

City of Sacramento

Legislation Details (With Text)

File #:	2019-01739	Version:	1	Name:	
Type:	Consent Item	Status:		Agenda Ready	
File created:	11/20/2019	In control:		City Council - 5PM	
On agenda:	12/3/2019	Final action:			
Title:	(Pass for Publication) Ordinance Amending Sections 8.132.030 and 8.132.050 of the Sacramento City Code, Relating to Illegal Cultivation of Cannabis				
Sponsors:	Finance				
Indexes:					
Code sections:					
Attachments:					

Date	Ver.	Action By	Action	Result
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Title:
(Pass for Publication) Ordinance Amending Sections 8.132.030 and 8.132.050 of the Sacramento City Code, Relating to Illegal Cultivation of Cannabis

File ID: 2019-01739

Location: Citywide

Recommendation:

1) Review an Ordinance amending sections 8.132.030 and 8.132.050 of the Sacramento City Code, relating to illegal cultivation of cannabis; and 2) pass for publication the ordinance title as required by Sacramento City Code section 32(c) to be adopted on December 10, 2019.

Contact: Leyne Milstein, Assistant City Manager, (916) 808-8491; Zarah Cruz, Program Specialist, (916) 808-8925, Office of Cannabis Management, Office of the City Manager; Gustavo Martinez, Supervising Deputy City Attorney, (916) 808-5346.

Presenter: None

Attachments:

- 1-Description/Analysis
- 2-Ordinance (Redline)
- 3-Ordinance (Clean)

Description/Analysis

Issue Detail: In 2017, City Council amended chapter 8.132 of the Sacramento City Code (all references herein to “chapter” or “section” will refer to the Sacramento City Code) and thereby restricted the cultivation of cannabis from anywhere in the city, unless it is done by a permitted cannabis business in accordance with chapter 5.150 or in a private residence in accordance with chapter 8.132. Section 8.132.030 makes it unlawful for a person to own, lease, occupy, or have possession (as used herein “like person” refers to a person who leases, occupies, or has possession of a property) of any property upon which cannabis is being cultivated, whether the person knew or did not know of the cultivation. Section 8.132.040.B makes it unlawful to cultivate more than six (6) living plants in or on the grounds of a residence in the city. Violations of chapter 8.132 are subject to civil actions, criminal sanctions, and administrative penalties. (Section 8.132.050) The proposed ordinance seeks to codify the City’s policy and practice with respect to violations of section 8.132.030 and make the civil penalty for violation of sections 8.132.030 or 8.132.040.B the same as that for an administrative penalty, namely, \$500 per cannabis plant in excess of the number of allowed plants for the property.

Codifying the City’s Policy

Violations of section 8.132.030 are generally prosecuted as administrative penalties with a fine of \$500 per cannabis plant that is in excess of the number of plants allowed on the property. Given the potentially large dollar amount of the fines, the City has developed an enforcement policy that takes into consideration if the property owner or like person knew or, by exercising reasonable care and diligence, should have known of the cultivation on the property. This then allows a property owner or like person to provide documentation or other evidence that the person truly did not know or had no reason to know of the cultivation on the property, providing the person with relief. In prosecuting such violations, the City has found that under some circumstances some property owners or like persons did not know and could not have known of the cultivation. For example, if a property owner is in the military on active duty it would be impractical for the service member to know or have reason to know of illegal cultivation inside his/her rental property. In other cases, the City has found evidence of tenants victimizing unsophisticated property owners because of language barriers or intentional misrepresentations intended to deceive property owners as to the tenant’s true activities. The proposed ordinance will allow the City to codify its current practices. (Attachment 2).

Civil Action Assessment

Lastly, the proposed ordinance will make the civil penalty for violation of sections 8.132.030 or 8.132.040.B, the same as that of an administrative penalty, namely \$500 per cannabis plant in excess of the allowed number of plants. The current civil penalty for all violations of SCC chapter 8.132 is \$250 to \$25,000 per day of the violation. In prosecuting administrative penalties for violation of sections 8.132.030 or 8.132.040.B, the City has discovered that the \$250 to \$25,000 per day of the assessment does not sufficiently penalize this often financially profitable violation. The current process provides a judge with the discretion to impose a far lower civil penalty than the administrative penalty of \$500 per plant in excess of that allowed in the City Code. The proposed ordinance will

make the civil penalty amount consistent with the equivalent administrative penalty and prevent a judge from imposing a lower civil penalty.

Policy Considerations: None.

Economic Impacts: None.

Environmental Considerations: This action is exempt from the California Environmental Quality Act (CEQA) because it is the adoption of an ordinance, rule, or regulation that requires discretionary review, including environmental review, and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity (CEQA Guidelines sections 15061(B)(1), California Business and Professions Code section 26055(h)) and because it does not have the potential for causing a significant effect on the environment (CEQA Guidelines section 15061(b)(3)).

Commission/Committee Action: This item is scheduled to be heard at the December 3, 2019 meeting of the Law and Legislation Committee.

Rationale for Recommendation: In 2017, the City Council restricted the cultivation of cannabis anywhere in the city unless it is done in accordance with the City Code. Under the City Code, cultivation of cannabis is allowed in or on the grounds of a residential property if there are no more than six plants being cultivated on the property, ("6-plant limit"). (Section 8.132.040.B) The intent of the 6-plant limit under chapter 8.132 is to eradicate the use of residential properties for illegal cultivation by holding cultivators and property owners responsible (Sections 8.132.030 and 8.132.040.B). Prior to the restriction, it was estimated that over 1,000 residential properties were being used for illegal cultivation of cannabis, supplying products to the illicit market, and creating an imminent threat to public health, safety, and welfare of Sacramento residents and constituting a major nuisance in neighborhoods within the city. Two years after the 6-plant limit and the associated "\$500 per cannabis plant in excess of 6" administrative penalty took effect; the number of estimated illegal residential cultivation has dropped by about 80 percent to around 200 residential properties still engaged in illegal cultivation. Administrative penalties are issued for violation of sections 8.132.030 and 8.132.040.B to cultivators and property owners, regardless of whether or not they occupy the property in question. Many of these administrative penalties are still currently on appeal.

In the course of prosecuting violations of sections 8.132.030 and 8.132.040.B, the City has come across property owners who claim to have no knowledge of tenants using their rented properties for illegal cultivation. After researching and discussing the assertion with the property owner, the City has found that some property owners truly did not know about the cultivation and the City withdrew its prosecution of that property owner. The City Code does not include this prosecutorial approach and staff recommends that the City Code be amended to reflect it.

Additionally, the amendment of a \$500 per plant in excess of the allowed number will strengthen the penalty for violation of sections 8.132.030 and 8.132.040.B in a civil suit by allowing the City to

recover such penalty through a civil action in Superior Court.

Financial Considerations: Pursuant to Council direction, penalties collected as specified above are utilized to offset the cost of the City's enforcement efforts

Local Business Enterprise (LBE): Not applicable.