

RECEIVED

MAR 6 2019

Item No. 5

CITY OF SOUTH GATE  
OFFICE OF THE CITY MANAGER

*City of South Gate*  
CITY COUNCIL

9:50am

AGENDA BILL

For the Regular Meeting of: March 12, 2019

Originating Department: Community Development

Department Director:

*Joe Perez*  
Joe Pérez

City Manager:

*Michael Flad*  
Michael Flad

**SUBJECT: ORDINANCE AMENDING SECTION 1.59.040 (ISSUANCE OF ADMINISTRATIVE CITATION; CONTENTS THEREOF) OF THE SOUTH GATE MUNICIPAL CODE, FOR THE IMMEDIATE IMPOSITION OF ADMINISTRATIVE CITATIONS FOR VIOLATIONS OF BUILDING, PLUMBING, ELECTRICAL, OR OTHER SIMILAR STRUCTURAL, HEALTH AND SAFETY, OR ZONING REQUIREMENTS RESULTING FROM ILLEGAL CANNABIS CULTIVATION**

**PURPOSE:** To consider an Ordinance authorizing the immediate issuance of administrative citations for building and zoning code violations resulting from or facilitating illegal cultivation of cannabis, in accordance with Assembly Bill (AB) 2164, which went into effect on January 1, 2019.

**RECOMMENDED ACTION:** Following the conclusion of the public hearing, waive the reading in full and introduce Ordinance amending Section 1.59.040 (Issuance of Administrative Citation; Contents Thereof), Chapter 1.59 (Administrative Citations) of Title 1 (Administration and Personnel), of the South Gate Municipal Code, to provide for the immediate imposition of administrative fines or penalties for the violation 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.

*FF*

**FISCAL IMPACT:** Administrative citations are deposited into the City's General Fund. The citations will not create additional expenses; however, they may generate an undetermined amount of revenue.

**ALIGNMENT WITH COUNCIL GOALS:** The adoption of this Ordinance authorizing the issuance of administrative citations due to illegal cultivation of cannabis supports the goal of protecting strong and sustainable neighborhoods, by creating a deterrent to illegal/unpermitted cultivation of cannabis, in the form of fines.

**ANALYSIS:** Under California law, Assembly Bill (AB) 2164, which became effective on January 1, 2019, authorizes a city to adopt an ordinance making any violation of the municipal code subject to an administrative penalty. In most cases the amount of the administrative penalty

shall not exceed the maximum fine set in Government Code Section 36900(b), which is \$100 for the first violation, \$200 for the second violation within a year, and \$500 for the third and subsequent violation in a year.<sup>1</sup>

Currently, the City must provide “reasonable period of time” to complete the abatement of a violation, prior to issuing an administrative citation. AB 2164 allows for the immediate issuance of an administrative citation for the violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning codes if the violation relates to the illegal cultivation of cannabis, and creates an immediate danger to health or safety.

However, AB 2164 provides an exception applicable to administrative citations issued to the owners of rental properties: the City must provide those owners with a “reasonable period of time” for the correction or remedy of the violation if all of the following three conditions are met:

1. A tenant is in possession of the property that is the subject of the administrative action;
2. The rental property owner can provide evidence that the rental agreement prohibits the cultivation of cannabis; and
3. The rental property owner did not know that the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.

Through authorizing citations for building and zoning code violations deriving from illegal cultivation of cannabis, the City aims to encourage property owners who rent property to ascertain that their properties are utilized correctly and not be used to grow cannabis.

If the City Council adopts the proposed Ordinance, once effective, the City could more quickly impose administrative fines, upon determining that someone violated the City’s building or zoning laws in connection with illegal cannabis cultivation.

**BACKGROUND:** On September 10, 2018, Governor Brown signed AB 2164 (Cooley) to authorize a local agency, to make any violation of an ordinance subject to an administrative fine or penalty when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues as a result of the illegal cultivation of cannabis. AB 2164 (Cooley) went into effect on January 1, 2019.

On March 13, 2012, the City Council adopted Ordinance No. 2293, which added Chapter 1.59 (Administrative Citations) to the South Gate Municipal Code to allow the issuance of

---

<sup>1</sup> We note that a recent amendment to Government Code Section 36900, which became effective January 1, 2019, added subsection (c) which authorizes higher administrative penalties for certain violations of building and safety codes. This Department believes it would be advisable for the City Council to amend Section 1.59.060.B of the South Gate Municipal Code in order to allow the City to impose these higher penalties. At an upcoming meeting we intend to present the City Council with a formal recommendation to that effect.

administrative citations in lieu of misdemeanors or infractions. In short, the Ordinance was a response to the need of an alternative method of enforcement for violations of the South Gate Municipal Code that allows for the abatement of violations.

