



# City of Chula Vista

## Staff Report

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**File#:** 17-0204, **Item#:** 2.

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**..Title**

ORDINANCE NO. 3401 OF THE CITY OF CHULA VISTA AMENDING CHULA VISTA MUNICIPAL CODE SECTION 1.41.110 TO INCREASE THE MAXIMUM DAILY CIVIL PENALTY AMOUNT; AMENDING CHULA VISTA MUNICIPAL CODE CHAPTER 5.66 TO SPECIFY THAT ALL COMMERCIAL MARIJUANA ACTIVITY IN THE CITY OF CHULA VISTA IS PROHIBITED; AND AMENDING CHULA VISTA MUNICIPAL CODE CHAPTER 9.14 TO ADD MARIJUANA AND OTHER CONTROLLED SUBSTANCES TO THE EXISTING SOCIAL HOST REGULATIONS (SECOND READING AND ADOPTION)

**RECOMMENDED ACTION**

Council adopt the ordinance.

**SUMMARY**

Staff is recommending that the City Council adopt the proposed Ordinance in order to increase the maximum daily civil penalty amount for violations of the Chula Vista Municipal Code, clarify that all Chula Vista-based commercial marijuana activity is currently prohibited in the City of Chula Vista, and add both marijuana and controlled substances to the City's current social host regulations. The provisions prohibiting all commercial marijuana activity would remain in effect pending further discussion and examination of the City's position as to marijuana businesses, but will not prevent the City from changing its position at a future date. This proposed ordinance is recommended at this time to provide clarity to residents and visitors, enhance public safety pending any future changes that may be made at either the state or local level, increase the effectiveness the City's municipal code enforcement efforts, and hold persons accountable for failing to take reasonable steps to prevent minors from consuming marijuana and other controlled substances at private gatherings.

**ENVIRONMENTAL REVIEW**

**Environmental Notice**

This activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

**Environmental Determination**

The proposed activity has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the activity is not a "Project" as defined under Section 15378 of the state CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to the CEQA.

**BOARD/COMMISSION RECOMMENDATION**

Not Applicable

## **DISCUSSION**

In response to the challenges and confusion facing local jurisdictions as a result of recent changes to state law regarding marijuana, Staff recommends that the City provide clarity regarding the current status of commercial marijuana activity in the City of Chula Vista, that the City enhance its enforcement capacity in response to recalcitrant municipal code offenders, and that the City take steps to expand its social host ordinance to include marijuana and other controlled substances.

### Updating the CVMC to Address Proposition 64

In 2011, the Chula Vista City Council enacted chapter 5.66 of the Chula Vista Municipal Code prohibiting medical marijuana businesses from operating in the City of Chula Vista. Chapter 5.66 did not address recreational marijuana businesses, as recreational marijuana businesses were prohibited in California at that time.

As the City Council is aware, California voters approved Proposition 64 in November 2016, which decriminalizes personal, recreational use of marijuana for individuals over 21 years of age in limited circumstances. Proposition 64 also directs the state of California to promulgate regulations for a wide-range of commercial recreational marijuana activities and to begin issuing licenses for such activities beginning in January 2018. It is anticipated that the regulation and licensing of recreational marijuana businesses will be similar in many ways to the licensing and regulation of medical marijuana businesses outlined in the Medical Marijuana Regulation and Safety Act; medical marijuana business licenses are also scheduled to be issued in January 2018. Given the rapid legislative changes in this area and marijuana's status under federal law, California State authorities are currently in the midst of drafting and finalizing all commercial marijuana rules and regulations, both recreational and medical, in anticipation of the 2018 state law deadlines.

While both Proposition 64 and the Medical Marijuana Regulation and Safety Act expand state law to allow and regulate certain types of marijuana activity, each also explicitly preserves local government control over land use and zoning principals in accordance with the California Constitution. In practical terms, this means that municipalities may still choose whether to allow or prohibit commercial recreational and medical marijuana businesses in their respective jurisdictions. It should be noted that local governments are preempted from interfering with certain personal uses of marijuana.

Staff recommends that the City of Chula Vista amend its current marijuana ordinance to more closely track the definitions outlined in both Proposition 64 and the Medical Marijuana Regulation and Safety Act, and to address the operation of both recreational and medical marijuana businesses in the City of Chula Vista. The proposed amendments contained in the attached ordinance would do just that.

The proposed ordinance would amend Chula Vista Municipal code chapter 5.66 to specify that it applies to all commercial marijuana activity identified in Proposition 64 and the Medical Marijuana Regulation and Safety Act. The changes to chapter 5.66 include new definitions that mirror the definitions contained in newly passed state laws. Using such definitions will streamline understanding of the regulations and ensure that they encompass all identified commercial activities outlined in state marijuana laws. The proposed changes also reflect the fact that civil and criminal remedies include injunction actions.

