

Assembly Bill No. 1684

CHAPTER 477

An act to amend Section 53069.4 of the Government Code, relating to local government.

[Approved by Governor October 8, 2023. Filed with Secretary of State October 8, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1684, Maienschein. Local ordinances: fines and penalties: cannabis.

Existing law authorizes the legislative body of a local agency, as defined, to make, by ordinance, any violation of an ordinance subject to an administrative fine or penalty, as specified. Existing law requires the ordinance adopted by the local agency to provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety. Existing law authorizes the ordinance to provide for the immediate imposition of administrative fines or penalties for the violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis, except as specified.

This bill would expand the authorization for an ordinance providing for the immediate imposition of administrative fines or penalties to include all unlicensed commercial cannabis activity, including cultivation, manufacturing, processing, distribution, or retail sale of cannabis, and would authorize the ordinance to declare unlicensed commercial cannabis activity a public nuisance. The bill would prohibit the ordinance from imposing an administrative fine or penalty exceeding \$1,000 per violation or \$10,000 per day. The bill would authorize the ordinance to impose the administrative fine or penalty on the property owner and each owner of the occupant business entity engaging in unlicensed commercial cannabis activity and to hold them jointly and severally liable. The bill would authorize a local agency that adopts an ordinance authorized by this provision to refer a case involving unlicensed commercial cannabis activity to the Attorney General, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 53069.4 of the Government Code is amended to read:

53069.4. (a) (1) The legislative body of a local agency, as the term “local agency” is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in Section 25132 and subdivision (b) of Section 36900.

(2) (A) The administrative procedures set forth by ordinance adopted by the local agency pursuant to this subdivision shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

(B) Notwithstanding subparagraph (A), the ordinance adopted by the local agency pursuant to this subdivision may declare commercial cannabis activity undertaken without a license as required by Division 10 (commencing with Section 26000) of the Business and Professions Code to be a public nuisance and provide for the immediate imposition of administrative fines or penalties for the violation of local zoning restrictions or building, plumbing, electrical, or other similar structural, or health and safety requirements if the violation exists as a result of, or to facilitate, the unlicensed cultivation, manufacturing, processing, distribution, or retail sale of cannabis for which a license is required. This subparagraph shall not be construed to apply to cannabis cultivation or activity that is lawfully undertaken pursuant to Section 11362.1 or 11362.5 of the Health and Safety Code, to commercial cannabis activity undertaken pursuant to a license under Division 10 (commencing with Section 26000) of the Business and Professions Code and applicable state regulations, or to a person exempt from licensure pursuant to Section 26033 of the Business and Professions Code.

(C) If a local agency adopts an ordinance that provides for the immediate imposition of administrative fines or penalties as allowed in subparagraph (B), that ordinance may impose the administrative fines and penalties upon the property owner and upon each owner of the occupant business entity engaging in unlicensed commercial cannabis activity and may hold them jointly and severally liable for the administrative fines and penalties.

(D) Administrative fines or penalties that are immediately imposed pursuant to an ordinance adopted under subparagraph (B) shall not exceed one thousand dollars (\$1,000) per violation and shall not exceed ten thousand

dollars (\$10,000) per day. This subparagraph shall not be construed to limit the immediate imposition of larger fines that are otherwise authorized by applicable law and shall not be construed to limit administrative fines or penalties that are imposed after notice and a reasonable time to correct pursuant to subparagraph (A).

(E) An ordinance adopted pursuant to subparagraph (B) shall provide for a reasonable period of time for the correction or remedy of the violation prior to the imposition of administrative fines or penalties as required in subparagraph (A) if all of the following are true:

(i) A tenant is in possession of the property that is the subject of the administrative action.

(ii) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the commercial cannabis activity.

(iii) The rental property owner or agent did not know the tenant was engaging in unlicensed commercial cannabis activity for which a license was required and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the unlicensed commercial cannabis activity.

(F) A local agency that passes an ordinance pursuant to subparagraph (B) may refer cases involving unlicensed commercial cannabis activity to the Attorney General to undertake civil enforcement action pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of, or Section 26038 of, the Business and Professions Code or any other applicable law.

(b) (1) Notwithstanding Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement, or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A proceeding under this subdivision is a limited civil case. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

(2) The fee for filing the notice of appeal shall be as specified in Section 70615. The court shall request that the local agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall retain the fee specified in Section 70615 regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the local agency in accordance with the judgment of the court.

(3) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(c) If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be deemed confirmed.

(d) If the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty pursuant to the procedures set forth in its ordinance.