



# Agenda Report

## Fullerton City Council

**MEETING DATE:** APRIL 6, 2021

**TO:** CITY COUNCIL / SUCCESSOR AGENCY

**SUBMITTED BY:** KENNETH A. DOMER, CITY MANAGER

**PREPARED BY:** MATT FOULKES, DIRECTOR OF COMMUNITY AND ECONOMIC DEVELOPMENT

**SUBJECT:** ILLEGAL CANNABIS BUSINESS ENFORCEMENT TWO-YEAR PILOT PROGRAM

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### SUMMARY

Creation of a two-year pilot program to hire one part-time Code Enforcement Officer exclusively focused on Code Enforcement actions to close illegal cannabis businesses.

### RECOMMENDATION

1. Approve \$10,700 appropriation to Fiscal Year 2020-21 budget to initiate Two-Year Pilot Program.
2. Direct Staff to recruit and hire one non-regular part-time Code Enforcement Officer dedicating 28 hours a week to closing illegal cannabis businesses.

### PRIORITY POLICY STATEMENT

This item matches the following Priority Policy Statements:

- Fiscal and Organizational Stability
- Public Safety.

### FISCAL IMPACT

The proposed Two-Year Pilot Program will use funding from the General Fund. The overall cost of the two-year program totals \$72,193 broken down as follows:

- Pro-rated Salary for Fiscal Year 2020-21 \$10,700  
(5 pay periods)
- Salary for Fiscal Year 2021-22 \$54,443

- Vehicle Maintenance and Fuel \$4,050
- Tools (computer, phone, supplies, etc.) \$3,000

Should City Council approve the recommendations, the proposed Fiscal Year 2021-22 budget will incorporate the FY 2021-22 costs. City council will consider the FY 2021-22 budget in June 2021.

Increased enforcement efforts may result in additional revenue to the City's General Fund as a result of increased frequency of administrative citations issued to illegal cannabis businesses. However, actual collected revenue from fines varies from year to year and a reduction in number of fines could offset any increase if the change in enforcement processes and increased frequency of fines has the desired effect of closing and deterring illegal cannabis businesses from opening or operating in the City.

## DISCUSSION

### Background

Since 2017, Code Enforcement has closed 49 illegal cannabis dispensaries/cultivation facilities located in the City. Increased non-cannabis related complaints have limited the time Code Enforcement Staff can spend on illegal cannabis businesses which has resulted in inconsistent enforcement practices and ineffective closing of illegal cannabis businesses.

The lucrative nature of illegal cannabis businesses often results in the business operator, and in some cases the property owner, exerting every available legal avenue to fight and slow the City's efforts to close them down. Like any illegally operating business, the law affords these businesses specific, and often lengthy, due process allowances before the City can obtain an abatement warrant from a judge to close the business permanently. Given the amount of time and resources required to get through the legal process, the time dedicated to cannabis enforcement negatively impacts the service level provided to residents and businesses who submit complaints to the Citywide Code Enforcement Program.

Fullerton prohibits all cannabis-related uses and/or activities except those superseded by state law. Despite ongoing closures, new illegal dispensaries open and an average of six to eight illegal dispensaries operate in the City at any given time. These are not the same six to eight illegal businesses continuing to operate, but rather a changing group of illegal operators.

In May 2019, the City Council approved an amendment to the Fullerton Municipal Code to increase fine amounts for illegal cannabis businesses up to the maximum amount permitted for General Law Cities (which includes Fullerton) to issue under state law. Pursuant to state law, the City can charge the following maximum citation amounts:

- 1st Citation - \$100
- 2nd Citation - \$200
- 3rd Citation (and every Citation after) - \$500.

If the illegal business has made building alterations without permits, which most have, the City can issue Building and Safety fines on top of the Administrative Citations above:

- 1st Citation - \$130
- 2nd Citation - \$700
- 3rd Citation (and every Citation after) - \$1,300.

In addition to the fines above, the City can also issue a fine of up to \$2,500 for each additional violation of the same ordinance within two years of the first violation on commercial property that has an existing building / safety violation at the time of the violation the property owner has failed to remove visible refuse (trash / debris) or prohibit unauthorized use of the property.

### Current Challenges

Per the Fullerton Municipal Code, the City can issue Administrative Citations daily while the illegal activity occurs and can issue citations to both the business tenant and the property owner. Unfortunately, due to the limited number of Code Enforcement Staff, and the need to respond to other non-cannabis related complaints received, Code Officers are only able to inspect and issue citations to illegal cannabis businesses about once a week. This delay in issuing citations causes delay with the Public Nuisance Hearing process which is required to petition a judge to issue an abatement warrant to allow the City to force the closure of the illegal cannabis business. In some instances, by the time enforcement has escalated to citations, unscrupulous property owners will transfer ownership or register the property under a different Limited Liability Corporation. This causes delays and requires enforcement efforts to start over under the new ownership.

Lastly, although the City notifies the State Bureau of Cannabis Control when it identifies illegal cannabis businesses, they have not provided support. The Department of Consumer Affairs' Division of Investigation-Cannabis Enforcement Unit has informed Staff that enforcement resumed in January 2021 after halting search warrants due to COVID-19. However, the agency has months of backlog.

### Proposed Focused Enforcement Program

Staff proposes to recruit and hire one certified Code Enforcement Officer whose sole assignment will be illegal cannabis business enforcement. This Officer will dedicate 28 hours a week to perform consistent and sometimes challenging inspections pertaining to cannabis dispensaries or cultivations facilities. This Officer will perform all required coordination with the City Attorney's Office and other departments from first knowledge of the illegal cannabis business to its closing. The Program's objective is to provide the focused and consistent daily enforcement missing under current staffing levels. To meet that objective, efforts will aim at accomplishing the following goals:

1. Increased Code Enforcement presence: Ensure staff inspects every illegal cannabis business at least five times a week.
2. Increased time for documentation and research: Create a process for Code Enforcement to maintain current property ownership information on all illegal cannabis businesses.

3. Increased accountability passed on to bad operators: Ensure operators and property owners receive Administrative Citations at least five times a week and create a mechanism to ensure unpaid fines incur late fee charges and/or sent to collections in a timely manner.

#### Evaluation after Two Years

At the conclusion of Fiscal Year 2021-22, staff will evaluate the program to determine its effectiveness at closing illegal cannabis businesses. Based on the findings, Staff will present a recommendation to continue, modify or eliminate the Program. If the Pilot Program continues after the initial two years, staff may request additional appropriations for purchase of a City vehicle through the vehicle replacement and maintenance fund.

#### Attachments:

- Attachment 1 – PowerPoint Presentation
- Attachment 2 – Enforcement Process Diagram