



CITY COUNCIL AGENDA REPORT

MEETING DATE: July 20, 2021

ITEM NUMBER: PH-1

SUBJECT: APPROVE CERTIFICATION OF SPECIAL ASSESSMENTS FOR THE COLLECTION OF DELINQUENT CIVIL CITATIONS FOR MUNICIPAL CODE VIOLATIONS IN RELATION TO ILLEGAL AND UNLICENSED CANNABIS BUSINESSES

DATE: JULY 6, 2021

FROM: FINANCE DEPARTMENT

PRESENTATION BY: CAROL MOLINA, DIRECTOR OF FINANCE

FOR FURTHER INFORMATION CONTACT:

**CAROL MOLINA, DIRECTOR OF FINANCE
714-754-5243**

RECOMMENDATION:

1. Hold a Public Hearing; and
2. Adopt the attached resolution approving the certification of special assessments for delinquent civil fines for municipal code violations in relation to illegal and unlicensed cannabis businesses.

BACKGROUND:

Since the legalization of recreational use of cannabis in 2016 under Proposition 64, illegal cannabis operations (dispensaries) have proliferated throughout the State. The participants in these operations, including property owners and employees, have set up shop with disregard to local ordinances, state permits and State building and fire codes. Specifically, these dispensaries have disregarded the ordinances regulating cannabis uses enacted by the voters of the City (Measure X) and the City Council - all to the detriment of the general public, as well as those legal cannabis businesses currently operating in the City.

The City has attempted to curb illegal and unlicensed cannabis operations that have been operating throughout the City by issuing citations for municipal code violations including: operating without a business license, lack of required building permits, and operating an unlicensed cannabis dispensary. As part of the City's targeted enforcement, citations have been issued to property owners, business operators, and employees. All parties who were issued citations had 30 days to pay before considered delinquent. Delinquent citations are then forwarded to the Finance Department for collection. Pursuant to State law, certain delinquent fines, interest, and penalties may be collected as part of nuisance abatement procedures authorized by Government Code Section 38773.5. This allows the City to place delinquent citations on the County's property tax roll as a special tax for collection purposes.

ANALYSIS:

Government Code Section 38773.5 authorizes municipalities' legislative bodies to adopt an ordinance to establish a procedure for the abatement of a nuisance and make the cost of abatement of a nuisance upon a parcel of land a special assessment against that parcel. The assessments are limited to property related violations. The City's procedures pursuant to Section 38773.5 are set forth in Costa Mesa Municipal Code (CMMC) Section 1-48, Collection of Unpaid Fines.

Staff has made repeated attempts without success to collect the Civil Citation fines due from the property owners and affiliated parties listed in Attachment 2. There are a total of 58 delinquent civil citations that are recommended to be assessed against 12 properties. The delinquent amount is \$122,475.

Persons cited were notified in writing at the time of citation issuance of their right to a hearing pursuant to CMMC Sections 1-45 through 1-47. In addition, each property owner recently was mailed a formal letter, via certified mail on July 7, 2021, of the proposed special assessment against their property for the delinquent civil citations and the date and time of the public hearing. Further, the letter included information that their right to an administrative hearing and judicial review of the citation issued against them has now expired.

The purpose of the public hearing is to consider a resolution to certify the special assessments and authorize recording such assessments against the respective properties as liens. This action will also authorize the Tax Collector for the County of Orange to place the assessments on the tax roll and proceed to collect the assessments as property tax liens against their properties. Should the assessments be added to the tax roll as liens, penalties and interest will continue to accrue until paid at the maximum rate as allowed by State law. Pursuant to Government Code section 38773.5(c), at the time of imposition of the assessment, a notice will be given to the property owner notifying them the property may be sold after three years by the County tax collector for unpaid delinquent assessments.

Property owners identified in Attachment 2, may appear before City Council at the public hearing and contest the amount and/or validity of any lien or assessment for a civil fine. However, pursuant to CMMC 1-48(4), such contests shall be limited to the issue of the amount and/or validity of the lien or assessment (whether the civil citation can legally be added to the tax roll as a special assessment) and may not consider whether the underlying Code violation occurred.

Finally, a legal notice advertising the public hearing, which is required pursuant to Government Code Section 38773.1(b), was published in the Daily Pilot on July 9, 2021.

ALTERNATIVES CONSIDERED:

Council may choose to reject the resolution and direct staff to proceed to collect delinquent civil citations through a collection agency, which historically has a low collection rate, therefore, limiting the effectiveness of compliance enforcement through citations. Adding the Civil Citation fines to Special Assessment liens provides an additional mechanism to assist Code Enforcement Officers in their effort to ensure compliance with the CMMC as it pertains to illegal and unlicensed cannabis business operators.

FISCAL REVIEW:

By certifying the Special Assessments to the Orange County Assessor for inclusion on the Property Tax Roll, the City has a greater likelihood to collect delinquent fines and curb the illegal and unlicensed cannabis operations within City limits. The County charges 0.30 percent (0.30%) of the original value for each special tax, fee, or assessment that is to be collected on the County tax rolls. The citations currently total \$122,475.

LEGAL REVIEW:

The City Attorney has reviewed and approved this report and the attached resolution as to form.

CITY COUNCIL GOALS & PRIORITIES

This item supports the following City Council goals and objectives: strengthen public safety and keep the community safe; and achieve long-term fiscal sustainability.

CONCLUSION:

Staff recommends adopting the attached resolution approving the certification of Special Assessments for delinquent civil fines for Costa Mesa Municipal Code violations in relation to illegal and unlicensed cannabis operations.

CAROL MOLINA
Director of Finance

KIMBERLY HALL BARLOW
City Attorney

- ATTACHMENTS:
1. [2021 Special Assessment Resolution](#)
 2. [2021 Civil Citation Special Assessment List](#)