriminalize these misdemeanors, but instead provides law enforcement with another avenue of resolution.

PURPOSE:
To seek compliance with Miami-Dade County Code violations, improve the quality of life in Miami-Dade County through community service hours, reduce the demands on the criminal justice and civil administrative hearing systems, and give violators penalty options to resolve their ordinance violations.

SCOPE:
The Miami-Dade Police Department (MDPD) will implement and administer the Miami-Dade County Diversion Program (Diversion Program) as outlined in this Implementing Order (IO). The Diversion Program was established by County Ordinance.

ELIGIBILITY:
When a violator is arrested or given a Civil Violation Notice (8-CC) for one of the Miami-Dade County Code violations listed below, he/she is eligible and may elect to voluntarily participate in the Diversion Program:

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[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.

7-3	Swimming or fishing from prohibited roads or bridges
8A-172	Conducting business without a local business tax receipt
8A-276(b)	Failure to display commercial vehicle markings
>>21-22	Sale , offer for sale, purchase with intent to sell or public display for sale of synthetic cannabinoid herbal incense<<
>>21-22.1	Sale, offer for sale, purchase with intent to sell or public display for sale prohibited of synthetic stimulant bath salts, synthetic cathinones, synthetic amphetamines and other synthetic stimulants that mimic illegal drugs<<
21-28	Producing loud or excessive noise
21.31.2(b)(1)	Consumption of alcohol in open containers near store
21.31.2(b)(2)	Possession of alcohol in open containers near store
21.31.4(B)	Obstructing traffic or aggressively begging
21-81(d)	Any one of the specific misdemeanors enumerated in section 21-81(d)(1) through and including 21-81(d)(7)
21.287	Rafting
26-1	Park violations

This list of violations may be amended as appropriate to include additional Miami-Dade County Code violations eligible for the Diversion Program.

Violators can only participate in the Diversion Program a maximum of three times, regardless of the type of violation. Once the violator is no longer eligible, he/she must proceed with their case in the criminal or civil court systems.

PROCEDURE:

Civil Violations:

Presently, pursuant to Miami-Dade County Code Section 8CC-5, when someone is issued a Civil Violation Notice, he/she must either pay the civil penalty or request an administrative hearing within twenty (20) days from the date of the violation. The Diversion Program gives the violator further alternatives. If a violation is listed in the "Eligibility" section, the violator may elect to enter the Diversion Program and select from options including paying a fee, completing community service hours, or a combination thereof, instead of requesting an administrative hearing or paying a civil penalty.

Criminal Violations:

Pursuant to the Florida Rules of Criminal Procedure, when someone is arrested for an ordinance violation, he/she is entitled to a first appearance, arraignment and trial. Usually, the violator must wait until his/her case is set for arraignment, which can take from three to five weeks from the date of the arrest. Also, in some instances, the violator may qualify for a private diversion program; however, usually diversion programs are for first time offenders.

Anyone arrested or given a Notice to Appear for one of the Miami-Dade County Code violations listed above in the Eligibility section other than section 21-81(d) can voluntarily participate in

the Miami-Dade County Diversion program, regardless of his/her criminal past. Individuals that are criminally charged for violations enumerated in section 21-81(d) are not eligible for the Miami-Dade County Diversion program.

DIVERSION PROGRAM – VIOLATOR OPTIONS:

When an eligible civil or criminal violator registers for the Diversion Program he/she has the following options which must be completed within 30 days from the issuance of the violation notice:

For Civil Violations:

OPTION 1 (Processing fee and complete community hours)

1) Pay $50 processing fee; and

2) Complete one day of community service for every $100 civil fines owed. ($100 fine = 1 day; $200 fine = 2 days; $300 fine = 3 days, etc.) One day of community service = 8 hours.

OPTION 2 (Community Service in lieu of any payment)

1) For Civil fines of $100 - complete 2 days of community service;
For Civil fines of $200 - complete 3 days of community service;
For Civil fines of $300 - complete 4 days of community service;
For Civil fines of $400 - complete 5 days of community service;
For Civil fines of $500 - complete 6 days of community service;

Once all of the above conditions are satisfied, a Certificate of Completion will be sent to the Clerk of the Court (Clerk) advising that the violator has complied and requesting that the civil case be closed. If the conditions of the Diversion Program are not satisfied by the violator within thirty days of the violation, the Clerk will be notified and asked to proceed with the civil collection process pursuant to Miami-Dade County Code Section 8CC-7, *Recovery of unpaid civil penalties, etc.*

Regardless of whether Option 1 or Option 2 above are selected, anyone receiving a civil violation notice for a violation of >>21-22 for synthetic cannabinoid herbal incense, 21-22.1 for synthetic stimulants that mimic illegal drugs,<< 21-81(d)(6) for Possession of Cannabis or 21-81(d)(7) for Possession of Drug Paraphernalia >>, or any combination of these offenses,<< shall also be provided information concerning substance abuse assessment programs and substance abuse treatment programs. This information will be provided by the Diversion Program.

For Criminal Violators – for all violations EXCEPT 8A-276(b), Failure to Display Commercial Vehicle Markings, and any one of the specific misdemeanors enumerated in section 21-81(d)(1) through and including 21-81(d)(7):

OPTION 3 (Processing fee and complete community hours)

1) Pay a $50 processing fee; and

2) Complete one day of community service for the first time enrollment in the Diversion Program; two days of community service for the second enrollment; or three days of community service for the third enrollment.

OPTION 4 (Community Service in lieu of any payment)

1) Complete two days of community service for first time enrollment in the Diversion Program; three days of community service for the second enrollment; or four days of community service for the third enrollment.