**ATTACHMENTS:** A. Proposed Ordinance  
B. Proposed Ordinance with redlines  
C. Assembly Bill 2164

**ORDINANCE NO. \_\_\_\_\_**

**CITY OF SOUTH GATE  
LOS ANGELES COUNTY, CALIFORNIA**

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH GATE, CALIFORNIA, AMENDING SECTION 1.59.040 (ISSUANCE OF ADMINISTRATIVE CITATION; CONTENTS THEREOF), OF CHAPTER 1.59 (ADMINISTRATIVE CITATIONS), OF TITLE 1 (ADMINISTRATION AND PERSONNEL), OF THE SOUTH GATE MUNICIPAL CODE TO PROVIDE FOR THE IMMEDIATE IMPOSITION OF ADMINISTRATIVE FINES OR PENALTIES FOR THE VIOLATION 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**

**WHEREAS**, California Government Code Section 53069.4 authorizes local jurisdictions to enact legislation making violations of the City's laws subject to an administrative fine or penalty; and

**WHEREAS**, existing law requires a local agency 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; and

**WHEREAS**, on March 13, 2012, the City Council adopted Ordinance No. 2293, adding Chapter 1.59 (Administrative Citations), to Title 1 (Administration and Personnel), of the South Gate Municipal Code to allow the issuance of administrative citations in lieu of misdemeanors or infractions; and

**WHEREAS**, Assembly Bill 2164 (Cooley), effective on January 1, 2019, amended said Section 54069.4 to allow a local agency, by ordinance, to provide for the immediate imposition of administrative fines or penalties for the violation 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; and

**WHEREAS**, during the regularly scheduled City Council meeting of March 12, 2019, the City Council held a duly noticed public hearing to take public testimony and consider introducing this Ordinance;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH GATE, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council hereby amends Section 1.59.040 (Issuance of Administrative Citation; Contents Thereof), of Chapter 1.59 (Administrative Citations), of Title 1 (Administration and Personnel), of the South Gate Municipal Code in its entirety to read as follows:

**1.59.040 Issuance of administrative citation—Contents thereof.**

- A. Whenever an officer determines that a violation of the code has occurred, the officer may issue a citation on a city-approved form imposing an administrative fine or fines to the responsible person(s) in accordance with the provisions of this chapter.
- B. When the violation pertains to building, plumbing, electrical or other similar structural or zoning issues that create an immediate danger to health or safety, a citation may be issued forthwith. In the absence of an immediate danger, a citation for a violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues shall not be issued pursuant to this chapter unless the responsible person has first been provided with a reasonable period, as determined by the officer, in which to complete the abatement or compliance actions.
- C. Notwithstanding the foregoing and subject to subsection D., below, administrative fines may be imposed immediately pursuant to Government Code Section 53069.4 for the violation of any 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.
- D. Before a person is issued a citation pursuant to subsection C., above, for a first offense, that person shall have the time provided in subsection B., above, to correct or remedy the violation, if all of the following are true:
  - 1. A tenant is in possession of the property that is the subject of the administrative action;
  - 2. The subject rental property owner or agent can provide evidence the subject rental or lease agreement prohibits the cultivation of cannabis; and
  - 3. The subject rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.
- E. An officer may issue a citation for a violation not committed in the officer's presence if the officer has determined, through investigation that the citee did commit, or is otherwise responsible for, the violation.
- F. Each day, or any portion thereof, that a prohibited condition, use or activity under the code is committed, continued or permitted shall constitute a separate violation for which an administrative fine may be imposed. A single citation may charge multiple violations of the code; however, each violation is subject to a separate and distinct administrative fine.

G. Each citation shall contain the following information:

1. Name and mailing address of the responsible person;
2. The address or description of the location of the violation;
3. The date and approximate time of the commission of the violation(s), or detection thereof by an officer;
4. The relevant provision(s) or section(s) of the code alleged to have been violated;
5. A description of the violation(s);
6. Amount of the fine for each violation, the procedure and place to pay the fine(s) and/or reinspection fees, and any late penalty and/or interest charge(s), if not timely paid;
7. When appropriate, the action(s) required to correct the violation(s), and, if applicable, any deadlines or time limitations for commencing and completing such action(s);
8. A description of the administrative citation review process and the manner by which a hearing on a citation may be obtained (including the form to be used, where it may be procured from, and the period in which a request must be made in order to be timely);
9. The name and signature of the officer, and the signature of the citee, if he or she is physically present and will sign the citation at the time of its issuance. The refusal of a citee to sign a citation shall not affect its validity or any related subsequent proceeding, nor shall signing a citation constitute an admission that a person has committed a violation of the code;
10. A statement that the failure to timely tender the fine(s) and other fees, costs, and/or charges imposed pursuant to this chapter may result in the recordation of a lien, a delay in the issuance or renewal of any city license, permit, and/or other collection efforts as allowed by law; and
11. Any other information deemed necessary by the city manager.

