

Date of Hearing: May 9, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2164 (Cooley) – As Introduced February 12, 2018

SUBJECT: Local ordinances: fines and penalties: cannabis.

SUMMARY: Allows local agencies to impose administrative fines or penalties for violations of local ordinances pertaining to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety *without* providing a reasonable time for the responsible person to correct or otherwise remedy the violation, if the violation exists as a result of, or to facilitate, the cultivation of cannabis.

EXISTING LAW:

- 1) Allows a county or city to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.
- 2) Allows the legislative body of a county or city to collect any fee, cost, or charge incurred in specified activities, including the abatement of public nuisances, enforcement of specified zoning ordinances, inspections and abatement of violations of the State Housing Law, inspections and abatement of violations of the California Building Standards Code, and inspections and abatement of violations related to local ordinances that implement these laws.
- 3) Limits the amount of a fee, cost, or charge described above to the actual cost incurred performing the inspections and enforcement activity, including permit fees, fines, late charges, and interest.
- 4) Provides that violation of a county or city ordinance is a misdemeanor, unless by ordinance it is made an infraction.
- 5) Provides that a violation of a county or city ordinance may be prosecuted by county or city authorities in the name of the people of the State of California, or redressed by civil action.
- 6) Provides that every violation of a county or city ordinance determined to be an infraction is punishable by the following:
 - a) A fine not exceeding \$100 for a first violation;
 - b) A fine not exceeding \$200 for a second violation of the same ordinance within one year; and,
 - c) A fine not exceeding \$500 for each additional violation of the same ordinance within one year.

- 7) Provides that a violation of local building and safety codes determined to be an infraction is punishable by the following:
 - a) A fine not exceeding \$100 for a first violation;
 - b) A fine not exceeding \$500 for a second violation of the same ordinance within one year; and,
 - c) A fine not exceeding \$1,000 for each additional violation of the same ordinance within one year of the first violation.
- 8) Allows the legislative body of a local agency, by ordinance, to make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty, and requires the local agency to set forth the administrative procedures that govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties.
- 9) Prohibits, for the purposes of administrative fines or penalties where the violation of an ordinance would otherwise be an infraction, the administrative fine or penalty from exceeding the maximum fine or penalty amounts set forth in 6) and 7), above.
- 10) Requires the administrative procedures described in 9), above, to provide for a reasonable period of time for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety.
- 11) Provides a process for appealing a local agency's decision regarding administrative fines or penalties via civil proceedings, including reimbursement of court filing fees by the local agency if the court finds in favor of the contestant, as specified.
- 12) Allows persons 21 years of age or older to possess, plant, cultivate, harvest, dry, or process not more than six living cannabis plants (personal cultivation), subject to specified restrictions that include reasonable regulations enacted and enforced by counties or cities.
- 13) Prohibits counties and cities from completely prohibiting personal cultivation inside a private residence or accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.
- 14) Allows counties and cities to completely prohibit personal cultivation outdoors upon the grounds of a private residence.

FISCAL EFFECT: None

COMMENTS:

- 1) **Background.** A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. This "police

power" provides the right to adopt and enforce zoning regulations, as long as they do not conflict with state laws.

Current law allows counties and cities to establish ordinances, and makes violations of ordinances misdemeanors, unless by ordinance the county or city makes them infractions. The violation of an ordinance may be prosecuted by county or city authorities in the name of the people of the State of California, or redressed by civil action.

- 2) **Administrative Alternative.** As an alternative to the court process, a local agency can make any violation of any of its ordinances subject to an administrative fine or penalty. This provision was enacted in 1995 to relieve the courts of some of these cases and offer local governments a faster, easier, and less costly means of pursuing remedies for ordinance violations.

In order to make an ordinance violation subject to an administrative fine or penalty, the local agency must adopt an ordinance specifying the administrative procedures that govern the imposition, enforcement, collection, and administrative review of the fines or penalties. A person may appeal such fines or penalties in Superior Court within 20 days after service of a final administrative order or decision. Local agencies must pursue a civil court proceeding to collect fines and penalties that are not secured via the administrative process.

Of note for the purposes of this bill, current law *requires* these administrative procedures to grant a person responsible for a continuing violation a reasonable time to remedy the violation before the local agency may impose fines or penalties when the violation pertains to *building, plumbing, electrical, or other similar structural and zoning issues that do not create an immediate danger to health or safety*.

