

ORDINANCE NO. 3453

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING VARIOUS SECTIONS OF THE CHULA VISTA MUNICIPAL CODE (CVMC) TO CLARIFY PROVISIONS REGARDING ILLEGAL COMMERCIAL CANNABIS CONDUCT AND PENALTIES, INCLUDING CVMC SECTIONS 1.04.010, DEFINITION OF RESPONSIBLE PARTY, 1.41.110, CIVIL PENALTIES, 5.19.020, DEFINITIONS, AND 5.19.280, ENFORCEMENT AND PENALTIES

WHEREAS, Chula Vista Municipal Code section 1.04.010 identifies and defines responsible parties for purposes of violations of the Chula Vista Municipal Code; and

WHEREAS, Chula Vista Municipal Code section 1.41.110(C) currently caps the amount of civil penalties that can be assessed against a responsible party for violations of the municipal code at \$2,500 per day, with the exception of violations of Chapter 15.04 CVMC; and

WHEREAS, Chula Vista Municipal Code section 5.19.020 identifies and defines commercial cannabis activity and manager for purposes of Chapter 5.19 of the Chula Vista Municipal Code; and

WHEREAS, Chula Vista Municipal Code section 5.19.280(C) authorizes the assessment of civil penalties in the amount of up to \$10,000 for each and every violation of Chapter 5.19 CVMC; and

WHEREAS, in *City and County of San Francisco v. Sainez*, the California Court of Appeal found that fines in excess of \$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 misconduct; and

WHEREAS, unlawful cannabis businesses have continued to operate in violation of the Chula Vista Municipal Code despite enforcement action and the assessment of civil penalties in the amount of \$2,500 per day; and

WHEREAS, under California Business and Professions Code section 26200(a)(1), local jurisdictions are authorized to either permit and regulate or prohibit the operation of cannabis businesses within their boundaries; and

WHEREAS, the City of Chula Vista has experienced the negative impacts and secondary effects associated with the operation of unlawful cannabis businesses within its corporate boundaries; and

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WHEREAS, unregulated businesses remain a source of danger and disruption for City residents and businesses; and

WHEREAS, pursuant to its police powers, including but not limited to California Constitution Article XI, Section 5(b) authority over municipal affairs, the City of Chula Vista has general authority over the public health, safety, and welfare of its citizens; and

WHEREAS, the proposed amendments do not cause a substantial change to the objectives and policies contained in Chula Vista Municipal Code chapters 1.04 and 5.19, but instead clarify important provisions and facilitate City's ability to implement such objectives and policies; and

WHEREAS, it is the intent of the City Council to authorize robust enforcement procedures with regard to unlawful cannabis activity within the City in order to protect public safety, health, and other law enforcement interests.

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

### **Section I. Environmental Findings**

A. Chapter 1, Section 1.04.010 of the Chula Vista Municipal Code regarding the definition of "Responsible party" is amended to read as follows:

#### **1.04.010 Definitions and rules of construction.**

"Responsible party" means, individually and collectively, the owner(s) of real property upon which a violation of this code or state law exists, a tenant or occupant in possession, a licensee, or any other person who has caused, created, or continues to allow a condition to occur or exist upon real property constituting a violation of this code or state law. A "responsible party" can be a natural person or an entity.

**[All other provisions and definitions in section 1.04.010 remained unchanged]**

B. Chapter 1, Section 1.41.100 of the Chula Vista Municipal Code regarding the assessment of civil penalties is amended to read as follows:

#### **1.41.110 Civil penalties.**

A. The council finds that there is a need for alternative methods of enforcement of the Chula Vista Municipal Code and applicable state codes. The council further finds that the assessment of civil penalties through an administrative hearing procedure for code violations is a necessary alternative method of code enforcement. The administrative assessment of civil penalties established in this section is in addition to any other administrative or judicial remedy established by law which may be pursued to address violations of the municipal code or applicable codes.

B. Civil penalties may be assessed against a responsible party for continued violations of the municipal code or applicable state codes, whether of the same section or any combination, that reflect a continuing disregard for the requirements of such laws. The director may issue a notice and order to the responsible party assessing a civil penalty pursuant to this section. The civil penalty may be enforced against the responsible party as a lien pursuant to CVMC 1.41.140.

C. Except for violations of land grading ordinances contained in Chapter 15.04 CVMC and violations of commercial cannabis provisions contained in Chapter 5.19 CVMC, civil penalties may be assessed at a rate not to exceed \$2,500 per violation per day.

D. The civil penalty for violations of land grading permits or land grading work done without the issuance of a permit shall be based on an estimate by the director of grading work performed. The rate of civil penalties shall be as follows:

1. Less than 250 cubic yards, but not meeting the requirements for an exemption from grading permit under CVMC 15.04.150: \$1,000 per violation;
2. Two hundred fifty-one (251) to 500 cubic yards: \$5,000 per violation;
3. Five hundred one (501) to 1,000 cubic yards: \$10,000 per violation;
4. Over 1,001 cubic yards: \$25,000 per violation;
5. In the event any individual, firm, company, developer or property owner causes a second violation of the land grading permit ordinance, either on the same property or different property and whether or not part of the same development, the rate of civil penalties shall be doubled. For third and subsequent violations, the rate of civil penalties shall be multiplied by a factor of four.

E. Civil penalties for violations of Chapter 5.19 CVMC may be assessed at a rate not to exceed \$10,000 per violation per day.

