

“Keep Orlando a safe city by reducing crime and maintaining livable neighborhoods.”
ORLANDO POLICE DEPARTMENT POLICY AND PROCEDURE
1142.2, CANNABIS AND PARAPHERNALIA CIVIL CITATION PROGRAM

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CHIEF OF POLICE	ORLANDO ROLÓN

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PURPOSE:

The City's cannabis civil citation program, authorized by Orlando City Ordinance, Section 43.95, is an effort to make the punishment for simple misdemeanor possession of cannabis or paraphernalia more commensurate with the nature of the offense. This ordinance aims to balance the impact of the offense with the nature of the crime.

The cannabis and paraphernalia civil citation was created to permit officers and supervisors better use of patrol time, reduce officer downtime, and ease the burden of overcrowded jails and crowded court dockets in Orange County.

This program is for adult offenders who meet certain qualifying criteria. Doubt or uncertainty as to whether a particular offender meets the criteria should be resolved in favor of applying this program in lieu of arrest. Officer safety remains paramount. Officers will continue to safely and reasonably control scenes and subjects during the investigation of cannabis cases, even when the investigation ultimately leads to a civil citation and release of the subject at the scene.

1. DEFINITIONS

Cannabis: All parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include “low-THC cannabis” and “medical cannabis” as defined in Florida Statute § 381.986 if manufactured, possessed, sold, purchased, delivered, distributed, and dispensed in conformance with § 381.986.

Paraphernalia: For the purpose of this policy, any object used, intended for use, or designed for use, in ingesting, inhaling, smoking, or otherwise introducing cannabis into the human body, or any object used, intended for use, or designed for use, in storing, containing, concealing, or transporting cannabis.

2. INVESTIGATION AND ISSUING THE CITATION

2.1 PROCEDURE

Employees will utilize Orlando City Ordinance, Section 43.95 and the civil citation process authorized therein in lieu of arrest for misdemeanor cannabis or paraphernalia possession whenever the subject meets the following criteria:

1. The amount of marijuana possessed is **20 grams or less**;

2. The subject is 18 years of age or older;
3. No other criminal charges are applicable from the same incident;
4. The subject is qualified for release on his own recognizance (except for residency requirements); and
5. The subject has no prior **unpaid and past due** civil citations for cannabis or paraphernalia.

2.2 INVESTIGATIVE PROCESS

Officers will fully investigate all incidents of suspected cannabis possession and will do so utilizing all officer safety procedures and in accordance with current Department policy. Officers will treat instances of suspected cannabis possession as full criminal investigations of potentially dangerous subjects up until the investigation is complete and a charging decision is being made. Once probable cause is developed during a citizen encounter indicating the citizen is in possession of cannabis or paraphernalia, the citizen will be appropriately secured and the citizen, his vehicle, and any other area lawfully subject to search will be thoroughly searched.

Officers should not mention the possibility of a citation being issued until the criminal investigation is complete. Prior to issuing the citation, the officer must search Orange County court records (<https://myeclerk.myorangeclerk.com>) to check if the subject has any prior offenses. If, at the conclusion of the search and full investigation (including field testing of suspected cannabis), the only applicable criminal charge(s) will be misdemeanor (20 grams or less) cannabis and/or misdemeanor paraphernalia, the officer will consider whether the subject meets the remaining civil citation criteria:

1. The subject is generally qualified for release on her or his own recognizance, requiring:
 - a. The subject's identification is known with confidence;
 - b. The subject will sign the civil citation;
 - c. No threat to the community or to the subject will result from the subject's release; and
2. No other substantial circumstances exist which would make release inappropriate (supervisory approval required).
3. The Subject is **not** required to live or work in Orange County to be eligible for a civil citation, but must be able to provide a reliable address.

2.3 ISSUING THE CITATION

Prior to issuing the citation, ensure the subject has no prior **unpaid and past due** civil citations for cannabis or paraphernalia possession. This is determined by running the subject's name in Orange County Court Records (myorangeclerk.com) under case type "Municipal Ordinance."

If a subject is in possession of both cannabis (20 grams or less) **and** paraphernalia, **only one citation should be issued**. Subjects may be advised that if the encounter ends with the issuance of a civil citation, the subject is not considered to have been arrested. This is true even if handcuffs were employed for officer safety reasons during the encounter.

1. Completely fill in all required information of the civil citation.
2. Complete a detailed description of the violation, including but not limited to:
 - a. The reason for the contact/stop;
 - b. The reasonable suspicion or probable cause to believe the subject is in possession of cannabis (plain smell, plain sight, statements, etc);
 - c. The results of the presumptive field test for cannabis;
 - d. The approximate weight of the cannabis;

- e. Any statements/admissions made by the subject; and
 - f. Any other law enforcement officers and witnesses.
3. Indicate prior offenses (if applicable).
 4. Possession of Cannabis/Paraphernalia is always a **Class II fine**.
 5. Enter the fine amount (Refer to Section 9).
 6. Explain citation to the subject and obtain signature.

