

REPORT TO THE CITY COUNCIL



DATE: May 7, 2019

TITLE: An Ordinance Amending Chapter 4.24 of the Desert Hot Springs Municipal Code to Revise the Procedures for the Issuance of Administrative Citations

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RECOMMENDATION

Introduce for First Reading, and read by title only, "An Ordinance of the City Council of the City of Desert Hot Springs, California, amending Chapter 4.24 "Administrative Citation Procedure" of Title 4 "Code Enforcement" of the Desert Hot Springs Municipal Code to revise the procedures for the issuance of administrative citations."

BACKGROUND:

The purpose of the City of Desert Hot Springs' ("City") administrative citation procedures is to enforce the Desert Hot Springs Municipal Code ("DHSMC") in an expedient, efficient and fair manner to protect the health and safety of the public.

Currently, Chapter 4.24 contains the City's administrative citation procedures. Under the current language, whenever a violation of the DHSMC occurs, a "Community Preservation" Officer may issue an administrative citation to the responsible party. The existing language was the result of Ordinance 660 passed by the City Council on April 17, 2018, as part of an effort to update and modernize the City's code enforcement ordinances.

Since then, Assembly Bill ("AB") 2164 was passed by the California Legislature and signed by the Governor in September. AB 2164, taking effect on January 1, 2019, emphasizes the right of local jurisdictions to impose immediate fines for certain code violations. In particular, AB 2164 allows the immediate imposition of administrative fines for violations 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.

Additionally, the City has since renamed the Community Preservation Department into the Code Compliance Division. The City has also added more staff to the Cannabis Compliance Team, who need the ability to issue citations in the same manner as Code Compliance officers.

DISCUSSION:

The proposed ordinance updates Chapter 4.24 of the DHSMC in order to implement AB 2164. For instance, the proposed ordinance allows "Issuing Officers"—defined as "a code compliance officer or any other authorized enforcement agent of the City"—to issue citations against illegal cannabis cultivators for violations related to building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements. Since no grace period is allowed, the administrative fines are immediately payable. Further, since each day a violation persists is considered a separate violation, Issuing Officers may issue a new citation each day the code violations remain unabated.

AB 2164 does provide one significant exception, which is reflected in the proposed ordinance: rental property owners who were unaware and did not receive actual notice of the illegal cultivation and whose lease agreements prohibit the cultivation of cannabis are not subject to immediate fines. In such a scenario, the rental property owner is afforded a "reasonable time" to correct the violations before fines may be imposed. Stated a different way, if the property owner

was given notice that his tenant was cultivating cannabis, or fails to show a lease agreement specifically prohibiting cannabis cultivation, the property owner can be fined immediately.

The practical effect of the proposed ordinance is to allow Code Compliance Officers and any other authorized agent of the City to issue multiple citations with accumulating fines against illegal cannabis cultivators. Further, property owners facing escalating fines and citations may be discouraged from renting their properties to illegal cultivators.

Other amendments in the proposed ordinance include changing “Code Compliance Officer” to “Issuing Officer.” This change clarifies that any authorized agent of the City may issue citations under the DHSMC. If enacted, the proposed ordinance will allow members of the Cannabis Compliance Team to issue citations for any violation of marijuana regulations under the DHSMC, and impose associated fines.

Finally, the proposed ordinance clarifies that citations for any violation of the DHSMC, save those that cause immediate danger to the public, may be corrected before fines are collected. This has always been the practice by the Code Compliance Division (and required by state law) but the proposed ordinance memorializes this rule to guide future enforcement.

EXHIBIT:

1) Ordinance