



City of Costa Mesa

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 22-828

Meeting Date: 8/2/2022

TITLE:

APPROVE CERTIFICATION OF SPECIAL ASSESSMENTS FOR THE COLLECTION OF DELINQUENT CIVIL CITATIONS FOR MUNICIPAL CODE VIOLATIONS

DEPARTMENT: FINANCE DEPARTMENT

PRESENTED BY: CAROL MOLINA, FINANCE DIRECTOR

CONTACT INFORMATION: CAROL MOLINA, FINANCE DIRECTOR, (714) 754-5243

RECOMMENDATION:

Staff recommends the City Council:

1. Conduct a Public Hearing.
2. Adopt Resolution 2022-xx approving the certification of special assessments for delinquent civil fines for municipal code violations in relation to unlicensed cannabis and other municipal code violations.

BACKGROUND:

Since the legalization of the recreational use of cannabis in 2016 under Proposition 64, legally permitted cannabis operations (dispensaries) have been licensed throughout the State, if allowed by the host City. However, before the residents of Costa Mesa approved the retail sale of cannabis within the City in November of 2020, certain cannabis dispensaries opened to the public without the requisite state and local permits needed to ensure compliance with all pertinent laws and regulations.

While an unlicensed or unpermitted business operating in a City can occur in any business sector, in the case of cannabis, strict compliance with State and local laws is paramount as this is a product that is used for human consumption. In many cases it is also used to treat various medical conditions and ailments. Hence, the City has dedicated resources across multiple departments to identify and shut down illegal dispensaries to ensure public safety and compliance with all laws.

The City has successfully curbed illegal and unlicensed cannabis operations, as well as other municipal code violations by issuing citations for these violations, which include operating without a business license, lack of required building permits, and operating an unlicensed cannabis dispensary.

All commercial, residential, public assembly, and other buildings within a governmental jurisdiction are required to be constructed in accordance with the jurisdiction's municipal code provisions. Permitting regulates construction and property use to ensure safe, healthy, efficient, and accessible environments for human occupancy and habitation.

Building permit violations can jeopardize public health and safety; hence, these citations hold violators accountable for any unpermitted and illegal activity.

As part of the City's targeted enforcement, citations have been issued to property owners, business operators, and employees of the illegal businesses operating in the City. 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 41 delinquent civil citations that are recommended to be assessed against 27 properties. The total delinquent amount is \$35,825.

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 21, 2022, 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 20, 2022.

ALTERNATIVES:

City 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 mitigate further illegal and unlicensed cannabis operators from operating 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 \$35,825.

LEGAL REVIEW:

The City Attorney's Office has reviewed this report and Resolution and has approved them as to form.

CITY COUNCIL GOALS AND PRIORITIES:

Ensure the Public's Safety and Quality of Life.

CONCLUSION:

Staff recommends City Council:

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