

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING
CHULA VISTA MUNICIPAL CODE SECTION 1.41.110 TO
REMOVE THE EXISTING CIVIL PENALTIES CAP AND
DELETING CHULA VISTA MUNICIPAL CODE SECTION
5.66.030 TO PERMIT CRIMINAL ENFORCEMENT FOR
VIOLATION OF CHAPTER 5.66

WHEREAS, unlawful marijuana dispensaries have continued to operate in violation of Chula Vista Municipal Code section 5.66.020 despite administrative enforcement, the assessment of civil penalties of up to \$100,000, and the commencement of civil litigation; and

WHEREAS, Chula Vista Municipal Code section 1.41.110(C) currently caps the amount of civil penalties that can be assessed against an individual property for any related series of municipal code violations; and

WHEREAS, Chula Vista Municipal Code section 5.66.030 currently prohibits the use of criminal enforcement remedies against persons found to be in violation of chapter 5.66; and

WHEREAS, in *City and County of San Francisco v. Sainez*, the California Court of Appeal found that fines exceeding \$100,000 did not violate excessive fines clauses of the Federal and State Constitutions; and

WHEREAS, for purposes of constitutional inquiry under the excessive fines clause, the amount of fines imposed are required to bear some proportional relationship to the penalty's deterrent purpose and the nature of the misconduct; and

WHEREAS, in *Kirby v. County of Fresno*, the California Court of Appeal held that state law does not preclude criminal prosecution for failure to abate a public nuisance regarding commercial marijuana activity; and

WHEREAS, it is in the best interests of the City to amend the Chula Vista Municipal Code to permit criminal enforcement for failure to abate a violation of Chapter 5.66;

WHEREAS, it is in the best interests of the City to amend the Chula Vista Municipal Code to remove the existing civil penalty cap and permit penalties in excess of \$100,000 when warranted; and

NOW THEREFORE the City Council of the City of Chula Vista does ordain as follows:

SECTION I

A. Chapter 1, Section 1.41.110(C) of the Chula Vista Municipal Code regarding the assessment of civil penalties is amended to read as follows:

1.41.110 Civil Penalties

C. Except for violations of land grading ordinances contained in Chapter 15.04 CVMC, civil penalties may be assessed at a daily rate not to exceed \$1,000 per violation per day per tax assessor's parcel number in the case of unimproved real property or per each structure against which violations have existed on a single tax assessor's parcel number for any related series of violations.

[Note: [1.41.110 Subsections A, B, and D through G remain unchanged]]

B. Chapter 5, sections 5.66.030 and 5.66.040 of the Chula Vista Municipal Code are hereby amended and restated as follows:

5.66.030 Repealed.

5.66.040 Public nuisance; Penalties.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be, and is hereby declared, a public nuisance, which may be abated by the city pursuant to the procedures set forth in this code, and be subject to any associated civil or criminal remedies, except to the extent expressly and validly preempted by state or federal law. (Ord. 3204 § 2, 2011).

SECTION II Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

SECTION III Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

SECTION IV Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

SECTION V Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

Glen R. Googins
City Attorney

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