OPTION 5 (No Community Service Hours)

1) Pay a $50 processing fee and a $100 community service fee ($150 total) for the first time enrollment in the Diversion Program; pay a $50 processing fee and a $200 community service fee ($250 total) for the second enrollment; or pay a $50 processing fee and a $300 community service fee ($350 total) for the third enrollment.

Options for violations of 8A-276(b), Failure to Display Commercial Vehicle Markings:

OPTION 6 (Processing fee and complete community hours)

1) Pay a $50 processing fee; and

2) Complete two days of community service for first time enrollment; three days of community service for the second enrollment; or four days of community service for the third enrollment in the Diversion Program; and

2) Unless the vehicle has been sold, or another documented reason is provided, the violator must also ensure that affixed to the vehicle (that was driven at the time of arrest) is signage permanently marked on both sides in letters and numerals not less than three inches in height, with the name, address and telephone number of the owner thereof. Additionally, ensure that the numbers of all occupational and business licenses issued to the owner are similarly displayed. Upon correction of the violation, the vehicle or a photograph thereof shall be brought to the staff of the Diversion Program.

OPTION 7 (Community Service in lieu of any payment)

1) Complete three days of community service for the first time enrollment; four days of community service for the second enrollment; or five days of community service for the third enrollment in the Diversion Program; and

2) Unless the vehicle has been sold, or another documented reason is provided, the violator must also ensure that affixed to the vehicle (that was driven at the time of arrest) is signage permanently marked on both sides in letters and numerals not less than three inches in height, with the name, address and telephone number of the owner thereof. Additionally, ensure that the numbers of all occupational and business licenses issued to the owner are similarly displayed. Upon correction of the violation, the vehicle or a photograph thereof shall be brought to the staff of the Diversion Program.

OPTION 8 (No Community Service Hours)

1) Pay a $50 processing fee and a $200 community service fee ($250 total) for the first time enrollment; pay a $50 processing fee and a $300 community service fee ($350 total) for the second enrollment; or pay a $50 processing fee and a $400 community service fee ($450 total) for the third enrollment; and

2) Unless the vehicle has been sold, or another documented reason is provided, the violator must also ensure that affixed to the vehicle (that was driven at the time of arrest) is signage permanently marked on both sides in letters and numerals not less than three inches in height, with the name, address and telephone number of the owner thereof. Additionally, ensure that the numbers of all occupational and business licenses issued to the owner are similarly displayed. Upon correction of the violation, the vehicle or a photograph thereof shall be brought to the staff of the Diversion Program.

For eligible criminal violations, once all of the above conditions are satisfied, a Certificate of Completion will be sent to the Miami-Dade Office of the State Attorney, County Court Division, for approval. The Certificate and the Arrest Form will then be given to the Clerk who will open and close the case in the Criminal Justice Information System (CIJIS) as a "Nolle Pros – PTD," or use any other entry that the Clerk deems appropriate. If the conditions of the Diversion Program are not satisfied by the violator within thirty days of the violation, the Arrest Form will be forwarded to the Clerk, who will be asked to proceed as quickly as possible with the arrest charges as outlined in the Florida Rules of Criminal Procedure.

ADDITIONAL REQUIREMENTS FOR BOTH 8-CC AND CRIMINAL VIOLATIONS OF 8A-172

If the violator has been charged with violating Section 8A-172, *Conducting business without a local business tax receipt,* the violator must also obtain a business license from the Miami-Dade

County Local Business Tax Section and present the license or receipt to the staff at the Diversion Program, unless the violator provides written documentation to the contrary.

REGISTRATION BY MAIL

Eligible criminal violators have the option of performing community service hours or converting their hours into a monetary amount. If the violator chooses to pay a fee in lieu of completing community service hours, the conditions of the Diversion Program can be completed by registering by mail and submitting payment via a money-order payable to the Miami-Dade County Diversion Program. The police case number and the date of arrest should be noted on the money-order. To complete the conditions of the program by mail, the violator shall:

1) Complete and sign the registration form; and

2) Send a money-order for the amount owed:

3) Send the form and money-order with the amount owed to the Miami-Dade Police Department address indicated on the Diversion Program reference Materials and website.

*If the violator was cited for 8A-276(b), *Failure to display commercial vehicle markings*, please refer to the *Criminal Violation* section listed above for the appropriate amortization amounts. In addition, for 8A-276(b), the violator must also submit a clear photograph, or a copy thereof, illustrating that the vehicle that was cited is presently in code compliance or provide written documentation explaining why the vehicle has not been brought into compliance.

NOTE: If the violator was cited for a violation of 8A-172, *Conducting Business Without a Local Business Tax Receipt*, a copy of the business license or receipt thereof or written documentation explaining why the license has not been obtained must also be mailed together with the registration form and money-order.

Upon review of the submission as required above, the Diversion Program reserves the right to reject incomplete or noncompliant registrations.

HARDSHIPS

Upon written request, a Diversion Program supervisor may waive conditions or grant violators additional time to complete the conditions of the program on an individual basis. A hardship may be granted for several reasons such as, but not limited to, unforeseen emergencies, inclement weather, staffing, etc.

OTHER POLICE AGENCIES

MDPD will be the lead law enforcement agency referring violators to the Diversion Program. However, other police departments may wish to send violators whom they cite or arrest for county ordinance violations to the Diversion Program as well. Eligibility for violations of section 21-81(d)(1) through and including 21-81(d)(7) are outlined within section 21-81(d). For other eligible violations, such other police departments and/or municipalities and/or government

entities must enter into agreements with Miami-Dade County outlining the terms and conditions that must be met for violators referred from their police agency.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County

County Mayor

Approved by the County Attorney as
to form and legal sufficiency _____