



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Larry Esquivel

SUBJECT: SEE BELOW

DATE: September 15, 2014

Approved

Date 9/16/14

SUBJECT: AMENDMENTS TO THE ADMINISTRATIVE CITATION SCHEDULE OF FINES TO CREATE FINES FOR VIOLATION OF THE MEDICAL MARIJUANA ORDINANCE, AND TO MAKE TECHNICAL CORRECTIONS TO THE SCHEDULE

RECOMMENDATION

Adopt a resolution amending the Administrative Citation Schedule of Fines to create escalating fines for violation of Title 6 of the San Jose Municipal Code (Code) related to the Medical Marijuana Regulatory Program approved by the City Council on June 17, 2014, making technical corrections to delete fines for violation of Municipal Code sections that have been repealed, and repealing Resolution No. 76637.

OUTCOME

Adoption of the above resolution will provide greater incentive for medical marijuana establishments, and persons involved with cultivation and distribution of medical marijuana, to comply with the Code; improve the Police Department's and Code Enforcement's ability to effectively regulate medical marijuana establishments; promote the City's efforts to prevent the distribution of marijuana to minors; help prevent revenue from the sale of marijuana from going to criminal enterprises; and strengthen the overall effectiveness of the City's Medical Marijuana Regulatory Program.

BACKGROUND

On June 17, 2014, the City Council approved a Medical Marijuana Regulatory Program (Program) defining and regulating the legal operation of medical marijuana establishments in the City of San José. The Medical Marijuana Regulatory Program is set forth in two City ordinances; the Zoning Ordinance under Title 20, and the Medical Marijuana Operational Regulatory Ordinance under Title 6. The Ordinances took effect on July 18, 2014. On August 5,

2014, the City Council adopted a resolution to amend the Schedule of Fees and Charges and establish fees associated with the Program¹.

Under the current Administrative Citation Schedule of Fines, violations of the new Regulatory Ordinance are not scheduled. Thus the standard fine of twenty-five dollars (\$25) applies. The proposed changes would support more effective enforcement of regulations applicable to medical marijuana establishments by setting forth reasonable fines that encourage compliance with the Code. The primary purpose of the proposed changes to the Administrative Citation Schedule of Fines is to facilitate compliance with the Program.

ANALYSIS

The proposed changes would establish fines associated with the Program. Violations would be enforceable through administrative citations and would follow the normal City administrative citation process. The fines are proposed to escalate for each violation within one year of a previous violation. The proposed fines for the Program have three tiers:

- **Personal use regulations and nuisance related violations** (public urination, disturbance of the peace, etc.) would be assessed at the lowest level:
 - \$2,500 for the first violation
 - \$5,000 for a second violation within a twelve month period from the date of previous violation
 - \$7,500 for a third and each subsequent violation within a twelve month period from the date of previous violation
- **Operational and record-keeping violations** would be assessed at the middle level:
 - \$5,000 for the first violation
 - \$7,500 for a second violation within a twelve month period from the date of previous violation
 - \$10,000 for a third and each subsequent violation within a twelve month period from the date of previous violation
- **More egregious violations such as multiple locations or transfer of a Notice of Completed Registration** would be assessed at the highest level:
 - \$10,000 for the first violation
 - \$25,000 for a second violation within a twelve month period from the date of previous violation
 - \$50,000 for a third and each subsequent violation within a twelve month period from the date of previous violation

Experience has shown that compliance of property owners and operators can improve when administrative citations are issued with fines that are reasonable and proportional to the

¹ The Administration expects to return to the City Council in January of 2015 to establish the final medical marijuana staffing plan as well as the fees associated with operating the Program on an annual basis. The fine for operating without a Notice of Completed Registration will be evaluated after the annual operating fee has been determined, and also will be brought to City Council at this time.

violations cited. Repeat violators of the Code are more likely to comply in the future when the fines escalate per violation.

Adoption of this resolution would also make technical corrections to the Administrative Citation Schedule of Fines to delete fines for violation of Code sections that have been repealed.

EVALUATION AND FOLLOW-UP

If approved, staff will monitor the impact of these actions and report any issues to the Council as appropriate. The Administration will also be returning to the Council once the annual operating fee has been set to request the Council add to the Administrative Citation Schedule of Fines a fine amount for operating without a Notice of Completed Registration.

POLICY ALTERNATIVES

In their review of the proposed changes to the Administrative Citation Schedule of Fines, the City Council can take the following actions.

Alternative #1: Maintain the existing Administrative Schedule of Fines with no changes.

Pros: None

Cons: Enforcement of the Medical Marijuana Regulatory Program would not be made more effective or robust. Police Department and Code Enforcement efforts to enforce the Code would lack incentives designed to encourage compliance with the Code.

Alternative #2: Approve the changes to the Administrative Citation Schedule of Fines as proposed by staff.

Pros and Reason for Recommending: Enforcement of the Code by various City departments could be more effective, and the Medical Marijuana Regulatory Program would be more robust.

Cons: For property owners and medical marijuana operators, fines would be more costly.

Alternative #3: Approve the proposed changes with modifications.

Pros: Council can adopt changes that include provisions not proposed by staff.

Cons: Approving the proposed changes with modifications may result in fines that are too low or too high based upon staff's experience with enforcement actions to optimize code compliance through the administrative citation process.

PUBLIC OUTREACH/INTEREST

This memorandum will be posted on the City's website for the September 30, 2014 City Council Meeting Agenda.

HONORABLE MAYOR AND CITY COUNCIL

September 15, 2014

Subject: Amending Schedule of Fines for Violation of Medical Marijuana Ordinance

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COORDINATION

This memorandum was coordinated with the City Attorney's Office, the Department of Planning, Building and Code Enforcement, and the Finance Department.

CEQA

Not a Project, File PP10-069(a), Staff reports and informational memos.

/s/
LARRY ESQUIVEL
CHIEF OF POLICE

For questions, please contact San José Police Sergeant David Woolsey at (408) 277-4115.