**SECTION 2.** This Ordinance is exempt from CEQA as the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Section 15061 (b) (3) of the CEQA Regulations (14 CCR § 15061).

**SECTION 3.** This Ordinance shall take effect and be enforced on the thirty-first (31<sup>st</sup>) day after its adoption.

**SECTION 4.** The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be published as required by law.

**PASSED, APPROVED and ADOPTED** this \_\_\_ day of \_\_\_\_\_, 2019.


**CITY OF SOUTH GATE:**

\_\_\_\_\_  
María Belén Bernal, Mayor

**ATTEST:**

\_\_\_\_\_  
Carmen Avalos, City Clerk  
(SEAL)

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Raul F. Salinas, City Attorney

**ORDINANCE NO. \_\_\_\_\_**

**CITY OF SOUTH GATE  
LOS ANGELES COUNTY, CALIFORNIA**

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH GATE, CALIFORNIA, AMENDING SECTION 1.59.040 (ISSUANCE OF ADMINISTRATIVE CITATION; CONTENTS THEREOF), OF CHAPTER 1.59 (ADMINISTRATIVE CITATIONS), OF TITLE 1 (ADMINISTRATION AND PERSONNEL), OF THE SOUTH GATE MUNICIPAL CODE TO PROVIDE FOR THE IMMEDIATE IMPOSITION OF ADMINISTRATIVE FINES OR PENALTIES FOR THE VIOLATION 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**

**WHEREAS**, California Government Code Section 53069.4 authorizes local jurisdictions to enact legislation making violations of the City's laws subject to an administrative fine or penalty; and

**WHEREAS**, existing law requires a local agency 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; and

**WHEREAS**, on March 13, 2012, the City Council adopted Ordinance No. 2293, adding Chapter 1.59 (Administrative Citations), to Title 1 (Administration and Personnel), of the South Gate Municipal Code to allow the issuance of administrative citations in lieu of misdemeanors or infractions; and

**WHEREAS**, Assembly Bill 2164 (Cooley), effective on January 1, 2019, amended said Section 54069.4 to allow a local agency, by ordinance, to provide for the immediate imposition of administrative fines or penalties for the violation 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; and

**WHEREAS**, during the regularly scheduled City Council meeting of March 12, 2019, the City Council held a duly noticed public hearing to take public testimony and consider introducing this Ordinance;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH GATE, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council hereby amends Section 1.59.040 (Issuance of Administrative Citation; Contents Thereof), of Chapter 1.59 (Administrative Citations), of Title 1 (Administration and Personnel), of the South Gate Municipal Code in its entirety to read as follows:



**1.59.040 Issuance of administrative citation—Contents thereof.**

- A. Whenever an officer determines that a violation of the code has occurred, the officer may issue a citation on a city-approved form imposing an administrative fine or fines to the responsible person(s) in accordance with the provisions of this chapter.
- B. When the violation pertains to building, plumbing, electrical or other similar structural or zoning issues that create an immediate danger to health or safety, a citation may be issued forthwith. In the absence of an immediate danger, a citation for a violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues shall not be issued pursuant to this chapter unless the responsible person has first been provided with a reasonable period, as determined by the officer, in which to complete the abatement or compliance actions.
- C. Notwithstanding the foregoing and subject to subsection D., below, administrative fines may be imposed immediately pursuant to Government Code Section 53069.4 for the violation of any 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.
- D. Before a person is issued a citation pursuant to subsection C., above, for a first offense, that person shall have the time provided in subsection B., above, to correct or remedy the violation, if all of the following are true:
  - 1. A tenant is in possession of the property that is the subject of the administrative action;
  - 2. The subject rental property owner or agent can provide evidence the subject rental or lease agreement prohibits the cultivation of cannabis; and
  - 3. The subject rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.
- ~~E.~~ An officer may issue a citation for a violation not committed in the officer's presence if the officer has determined, through investigation that the citee did commit, or is otherwise responsible for, the violation.
- ~~D F.~~ Each day, or any portion thereof, that a prohibited condition, use or activity under the code is committed, continued or permitted shall constitute a separate violation for which an administrative fine may be imposed. A single citation may charge multiple violations of the code; however, each violation is subject to a separate and distinct administrative fine.

