Business Impact Estimate

In accordance with Section 125.66(3)(a), F.S., a Business Impact Estimate (BIE) is required to be: 1) prepared before enacting certain ordinances and 2) posted on Hillsborough County's website no later than the date the notice proposed enactment/notice of intent to consider the proposed ordinance, is advertised in the newspaper (which, per Section 125.66(2)(a), F.S., is ten (10) days before the Public Hearing).

Proposed Ordinance Title/Reference: AN ORDINANCE AMENDING HILLSBOROUGH COUNTY CODE OF ORDINANCES AND LAWS CHAPTER 36, ARTICLE VII (ORDINANCE 13-3) SYNTHETIC DRUG ORDINANCE; AMENDING SECTION 36-503 PROVIDING FOR DEFINITIONS; AMENDING SECTION 36-504 PROVIDING CRITERIA FOR DETERMINATION OF A PRODUCT AS A SYNTHETIC DRUG TO INCLUDE KRATOM PRODUCTS AND PROVIDE FOR EXEMPTIONS; AMENDING SECTION 36-505 PROVIDING FOR PROHIBITED ACTS TO INCLUDE KRATOM PRODUCTS; AMENDING SECTION 36-506 PROVIDING FOR LABORATORY ANALYSIS TO BE RENUMBERED AS SECTION 36-507 AND REPLACING WITH NEW SECTION 36-506 PUBLIC AWARENESS SIGNAGE REQUIREMENTS; AMENDING SECTION 36-507 TO BE RENUMBERED AS SECTION 36-508 AND PROVIDING FOR ENFORCEMENT AND PENALTIES; AMENDING SECTION 36-508 PROVIDING FOR CONFLICT WITH STATE LAW TO BE RENUMBERED AS SECTION 36-509; AMENDING SECTION 36-509 PROVIDING FOR SEVERABILITY TO BE RENUMBERED AS SECTION 36-510; AMENDING SECTION 36-510 PROVIDING FOR APPLICATION TO BE RENUMBERED AS SECTION 36-511; PROVIDING FOR SEVERABILITY; PROVIDING FOR RESOLUTION OF CONFLICT OF LAWS; PROVIDING FOR INCLUSION IN THE HILLSBOROUGH COUNTY CODE; PROVIDING FOR FILING OF ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE.

The following types of ordinances are exempt from the BIE requirement under Section 125.66(3)(c), F.S. As such, if one or more boxes are checked below, Hillsborough County believes that a BIE is not required by state law for some provisions of the proposed ordinance referenced above.

Notwithstanding, Hillsborough County is preparing this BIE to prevent an inadvertent procedural issue from impacting the enactment of this proposed Ordinance. Hillsborough County reserves the right to revise this BIE following its initial posting and to discontinue providing this information for proposed ordinances believed to be exempt under state law.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation.
- ☐ The proposed ordinance relates to the issuance or refinancing of debt.
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget.
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the local government.
- ☐ The proposed ordinance is an emergency ordinance.

☐ The ordinance relates to procurement.

☐ The proposed ordinance is enacted to implement the following:

a. Development orders and development permits, as those terms are defined in s. 163.3164, and development agreements, as authorized by the Florida Local Government Development Agreement Act under ss. 163.3220-163.3243.
b. Comprehensive plan amendments and land development regulation amendments initiated by an application by a private party other than the County;
c. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
d. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
e. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

Consistent with the posting requirement set forth in Section 125.66(3)(a), F.S., the County hereby publishes the following BIE information for this proposed ordinance on its website for public viewing and consideration on this _____ day of _____, 20____:

1. Summary of the proposed ordinance (must include statement of the public purpose, such as serving the public health, safety, morals, and welfare):

The Ordinance amends Hillsborough County's Synthetic Drug Ordinance 13-3, codified as Chapter 36, Article VII, Hillsborough County Code of Laws and Ordinances ("the Ordinance"), to prohibit kratom products as defined therein, provide for exemptions, provide for public awareness signage requirements, and provide criminal penalties for the production, manufacturing, distribution, sale, display for sale, marketing, or advertisement of synthetic drugs.