Amending the CVMC to Increase the Maximum Daily Civil Penalty to \$2,500

Despite a mixture of successes and frustrations, City staff remain committed to enforcement efforts against marijuana businesses that operate in violation of local law. As part of its enforcement tool box, the City Council previously asked City staff to examine whether the City could lawfully increase the amount of civil penalties that could be assessed per day per violation. City staff have examined this issue and determined that such increase is lawful. Although general law cities are limited to maximum civil penalties of \$1,000 per day under California Government Code section 36901, as a charter city, the City of Chula Vista may enact an ordinance that provides for penalties in excess of \$1,000 so long as such penalties do not exceed any maximum limits set in its charter. (*County of Los Angeles v. City of Los Angeles* [1963] 219 Cal.App.2d 838, 844.) Accordingly, staff recommend that CVMC section 1.41.110 be amended to increase the amount of civil penalties that may be assessed against responsible persons for violations of the municipal code. The proposed increase from a maximum of \$1,000 per violation per day to \$2,500 per violation per day increases the range of allowable administrative civil penalties and is intended to encourage further compliance with the Municipal Code in appropriate cases. An increased range of allowable administrative penalties may be particularly helpful in enforcement efforts against unlawful marijuana dispensaries, as such dispensaries have been estimated to bring in profits of thousands of dollars per day.

Amending the City's Social Host Ordinance to Add Marijuana

Finally, following up on an inquiry by Councilmember Diaz and with the support of both the Institute for Public Strategies and the San Diego County Marijuana Prevention Initiative, staff recommends amending Chapter 9.14 to address concerns over the increased availability of marijuana to minors. The proposed amendments to Chapter 9.14 would require persons to take reasonable steps to prevent the consumption of marijuana and controlled substances by minors at private gatherings on their property. Chapter 9.14, commonly known as a "social host ordinance", was originally adopted by the City Council in 2007 to reduce opportunities for minors to access and consume alcohol at private gatherings. As adults over 21 years of age may now legally consume marijuana in certain circumstances, there is an increased risk that minors may also have access to and consume marijuana at private gatherings. Recent medical research indicates that marijuana affects the both the functioning and development of adolescent brains. Accordingly, staff recommends that the City amend Chapter 9.14 to add marijuana and controlled substances to the City's existing social host ordinance.

Looking Forward; Next Steps

Beyond the changes contained in this proposed ordinance, staff remain dedicated to pursuing additional avenues of enforcement and regulation as we continue to address marijuana's impact on our community. City staff have been and currently are working on the following efforts:

- 1) Engagement with Commercial Property Owners: The City Attorney's Office and Development Services Division are coordinating on an effort to inform commercial property owners of their responsibilities and liabilities in renting to marijuana businesses in the City of Chula Vista.
- 2) Expanded Enforcement: The City Attorney's Office is preparing a report that will identify and assess the systems, staffing, and funding requirements necessary to facilitate criminal prosecution of municipal code violations. This will be presented to the Council for input in the near future.
- 3) Delivery Regulations: The City Attorney's Office, Development Services Division, Finance Department, and Police Department have been coordinating to discuss and draft proposed local marijuana delivery regulations that will incorporate forthcoming state delivery regulation

and licensing protocols. Staff anticipates that the outline for possible delivery regulations will be presented for input to City Council at the end of this summer or in early fall.

Staff understands and anticipates that the City's position regarding marijuana activity will be debated and assessed in the coming year. Prudent civil discourse is warranted, and careful assessment of state and possibly federal regulations promulgated in the coming months is critical to an informed and responsible position on this issue. The amendments contained in this agenda item, however, are intended to preserve and clarify the status quo in the City of Chula Vista pending a clearer understanding of both state and federal regulations, as well as the City's position on this issue. These amendments will not prevent the City, after careful consideration of the advantages and disadvantages of permitting or prohibiting commercial marijuana activity, from adopting future ordinances that alter or adjust the current status quo. In the interim, staff recommend that the City adopt this proposed ordinance to clarify the City's current position on commercial marijuana activity, enhance the City's enforcement capacity against those who violate our municipal code, and extend the City's social host ordinance to include marijuana and other controlled substances.

#### **DECISION-MAKER CONFLICT**

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the 500-foot rule found in California Code of Regulations Title 2, section 18702.2(a)(11), is not applicable to this decision for purposes of determining a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

#### **LINK TO STRATEGIC GOALS**

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The amendments in this proposed ordinance support the City's Operational Excellence, Healthy Community, and Strong and Secure Neighborhoods goals, as they provide clarity regarding prohibited commercial marijuana activity, allow for more effective enforcement of the City's Municipal Code provisions, and enhance accountability in preventing minors from accessing marijuana and other controlled substances at private gatherings.

#### **CURRENT YEAR FISCAL IMPACT**

The subject amendments to section 1.41.110, chapter 5.66, and chapter 9.14 result in no current year fiscal impact to the City.

#### **ONGOING FISCAL IMPACT**

The subject amendments to section 1.41.110, chapter 5.66, and chapter 9.14 result in no ongoing fiscal impact to the City.

#### **ATTACHMENTS**

1. CVMC 1.41.110 with strikeout underline text

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2. CVMC 5.66 with strikeout underline text
3. CVMC 9.14 with strikeout underline text

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