



Board Agenda Item 2

DATE: September 15, 2015

TO: Board of Supervisors

SUBMITTED BY: Margaret Mims, Sheriff-Coroner

SUBJECT: Appeal of Administrative Penalties for Violations of Fresno County Medical Marijuana Ordinance

RECOMMENDED ACTION(S):

Consider and take action on appeal of administrative citation in the amount of \$40,000.00, filed by Donald Kolz, pertaining to the property located at 34222 High Mountain Lane, Fresno, CA, APN 140-310-23, for violation of Fresno County Ordinance Code section 10.60.060 of Title 10, Medical Marijuana Cultivation Regulations.

The \$40,000.00 citation was issued pursuant to Fresno County Ordinance Code section 10.64.040. The County's Ordinance Code includes a process for appealing such a citation. An appeal must be made within 15 days from the date the citation is issued. The appeal by Mr. Kolz was made within 15 days of when he was cited.

ALTERNATIVE ACTION(S): An order denying the appeal is appropriate if your Board upholds the imposition of an administrative penalty in the amount of \$40,000 against Mr. Kolz (hereafter, the "Appellant"). Alternatively, your Board may deny the appeal, but reduce the administrative penalty. Finally, your Board may determine that the Appellant was not a responsible party, and grant the appeal by dismissing the citation.

FISCAL IMPACT:

There is no new net County cost associated with the recommended action. Staff costs associated with enforcement and administration of Fresno County Ordinance Code section 10.60.060 - Medical Marijuana Cultivation Regulations is being absorbed within the Sheriff's Org 3111 Adopted Budget.

DISCUSSION:

Summary of Facts:

Date of Citation: June 3, 2015

Number of Marijuana Plants: 40

Amount of Citation: \$40,000

Person Cited: Donald Kolz (owner)

Location of Property: 34222 High Mountain Lane, Fresno, California 93677
APN 140-310-23 (the "Property").

Disposition of Plants: Eradicated by staff on June 3, 2015

On June 3, 2015, staff from the Fresno County Sheriff's Office ("staff") investigated a possible marijuana grow located on the Property. Staff confirmed that 40 marijuana plants were growing on the Property and eradicated them.

Staff explained to Appellant that they were there to investigate possible marijuana being grown on the Property. Appellant was cooperative and allowed members of the team to access his residence and the marijuana grow that was located at the rear of the Property. Appellant said that he grew marijuana at the location and had done so since 2008 when he purchased the Property. Inside the residence there were several boxes of butane and PVC pipe used in making butane honey oil. Appellant stated he made hash out of the marijuana.

Staff advised Appellant that his cultivation of marijuana violated the Fresno County Ordinance Code, and issued an administrative citation in the amount of \$40,000 to him.

Applicable Laws:

Fresno County Ordinance Code chapter 10.64 provides that administrative penalties can be imposed for each and every marijuana plant cultivated in violation of Chapter 10.60 in the amount of one thousand dollars (\$1,000) per plant.

Pursuant to Fresno County Ordinance Code chapter 10.64.070.B, your Board shall only consider evidence that is relevant to whether the violation(s) occurred, and whether the recipients of the citations are "responsible parties" as defined by Fresno County Ordinance Code chapter 10.64.030.D ["any other entity whatsoever whose action or actions caused or contributed to violations of codes].

The decision of your Board shall be final upon adoption of an order containing its determination. The administrative penalties, if any, are due and payable immediately upon the adoption of an order denying the appeal.

ATTACHMENTS INCLUDED AND/OR ON FILE:

- Exhibit A - Map showing location of Property
- Exhibit B - Copy of citation issued to Appellant
- Exhibit C - Copy of the Request for Hearing filed by Appellant
- Exhibit D - Copy of Incident Report prepared by the Fresno County Sheriff's Office
- Exhibit E - Copy of Notice of Hearing sent to Appellant by the Clerk to the Board of Supervisors
- Exhibit F - Photos of Property taken by Fresno County Sheriff's Office staff

CAO ANALYST:

Jeannie Z. Figueroa