

1 **CITY OF SANTA FE, NEW MEXICO**

2 **RESOLUTION NO. 2014-86**

3 **INTRODUCED BY:**

4
5 Councilor Patti Bushee

6 Councilor Signe Lindell

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10 **A RESOLUTION**

11 **ESTABLISHING ADMINISTRATIVE PROCEDURES RELATING TO CIVIL PENALTIES**
12 **FOR MARIJUANA AND MARIJUANA PARAPHERNALIA POSSESSION AND**
13 **RESTATING THAT POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA IS THE**
14 **LOWEST LAW ENFORCEMENT PRIORITY OF THE CITY OF SANTA FE POLICE**
15 **DEPARTMENT.**

16
17 **WHEREAS**, on August 27, 2014, the Governing Body adopted Ordinance No. 2014-29 (the
18 “Ordinance”) which established that possession of one ounce or less of marijuana and possession of
19 marijuana paraphernalia are civil infractions and established a fine of twenty-five dollars (\$25.00) for
20 such infractions; and

21 **WHEREAS**, Section 20-6.1 of the Ordinance states that “It is the duty of the police
22 department to make possession of one ounce or less of marijuana the lowest law enforcement
23 priority;” and

24 **WHEREAS**, there is a need to establish administrative procedures for administration of the
25 Ordinance.

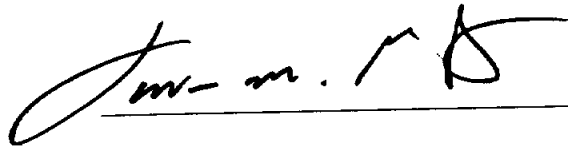
1 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**
2 **CITY OF SANTA FE** that the Governing Body hereby establishes the *Administrative Procedures*
3 *for the City of Santa Fe Marijuana and Marijuana Possession Ordinance*, attached hereto as Exhibit

4 A.

5 **BE IT FURTHER RESOLVED** that in accordance with Section 20-6.1 SFCC 1987, the
6 Governing Body hereby restates that possession of one ounce or less of marijuana is the lowest law
7 enforcement priority for the City of Santa Fe Police Department.

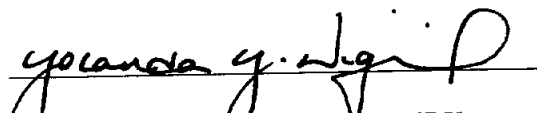
8 **BE IT FURTHER RESOLVED** that there shall be a forty-five (45) day implementation
9 period from the effective date of the Ordinance (September 10, 2014).

10 PASSED, APPROVED, and ADOPTED this 8th day of October, 2014.


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13 JAVIER M. GONZALES, MAYOR

14 ATTEST:

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17 VOLANDA Y. VIGIL, CITY CLERK

18 APPROVED AS TO FORM:

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21 KELLEY A. BRENNAN, CITY ATTORNEY

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25 CAO/M/Melissa/Resolutions 2014/2014-86 Marijuana Adm. Procedures

ADMINISTRATIVE PROCEDURES FOR THE CITY OF SANTA FE

MARIJUANA AND MARIJUANA PARAPHERNALIA POSSESSION ORDINANCE

1. PURPOSE

The purpose of these administrative procedures is to establish procedures for City of Santa Fe (the “City”) staff, the Governing Body, and any agent of the City to implement and administer the City of Santa Fe Marijuana and Marijuana Paraphernalia Ordinance (the “Marijuana Ordinance” adopted as Ordinance No. 2014-29).

2. AUTHORITY

2.1 The Marijuana Ordinance is enacted under the express statutory authority conferred upon municipalities to enact ordinances pursuant to their police power (NMSA 1978, § 3-17-1(B) (1965)) and to define and abate nuisances and impose penalties (NMSA 1978, § 3-18-17(A) (1965) and also pursuant to any and all such other authority as may be applicable including but not limited to the City’s recognized authority to protect the general welfare of its citizens.

2.2 The Marijuana Ordinance is adopted pursuant to the City of Santa Fe’s powers under its municipal charter which was effective March 15, 1998, pursuant to the Municipal Charter Act (NMSA 1978, §§ 3-15-1 to 3-15-16) and Article 10, Section 6 of the New Mexico State Constitution.

2.3 The Marijuana Ordinance is codified in the Santa Fe City Code as §20-6 SFCC 1987.

2.4 These administrative procedures were adopted by Resolution No. 2014-___. All changes to the administrative procedures shall be reviewed and approved by resolution of the governing body.