**E G.** Each citation shall contain the following information:

1. Name and mailing address of the responsible person;
2. The address or description of the location of the violation;
3. The date and approximate time of the commission of the violation(s), or detection thereof by an officer;
4. The relevant provision(s) or section(s) of the code alleged to have been violated;
5. A description of the violation(s);
6. Amount of the fine for each violation, the procedure and place to pay the fine(s) and/or reinspection fees, and any late penalty and/or interest charge(s), if not timely paid;
7. When appropriate, the action(s) required to correct the violation(s), and, if applicable, any deadlines or time limitations for commencing and completing such action(s);
8. A description of the administrative citation review process and the manner by which a hearing on a citation may be obtained (including the form to be used, where it may be procured from, and the period in which a request must be made in order to be timely);
9. The name and signature of the officer, and the signature of the citee, if he or she is physically present and will sign the citation at the time of its issuance. The refusal of a citee to sign a citation shall not affect its validity or any related subsequent proceeding, nor shall signing a citation constitute an admission that a person has committed a violation of the code;
10. A statement that the failure to timely tender the fine(s) and other fees, costs, and/or charges imposed pursuant to this chapter may result in the recordation of a lien, a delay in the issuance or renewal of any city license, permit, and/or other collection efforts as allowed by law; and
11. Any other information deemed necessary by the city manager.

**SECTION 2.** This Ordinance is exempt from CEQA as the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Section 15061 (b) (3) of the CEQA Regulations (14 CCR § 15061).

**SECTION 3.** This Ordinance shall take effect and be enforced on the thirty-first (31<sup>st</sup>) day after its adoption.

**SECTION 4.** The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be published as required by law.

**PASSED, APPROVED and ADOPTED** this \_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF SOUTH GATE:**

\_\_\_\_\_  
María Belén Bernal, Mayor

**ATTEST:**

\_\_\_\_\_  
Carmen Avalos, City Clerk  
(SEAL)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Raul F. Salinas, City Attorney



**Assembly Bill No. 2164**

**CHAPTER 316**

An act to amend Section 53069.4 of the Government Code, relating to local government.

[Approved by Governor September 10, 2018. Filed with Secretary of State September 10, 2018.]

**LEGISLATIVE COUNSEL'S DIGEST**

**AB 2164, Cooley. Local ordinances: fines and penalties: cannabis.**

Existing law authorizes the legislative body of a local agency, as defined, to make, by ordinance, any violation of an ordinance subject to an administrative fine or penalty, as specified. Existing law requires the ordinance adopted by the local agency to provide for a reasonable period of time, as specified in the ordinance, 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.

This bill would allow the ordinance to provide for the immediate imposition of administrative fines or penalties for the violation 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, except as specified.

*The people of the State of California do enact as follows:*

**SECTION 1.** Section 53069.4 of the Government Code is amended to read:

53069.4. (a) (1) The legislative body of a local agency, as the term "local agency" is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in Section 25132 and subdivision (b) of Section 36900.

(2) (A) The administrative procedures set forth by ordinance adopted by the local agency pursuant to this subdivision shall provide for a reasonable period of time, as specified in the ordinance, 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.

(B) Notwithstanding subparagraph (A), the ordinance adopted by the local agency pursuant to this subdivision may provide for the immediate imposition of administrative fines or penalties for the violation 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. This subparagraph shall not be construed to apply to cannabis cultivation that is lawfully undertaken pursuant to Section 11362.1 of the Health and Safety Code.

(C) If a local agency adopts an ordinance that provides for the immediate imposition of administrative fines or penalties as allowed in subparagraph (B), that ordinance shall provide for a reasonable period of time for the correction or remedy of the violation prior to the imposition of administrative fines or penalties as required in subparagraph (A) if all of the following are true:

(i) A tenant is in possession of the property that is the subject of the administrative action.

(ii) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.

(iii) The rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.

(b) (1) Notwithstanding Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement, or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A proceeding under this subdivision is a limited civil case. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

(2) The fee for filing the notice of appeal shall be as specified in Section 70615. The court shall request that the local agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall retain the fee specified in Section 70615 regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit

of the fine or penalty shall be refunded by the local agency in accordance with the judgment of the court.

(3) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(c) If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be deemed confirmed.

(d) If the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty pursuant to the procedures set forth in its ordinance.

O