

MEMORANDUM

Agenda Item No. 5(A)

TO: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

DATE: (Public Hearing 6-15-21)
June 2, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to civil
penalties; amending section 21-
81 of the Code; making certain
misdemeanor violations 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

Ordinance No. 21-48

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



Geri Bonzon-Keenan
County Attorney

GBK/uw



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: June 15, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 5(A)

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 _____

Agenda Item No. 5(A)
6-15-21

ORDINANCE NO. 21-48

ORDINANCE RELATING TO CIVIL PENALTIES; AMENDING SECTION 21-81 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; MAKING CERTAIN MISDEMEANOR VIOLATIONS 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; 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 that any person who violates or fails to comply with the County Code shall, in addition to all other enforcement measures authorized in the County Code or by other applicable law—including fines not to exceed \$500.00, imprisonment in the county jail for a period not to exceed 60 days, or both—be subject to fines in accordance with chapter 8CC of the County Code; 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

WHEREAS, section 8CC-10 of the County Code 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) of the County Code enumerates certain criminal misdemeanor violations that are eligible to receive civil citations as an alternative to criminal sanctions; and

WHEREAS, this Board desires to expand the civil citation program and provide that certain additional misdemeanor violations under Florida law may be subject to civil enforcement proceedings as set forth in chapter 8CC in order to provide authorized officers with an additional option for addressing violations by individuals, including:

- Chapter 538, Florida Statutes, which regulates Secondhand Dealers and Secondary Metals Recyclers, and provides that, except where otherwise provided therein, a person who knowingly violates any provision of the chapter commits a misdemeanor of the first degree;
- Section 539.001, Florida Statutes, which establishes the Florida Pawnbroking Act, and provides that any person who willfully violates this section or who willfully makes a false entry in any record specifically required by this section commits a misdemeanor of the first degree;
- Section 806.13, Florida Statutes, which defines the offense of criminal mischief, and in subsection 806.13(1)(b)1. provides that criminal mischief involving damage to property in an amount \$200.00 or less is a misdemeanor of the second degree, and

in subsection 806.13(1)(b)2. provides that criminal mischief involving damage to property in an amount greater than \$200.00 but less than \$1,000.00 is a misdemeanor of the first degree; and

- Section 812.014, Florida Statutes, which defines the crime of theft, and in subsection 812.014(3)(a) provides that theft of any property not specified in subsection 812.014(2) is petit theft of the second degree and a misdemeanor of the second degree and in subsection 812.014(2)(e) provides that, except as provided in subsection 812.014(2)(d), theft of property valued at \$100.00 or more but less than \$750.00 is petit theft of the first degree and a misdemeanor of the first degree; 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 individuals who have received civil citations for the above misdemeanor violations 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.

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.

* * *

- (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:

* * *

- >>(10) Misdemeanor violations of chapter 538, Florida Statutes, Secondhand Dealers and Secondary Metals Recyclers, as set forth in section 538.07(1), as such may be amended from time to time.
- (11) Misdemeanor violations of section 539.001, Florida Statutes, the Florida Pawnbroking Act, as set forth in subsection 539.001(17)(b), as such may be amended from time to time.
- (12) Criminal mischief involving property damage that is \$200.00 or less, as set forth in subsection 806.13(1)(b)1., Florida Statutes, as such may be amended from time to time.
- (13) Criminal mischief involving property damage that is greater than \$200.00 but less than \$1,000.00, as set forth in subsection 806.13(1)(b)2., Florida Statutes, as such may be amended from time to time.
- (14) Petit theft of the second degree, as set forth in subsection 812.014(3)(a), Florida Statutes, as such may be amended from time to time.
- (15) Petit theft of the first degree, as set forth in subsection 812.014(2)(e), Florida Statutes, as such may be amended from time to time.<<

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)(8)	Violation of emergency order by individual violator
>>21-81(d)(10)	<u>Violation by Secondhand Dealers and Secondary Metals Recyclers</u>
<u>21-81(d)(11)</u>	<u>Violation of the Florida Pawnbroking Act</u>
<u>21-81(d)(12)</u>	<u>Criminal mischief for damage \$200.00 or less</u>
<u>21-81(d)(13)</u>	<u>Criminal mischief for damage greater than \$200.00 but less than \$1,000.00</u>
<u>21-81(d)(14)</u>	<u>Petit theft of the second degree</u>
<u>21-81(d)(15)</u>	<u>Petit theft of the first degree</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)(9)	Violation of emergency order by commercial establishment violator	500.00
>>21-81(d)(10)	<u>Violation by Secondhand Dealers and Secondary Metals Recyclers</u>	<u>500.00</u>
<u>21-81(d)(11)</u>	<u>Violation of the Florida Pawnbroking Act</u>	<u>500.00</u>
<u>21-81(d)(12)</u>	<u>Criminal mischief for damage \$200.00 or less</u>	<u>100.00</u>
<u>21-81(d)(13)</u>	<u>Criminal mischief for damage greater than</u>	<u>100.00</u>

	<u>\$200.00 but less than \$1,000.00</u>	
<u>21-81(d)(14)</u>	<u>Petit theft of the second degree</u>	<u>100.00</u>
<u>21-81(d)(15)</u>	<u>Petit theft of the first degree</u>	<u>100.00</u> <<
21-112	Failure to properly fill abandoned well	100.00

Section 4. 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 5. 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 6. 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:

June 15, 2021`

Approved by County Attorney as
to form and legal sufficiency:




Prepared by:

Anita Viciano Zapata

Prime Sponsor: Commissioner Sally A. Heyman