F. Civil penalties under this section may be accrued retroactive to the date the violations were first discovered, as evidenced by the issuance of a notice of violation pursuant to CVMC 1.41.030, or any later date determined by the director. In determining the amount to be imposed on a daily rate, the director shall consider the following factors:

1. Duration of the violation;
2. Frequency or occurrence of the violation;
3. Frequency or occurrence of other violations during the period of accrual;
4. Seriousness of the violation in relation to its threat or impact upon public health, welfare or safety;
5. History of the violations;
6. Activity taken by the responsible party to obstruct or interfere with correction of the problem;
7. Good faith or bad faith efforts by the responsible party to comply;
8. The impact of the violation on the surrounding property and community;
9. The financial ability of the responsible party to have corrected the violation in a timely fashion.

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G. The director shall comply with Chapter 1.40 CVMC concerning notice of the proposed civil penalties and the right to a hearing to contest or confirm. Unless contested, the notice and order shall be final and be enforced pursuant to CVMC 1.41.160. If contested, the hearing examiner shall limit the hearing to the following issues:

1. Whether the responsible party maintained a use or condition on real property that violated the municipal code or state law on the dates specified; and
2. Whether the civil penalty assessed is consistent with the criteria expressed in subsection (F) of this section. The hearing examiner may, however, exercise discretion pursuant to CVMC 1.40.020(E) and increase or decrease the penalties assessed to a level determined to be supported by the evidence meeting the criteria under subsection (F) of this section.

H. The director shall issue a final order based on the proceedings under subsection (F) of this section and establish a date for payment, following which date an enforcement lien may be imposed upon the property in accordance with applicable law. The imposition of an enforcement lien may be made a part of the proceedings and notice and order under CVMC 1.41.100 or this section.

C. Chapter 5, Section 5.19.020 of the Chula Vista Municipal Code regarding the definitions of “Commercial Cannabis Activity” and “Manager” are amended to read as follows:

“Commercial Cannabis Activity” means the commercial Cultivation, possession, furnishing, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis or Cannabis Products.

“Manager” means any individual Person(s) designated by a Commercial Cannabis Business to manage day-to-day operations of the Commercial Cannabis Business or any Person acting with apparent management authority. Evidence of management authority includes, but is not limited to, evidence that the Person has the power to direct, supervise, or hire and dismiss employees or volunteers, control hours of operation, create policy rules, or purchase supplies.

**[All other provisions and definitions in section 5.19.020 remained unchanged]**

D. Chapter 5, Section 5.19.280 of the Chula Vista Municipal Code regarding enforcement and penalties regarding commercial cannabis activity is amended to read as follows:

**5.19.280 Enforcement and Penalties.**

A. It is unlawful to:

1. Own, operate, set up, conduct, maintain, facilitate, or direct Commercial Cannabis Activity in the City without a valid City License authorizing such Commercial Cannabis Activity;
2. Participate as an employee, contractor, agent, volunteer, or in any other capacity in Commercial Cannabis Activity in the City without a valid City License;

3. Use any parcel or any portion of parcel of land for Commercial Cannabis Activity without a valid City License;

4. Lease, rent to, or otherwise allow Commercial Cannabis Activity to occupy or access any parcel or portion of parcel of land in the City without a valid City License.

B. It shall be unlawful for any person to violate any provision, or to fail to comply with the requirements, of this Chapter or any regulation adopted hereunder. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Chapter or any regulation adopted hereunder shall be guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 or imprisonment for a period of not more than six months, or by both a fine and imprisonment. Each day that a violation continues is deemed to be a new and separate offense. No proof of knowledge, intent, or other mental state is required to establish a violation.

C. Any condition caused or allowed to exist in violation of any of the provisions of this Chapter or any regulation adopted hereunder is a public nuisance and may be abated by the City, or by the City Attorney on behalf of the people of the State of California, as a nuisance by means of a restraining order, injunction, or any other order or judgment in law or equity issued by a court of competent jurisdiction. The City, or the City Attorney on behalf of the people of the State of California, may seek injunctive relief to enjoin violations of, or to compel compliance with this Chapter or seek any other relief or remedy available at law or equity, including the imposition of monetary civil penalties. Each day that a violation continues is deemed to be a new and separate offense. Civil penalties for violations of this Chapter may be assessed at a rate not to exceed \$10,000 per violation per day.

D. Whenever in this Chapter any act or omission is made unlawful, it shall include causing, aiding, abetting, suffering, or concealing the fact of such act or omission.

E. The remedies specified in this Section are cumulative and in addition to any other remedies available under State or local law for a violation of this Code.

F. Nothing in this Section shall be construed as requiring the City to allow, permit, license, authorize, or otherwise regulate Commercial Cannabis Activity, or as abridging the City's police power with respect to enforcement regarding Commercial Cannabis Activity.

## **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.

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**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.

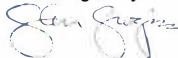
[SIGNATURES ON THE FOLLOWING PAGE]

Presented by

DocuSigned by:  
  
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Gary Halbert  
City Manager

Approved as to form by

DocuSigned by:  
  
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Glen R. Googins  
City Attorney


PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 9th day of April 2019, by the following vote:

AYES:	Councilmembers:	Diaz, Galvez, McCann, Padilla, and Casillas Salas
NAYS:	Councilmembers:	None
ABSENT:	Councilmembers:	None

DocuSigned by:  
  
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Mary Casillas Salas, Mayor

ATTEST:

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Kerry K. Bigelow, MMC, City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF SAN DIEGO    )  
CITY OF CHULA VISTA     )

I, Kerry K. Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3453 had its first reading at a regular meeting held on the 26th day of March 2019 and its second reading and adoption at a regular meeting of said City Council held on the 9th day of April 2019; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

4/16/2019

Dated

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Kerry K. Bigelow, MMC, City Clerk