



County of Fresno

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Fresno, California
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Legislation Details (With Text)

File #: 15-1359 **Version:** 1 **Name:** Appeal of administrative citation (Ord. s. 10.60.060)
Type: Agenda Item **Status:** Denied
File created: 8/18/2015 **In control:** Sheriff - Coroner
On agenda: 9/15/2015 **Final action:** 9/15/2015
Enactment date: **Enactment #:**

Title: Consider and take action on appeal of administrative citation in the amount of \$71,000, filed by Prom Damlong, pertaining to the property located at 2746 E. Avenell, Fresno, CA, APN 042-243-07, for violation of Fresno County Ordinance Code section 10.60.060 of Title 10, Medical Marijuana Cultivation Regulations

Sponsors:

Indexes:

Code sections:

Attachments: 1. Agenda Item, 2. Exhibits A -Map of Property, B - Citation, C - Request for Hearing (Damlong), 3. Exhibits D - Incident Report, E - Notice of Hearing, F - Photos (Damlong), 4. Additional Information

Date	Ver.	Action By	Action	Result
9/15/2015	1	Board of Supervisors	denied	Pass

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 \$71,000, filed by Prom Damlong, pertaining to the property located at 2746 E. Avenell, Fresno, CA, APN 042-243-07, for violation of Fresno County Ordinance Code section 10.60.060 of Title 10, Medical Marijuana Cultivation Regulations.

The \$71,000 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 Prom Damlong 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 \$71,000 against Prom Damlong (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: August 12, 2015

Number of Marijuana Plants:71

Amount of Citation: \$71,000

Person Cited: Prom Damlong (owner)

Person Not Cited: Ken Damlong

Location of Property: 2746 E. Avenell, Fresno, California 93725
APN 042-243-07 (the "Property")

Disposition of Plants: Eradicated by staff on August 12, 2015

Prior History of Marijuana Cultivation on Property

In March 2015, in the course of an investigation of marijuana being grown on the Property, Ken Damlong, husband of Appellant, admitted to cultivating marijuana on the Property with two other unnamed individuals. At that time, staff observed about 250 marijuana plants, of which Mr. Damlong said over 100 of them belonged to him. Staff advised Mr. Damlong that the cultivation of marijuana in Fresno County was illegal and doing so would subject him to a fine of \$1,000 per plant. Based on all facts and circumstances known to staff at the time of this incident, staff chose to issue a 15 day notice of abatement to Mr. Damlong, and elected not to issue an administrative citation to him. A subsequent compliance check revealed that the marijuana had been removed. Staff will be available at the hearing of this matter to address questions regarding actions taken with regard to this property.

Investigation Which Led To Issuance of Administrative Citation

On August 12, 2015 staff from the Fresno County Sheriff's Office ("staff") investigated a possible marijuana grow located on the Property. Staff confirmed that 71 marijuana plants were growing on the Property and eradicated them.

Staff made contact with Prom Damlong at the front door of the residence. With the assistance of an interpreter in the Laotian language, Appellant explained she lived at and owned the property. Appellant said that her husband, Ken Damlong, was in Stockton at a funeral.

Appellant went on to admit that marijuana was being grown on the property, but that it was owned by an unknown person who lived in Stockton. However, Appellant was unable to provide staff with any contact information for that person.

Appellant consented to a search of the property, including a detached garage. The search revealed the following:

1. Medical marijuana recommendations for Appellant and Mr. Damlong;
2. Evidence that the garage was set up for drying and processing marijuana; and
3. 71 live marijuana plants in a fenced in area outside the curtilage of the residence.

Based on the foregoing evidence and staff's training and experience, staff determined that Appellant was responsible for the cultivation of the marijuana on the Property. Staff advised Appellant that her cultivation of marijuana violated the Fresno County Ordinance Code, and issued an administrative citation in the amount of \$71,000 to her.

Staff did not issue a citation to Mr. Damlong because he was not present on the date of the investigation. Staff was therefore unable to interview him to establish his responsibility for cultivation of the marijuana discovered on the property.

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