The purpose of the amendment is to provide for the health, safety, and welfare of the residents of Hillsborough County by updating the Ordinance to include opioid-like kratom products which contain, or purport to contain, concentrated 7-OH and synthetic derivatives of mitragynine, while not prohibiting traditional botanical kratom which naturally contains only low, trace levels of mitragynine, and to increase public awareness of the potential adverse health effects of kratom use in general.

The Ordinance amendment is intended to prohibit the concentrated, opioid-like substances that have already been identified by federal and state authorities via temporary, emergency drug scheduling rules, as immediate threats to public health. Whole-leaf kratom including raw or dried leaves, and products that are not chemically enhanced, chemically altered, or not otherwise concentrated for increased potency are excluded from the Ordinance's definition of synthetic drug. However, the Ordinance seeks to increase public awareness of the potential adverse health effects of all kratom products by requiring the posting of a public awareness sign where such lawful products are sold.

If the BOCC were to adopt more restrictive regulations, prohibiting the sale of all products containing kratom/mitragynine, this would further support the health, safety, and welfare of the citizens of Hillsborough County.

2. Estimate of direct economic impact of the proposed ordinance on private, for-profit businesses in the County, including the following, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur;

There will be a minimal cost to post the signage required by the Ordinance amendment. The Florida Department of Agriculture and Consumer Services (FDACS), which administers the Florida Kratom Consumer Protection Act, requires businesses to post a sign, warning that sales are prohibited under the age of 21 and that proof of age is required for purchase. The Ordinance amendment requires such businesses to add one additional line to the already-required sign that "THE USE OF KRATOM MAY CAUSE SERIOUS ADVERSE HEALTH EFFECTS."

Pursuant to current state and federal emergency drug scheduling rules, kratom products that include the substances identified in the Ordinance (concentrated 7-OH, 7-acetoxymitragynine, Dihydro-7-hydroxymitragynine ("MGM–15"), and 9fluoro-7hydroxymitragynine ("MGM-16")) are controlled substances and cannot lawfully be sold in Hillsborough County. As such, businesses operating within the County should not incur any compliance costs related to products they cannot currently sell lawfully.

If the BOCC were to adopt more restrictive regulations, prohibiting the sale of all products containing kratom/mitragynine, there would likely be a negative impact on revenue for businesses possessing such products that can no longer be lawfully sold.

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and

The proposed ordinance does not institute a charge or fee.

(c) An estimate of the County's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

The Ordinance does not impose new charges or fees payable to the County. As such, the County does not anticipate an increase in revenues. The Code Enforcement Department enforces the Ordinance via funds within the Department's Budget.

3. A good faith estimate of the number of businesses likely to be impacted by the ordinance:

Per state law, businesses selling kratom for human consumption must hold a food establishment permit issued by FDACS. According to recent FDACS data, there are approximately 2,797 active food establishment permits in Hillsborough County.

A food establishment permit is required for a wide variety of retailers including grocery stores, supermarkets, health food stores, and seafood markets, which may or may not sell kratom. Thus, the total number of permitted establishments does not necessarily reflect how many businesses are selling kratom. Of the 2,797 active permits, approximately 1,057 are categorized by FDACS as "convenience stores," and 174 purport to be smoke/vape/hemp shops.

Retailers opting to sell kratom products that are not prohibited by the Ordinance (whole-leaf kratom including raw or dried leaves, and products that are not chemically enhanced, chemically altered, or not otherwise concentrated for increased potency) will be required to post a public awareness sign. As noted above, the substances implicated by the Ordinance amendment are not currently legal to sell in the state of Florida pursuant to an emergency rule. FDACS has issued guidance to food establishment permit holders about the emergency rule and warned that violations will result in administrative action to issue a stop sale order and administrative fines may be issued.

If the BOCC were to adopt more restrictive regulations by prohibiting the sale of all products containing kratom/mitragynine, these retailers would be prohibited from selling any such products.

4. Additional information the governing body deems useful (if any):
None.