



City Council Agenda Item

City Council Meeting Date: November 20, 2018

TO: Jim Throop, City Manager

FROM: Pat Walsh, Police Chief
pwalsh@ci.lompoc.ca.us

SUBJECT: Introduction of Ordinance No. 1657(18) Regarding Administrative Fines for Illegal Cannabis Cultivation

Recommendation:

Staff recommends the City Council

- 1) Introduce Ordinance No. 1657(18) (Attachment 1) for first reading by title only with further reading waived, amending Lompoc Municipal Code (LMC) section 1.36.040 regarding administrative fines related to illegal cannabis cultivation; or
- 2) Provide other direction.

Background/Discussion:

Pursuant to AB 2164 (Attachment 2), effective January 1, 2019, State law will grant cities the ability to expedite administrative fines for violations of building and zoning regulations, if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis. To effectuate that new law, the City needs to amend its current administrative enforcement procedures. Ordinance No. 1657(18) would accomplish that by amending LMC section 1.36.040 (Attachment 3) to add new subdivisions C. and D.

Once that ordinance becomes effective, the City could more quickly impose administrative fines, if someone violates the City's building or zoning laws in connection with illegal cannabis cultivation.

The fines that can be imposed, pursuant to the LMC, are \$25 for the first offense, \$100 for a second offences occurring within a 12-month period and \$500 for a third or more offences within a 12-month period. The new State law allows the fines to be \$100 for a first violation, \$500 for a second violation within one year and \$1,000 for each additional violation within one year of the first violation. Staff suggests the City Council also increase the maximum fines to those permitted by the new State law for the illegal cannabis cultivation violations.

Fiscal Impact:

There is no fiscal impact due to the introduction of Ordinance No. 1657(18). If adopted, then the implementation of the ordinance could provide the City with revenues to partially offset the additional costs of enforcement related to illegal cannabis cultivation activities.

Conclusion:

Introduction of Ordinance No. 1657(18) would allow the City a more expedient means to be sure illegal cannabis cultivation does not occur in the City.

Respectfully submitted,

Pat Walsh, Chief of Police

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

Jim Throop, City Manager

Attachments: 1) Ordinance No. 1657(18)
2) AB 2164
3) LMC section 1.36.040

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Date Published: 09/10/2018 09:00 PM

Assembly Bill No. 2164

CHAPTER 316

An act to amend Section 53069.4 of the Government Code, relating to local government.

[Approved by Governor September 10, 2018. Filed with Secretary of State September 10, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2164, Cooley. Local ordinances: fines and penalties: cannabis.

Existing law authorizes the legislative body of a local agency, as defined, to make, by ordinance, any violation of an ordinance subject to an administrative fine or penalty, as specified. Existing law requires the ordinance adopted by the local agency to provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

This bill would allow the ordinance to provide for the immediate imposition of administrative fines or penalties for the violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis, except as specified.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 53069.4 of the Government Code is amended to read:

53069.4. (a) (1) The legislative body of a local agency, as the term "local agency" is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in Section 25132 and subdivision (b) of Section 36900.

(2) (A) The administrative procedures set forth by ordinance adopted by the local agency pursuant to this subdivision shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

(B) Notwithstanding subparagraph (A), the ordinance adopted by the local agency pursuant to this subdivision may provide for the immediate imposition of administrative fines or penalties for the violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis. This subparagraph shall not be construed to apply to cannabis cultivation that is lawfully undertaken pursuant to Section 11362.1 of the Health and Safety Code.

(C) If a local agency adopts an ordinance that provides for the immediate imposition of administrative fines or penalties as allowed in subparagraph (B), that ordinance shall provide for a reasonable period of time for the correction or remedy of the violation prior to the imposition of administrative fines or penalties as required in subparagraph (A) if all of the following are true:

(i) A tenant is in possession of the property that is the subject of the administrative action.

(ii) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.

(iii) The rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.

(b) (1) Notwithstanding Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement, or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A proceeding under this subdivision is a limited civil case. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

(2) The fee for filing the notice of appeal shall be as specified in Section 70615. The court shall request that the local agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall retain the fee specified in Section 70615 regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the local agency in accordance with the judgment of the court.

(3) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(c) If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be deemed confirmed.

(d) If the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty pursuant to the procedures set forth in its ordinance.

Lompoc Municipal Code							
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[Title 1 GENERAL PROVISIONS](#)

[Chapter 1.36 ADMINISTRATIVE PENALTIES AND CITATIONS](#)

1.36.040 Procedure for Serving Administrative Citation.

- A. The citing official may issue an administrative citation, on a form approved by the City Administrator on a responsible person using any of the following methods:
1. Personal Service. The citing official may issue the administrative citation by personal delivery thereof to a responsible person. The citing official shall attempt to obtain on the administrative citation the signature of the responsible person. If the responsible person or person served refuses or fails to sign the administrative citation, then the failure or refusal to sign shall not affect the validity of the citation or the subsequent proceedings. Service shall be deemed effective on the date of delivery.
 2. Mail. The citing official may mail the administrative citation to the responsible person by certified mail. Service shall be deemed effective on the date of mailing.
 3. Posting. If the citing official does not succeed in serving the responsible party personally or by certified mail, then the citing official shall post the administrative citation on any real property within the City in which the responsible person has a legal interest and, when so posted, shall be deemed effective service as of that date.
 4. Publication. If the citing official does not succeed in serving the responsible person personally, by certified mail, or by posting, then the citing official shall cause the administrative citation to be published once a week for four successive weeks in a local newspaper published, in English, at least once a week. Service shall be deemed effective upon the final date of publication.
- B. Prior to an administrative citation being issued for a violation pertaining to building, plumbing, electrical or other similar structure of zoning issues that do not create an immediate danger to health and safety, when a continuing violation is involved the citing official shall provide the responsible person at least five days to correct or otherwise remedy the violation, unless in the reasonable discretion of the citing official more time is reasonably needed to correct, or otherwise correct the violation to the reasonable. (Ord. 1584 § 1, 2012)

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