- 3) **Author's Statement.** According to the author, "Until 2015, medical cannabis existed in a grey area of legality through a patchwork of Proposition 215, case law, and local ordinances. With the passage of the Medical Cannabis Regulation and Safety Act (MCRSA) in 2015, the medical cannabis industry finally had a framework for full licensure and regulation of the medical cannabis market. With the passage of Proposition 64 in 2016, adult-use of cannabis was legalized, and subsequent legislation has merged the medical and adult –use licensing system into a cohesive regulatory framework.

"Many challenges remain, however, not the least of which is the still thriving black market operators who are under-cutting the legal marketplace by growing cannabis illicitly in homes, strip malls, and warehouses – often times stealing electricity, and creating health and safety hazards. Last year in Sacramento County, the Sheriff's department responded to hundreds of calls relating to illegal cannabis grow operations, including one case where 183 plants were seized, along with 29 pounds of processed cannabis, a gun, and over \$5,000 in cash. In these circumstances where ordinances are violated, it is very easy for well-funded grow operations to simply move onto the next location over and over, effectively correcting the ordinance violation, without ever having to pay the administrative penalties.

"AB 2164, allows, but does not require, local governments to amend their ordinances to remove the time period to correct a violation in cases of cannabis cultivation only. This removes at least one monetary incentive for illicit grows to continually move while also

giving local governments the ability to bring meaningful penalties on willfully illegal growers."

- 4) **Bill Summary.** This bill allows local agencies to impose administrative fines or penalties for violations of local ordinances pertaining to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety *without* providing a reasonable time for the responsible person to correct or otherwise remedy the violation, if the violation exists as a result of, or to facilitate, the cultivation of cannabis.

This bill is sponsored by the California State Sheriffs' Association.

- 5) **Policy Consideration.** Under current law implementing MCRSA and Proposition 64, persons 21 years of age or older may engage in personal cultivation of cannabis, subject to specified restrictions that include reasonable regulations enacted and enforced by counties or cities. While counties and cities may completely prohibit personal cultivation outdoors upon the grounds of a private residence, they are not allowed to completely prohibit personal cultivation inside a private residence or accessory structure that is fully enclosed and secure. The language of this bill is not clear regarding its application to instances where a person is *lawfully* engaging in personal cultivation that may result in violations of local building, plumbing, electrical, or other similar structural or zoning ordinances *that do not create an immediate danger to health or safety*. Should these persons, who are otherwise engaging in activity deemed lawful, not be afforded the same opportunity as other persons to correct an ordinance violation that is not posing an immediate danger to health or safety? The Committee may wish to ask the author to clarify the intent of the bill regarding this issue.
- 6) **Arguments in Support.** California State Sheriffs' Association, sponsor of this bill, states, "There are reports from the field that alleged ordinance violators in the context of cannabis cultivation effectively use this 'curing' period to temporarily move or eliminate the violation to avoid the sanction, or successfully delay proceedings while they assert they are fixing the violation, and then go right back to violating the ordinance. Given the nuisance that unlawful cannabis activities can present, we believe it is appropriate to give local agencies the authority to have an ordinance that does not provide the 'curing' period when the violation deals with cannabis cultivation. An agency that wants to retain such a remedy period would not be precluded from doing so, but it would give an agency that wants to address these issues more expeditiously the ability to do so by avoiding the curing period."
- 7) **Arguments in Opposition.** The California Apartment Association, the California Association of Realtors, the California Business Properties Association, and the California Chamber of Commerce, in opposition, state, "While we agree that individuals or businesses that violate local laws should face fines and/or penalties, there should always be a right to appeal for property owners who have no knowledge that their tenants are violating local and state laws relating to cannabis. It is common for property owners to prohibit illegal activity on the part of their tenants. At the same time, however, state law prohibits property owners from proactively inspecting property that is leased to a tenant. As you can imagine, this makes it difficult for property owners to detect illegal activity. We respectfully request that you amend AB 2164 to ensure that property owners are not held liable for the actions of their tenants – including imposed fines and penalties – as it relates to cannabis."

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association [SPONSOR]
California Police Chiefs Association
Rural County Representatives of California

Opposition

California Apartment Association (unless amended)
California Association of Realtors (unless amended)
California Business Properties Association (unless amended)
California Chamber of Commerce (unless amended)

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