2.4 COURT APPEARANCE INFORMATION

Every citation will be assigned a court date. Employees shall use the misdemeanor court dates and times located in OPD Online under *Calendars and Schedules*.

3. WHEN THE CITATION DOES NOT APPLY

Any unpaid and past due civil citation for cannabis or paraphernalia disqualifies the subject from receiving any subsequent civil citation for possession of cannabis or paraphernalia. If the subject does not qualify for the civil citation process, normal arrest and documentation procedures apply.

During the course of investigation, if probable cause is developed to believe the suspect is committing a crime (not traffic infraction), other than misdemeanor possession of cannabis or paraphernalia, an arrest may be made and any appropriate charges, including the misdemeanor cannabis/paraphernalia charges, may be made by charging affidavit (ICJIS). **No civil citation will be issued for cannabis/paraphernalia when other offense are present.** The issuing officer shall complete the criminal investigation in accordance with current Department policies.

Possession of hashish, hash oil, resin, wax, synthetic marijuana and similar substances are **not** eligible for the civil citation process.

4. EVIDENCE PROCEDURES

All cannabis and paraphernalia will be seized, packaged and submitted to Property and Evidence as in all drug cases. The cannabis and/or paraphernalia will **not** be submitted to FDLE for testing. Ensure the citation number is placed on the Evidence Form.

Employees shall adhere to current issue of P&P 1123, Property and Evidence.

5. SPECIAL CIRCUMSTANCES

5.1 DETERMINING WEIGHT

Officers may encounter circumstances where the amount of cannabis recovered may, or may not, exceed 20 grams (not including the baggie or other packaging material). In these cases when the citizen otherwise qualifies for the civil citation procedure, officers may:

1. Give the citizen the benefit of the doubt without further delay and issue the civil citation; or
2. If the officer does not have a scale, secure the scene and request a scale be brought to the scene so the seized cannabis can be weighed. If the weight exceeds 20 grams, the citizen may be charged with felony possession pursuant to F.S. 893.13(6)(a). If the weight is 20 grams or less, the citizen may be issued a civil citation and

released.

5.2 CHARGING DECISION

Officers retain the discretion to elect to proceed with formal misdemeanor arrest in a particular case, but must be able to justify that decision with a legitimate reason. The decision of whether to proceed with arrest under the state statute or with citation under Orlando's ordinance can only be made after completion of the full investigation and lawful search.

A subject with a recent criminal history involving the illegal sale of cannabis or other drugs is not the intended beneficiary of the City of Orlando's Civil Citation program. Similarly, a subject who has received several cannabis citations in a short period of time, even when the citations are promptly paid, is not apparently inclined to modify the illegal behavior based on the threat of further fines. When officers elect to arrest (even in NTA cases) under the misdemeanor statute, officers shall document the reason(s) for the decision **not** to issue the civil citation in lieu of arrest. When that decision is based on officer discretion, the specific reason must be articulated in the charging affidavit narrative.

6. JUVENILE PROCEDURES

To ensure that juveniles receive the proper diversion treatment, employees who encounter juveniles in possession of cannabis or paraphernalia shall adhere to current issue of P&P 1203, Juvenile Civil Citation Program.

7. DISPOSITION

Employees will use the disposition code "MC" at the completion of the issuance of the civil citation.

8. ROUTING OF PAPERWORK

After the citation is complete and the subject has signed the citation, the second page shall be separated and given to the subject to serve as a receipt and notice for court appearance, if contested.

1. The original copy of the citation will be turned in no later than the end of the officer's tour of duty.
2. A copy of the citation will be delivered to Criminal Intake so a record of the violation can be tracked and maintained.

9. FINE SCHEDULE

Pursuant to Orlando City Ordinance, Section 43.95, the violation is a **Class II offense**. The first violation carries a civil penalty of \$100.00, the second \$200.00, and the third and/or subsequent offenses will require a mandatory court appearance. A \$10.00 filing fee should be added to the price of the ticket pursuant to s. 34.045, Fla. Stat. (Total cost written on the citation for a first offense should be \$110.00, which includes the fine and filing fee). There will be no additional administrative fee or clerk's fee if the citation is paid within 14 days. Citizens should be advised that if the civil citation is unpaid and past due, subsequent offenses will be handled pursuant to state statute and not pursuant to Orlando City Code.

Violation Classifications	First Offense	Second Offense	Third and Subsequent Offense
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Class II	\$ 100.00	\$200.00	Court Hearing Mandatory
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10. SUBSTANCE ABUSE DIVERSIONARY PROGRAM

First and second time offenders may, in lieu of paying the civil penalty provided by the ordinance, complete a substance abuse diversionary program. The diversionary program consists of either 8 hours of substance abuse education **or** 8 hours of community service. Upon the issuance of a cannabis or paraphernalia civil citation, officers shall instruct first and second time offenders that they may contact the Office of the City Prosecutor, in writing, at OrlandoCityProsecutor@orlando.gov, or by sending a certified letter to the Office of the City Prosecutor, 1250 W. South St., Orlando, FL 32805.

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