3. SCOPE

This document (the “Administrative Procedures”) sets forth responsibilities, procedures and standards for administrative actions necessary to implement and enforce the Marijuana Ordinance.

1 **4. RESPONSIBILITY FOR ADMINISTRATION**

2 **4.1 City Attorney's Office** – The City Attorney's Office or its designees shall be
3 responsible for the following functions with regard to administration of the Marijuana
4 Ordinance and the Administrative Procedures more fully set forth below.

5 **4.1.1** Administering all functions of the Marijuana Ordinance, except for those
6 which are specifically described as the responsibilities of the Santa Fe Police
7 Department, the Finance Department, or any other City department, and
8 providing overall coordination among the City's departments.

9 **4.1.2** Providing forms, information, and technical assistance with regard to the
10 administration of and compliance with the Marijuana Ordinance.

11 **4.1.3** Assisting in training police officers and other City employees in the
12 implementation and enforcement of the Marijuana Ordinance.

13 **4.1.4** Representing the City and the Santa Fe Police Department in hearings before
14 administrative hearing officers and in litigation arising out of the
15 implementation or enforcement of the Marijuana Ordinance.

16 **4.1.5** Performing other functions as required by the Marijuana Ordinance.

17 **4.1.6** Performing other functions not specifically described in the Marijuana
18 Ordinance or these administrative procedures, but essential for successful
19 administration of the Marijuana Ordinance and within the powers and
20 abilities of the office.

21 **4.1.7** The City Attorney's Office's responsibilities do not include or supersede
22 those responsibilities of the Santa Fe Police Department in carrying out its
23 law enforcement functions.

24 **4.2 Staff** – Administration of the Marijuana Ordinance shall be delegated to one or more
25 staff in the City Attorney's Office. The staff shall specifically be responsible for:

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4.2.1 Coordinating, training and monitoring the office’s staff and any appropriate agent of the office with regard to the office’s or agent’s responsibilities for administering City of Santa Fe Marijuana Ordinance.

4.2.2 Performing other duties as described in these administrative procedures.

4.3 **Santa Fe Police Department** – The Santa Fe Police Department or its designees shall be responsible for the following functions with regard to administration of the Marijuana Ordinance:

4.3.1 In accordance with the Marijuana Ordinance, making possession of one ounce or less of marijuana the lowest law enforcement priority.

4.3.2 Training police officers in the implementation and enforcement of the Marijuana Ordinance.

4.4 **Finance Department** – The Finance Department or its designees shall be responsible for the following functions with regard to administration and enforcement of the Marijuana Ordinance:

4.4.1 Administering those parts of the ordinance that permit or require the City to collect fines, costs of suit, and attorneys’ fees, or otherwise receive money under the Marijuana Ordinance.

4.4.2 Ensuring that all monies collected under the Marijuana Ordinance are directed to the appropriate City fund.

4.5 **Administrative Hearing Officers** – Administrative Hearing Officers shall be responsible for the following functions with regard to administration and enforcement of the Marijuana Ordinance:

4.5.1 Coordinating with Staff regarding the hearing officer’s availability to conduct a hearing.

1 **4.5.2** Conducting the hearing in a professional, ethical and judicious manner.

2 **4.5.3** Providing a basic explanation of the process to any person present at the
3 hearing.

4 **4.5.4** Swearing witnesses and taking testimony.

5 **4.5.5** Determining whether the issuance of a citation is supported by a
6 preponderance of the evidence.

7 **4.5.6** Providing written notice of the hearing officer's decision, either immediately
8 following the hearing or within two days of the due process hearing.

9 **5. APPLICABILITY**

10 These Administrative Procedures are applicable to any effort by the City or its employees to enforce
11 the Marijuana Ordinance.

12 **6. DEFINITIONS**

13 The following definitions shall apply as used in these Administrative Procedures unless the context
14 clearly indicates or requires a different meaning:

15 *Administrative hearing* means a hearing conducted by an administrative hearing officer to
16 determine only if there is a preponderance of the evidence that the person cited was in possession of
17 marijuana or marijuana paraphernalia. The New Mexico Rules of Evidence apply to the
18 administrative hearing, but the New Mexico Rules of Civil Procedure do not apply. Scientific
19 evidence of the character of the substance believed to be marijuana is not required, as long as the
20 administrative hearing officer believes the substance is marijuana based on a witness' training and
21 experience or other competent evidence. The only procedural requirement is that the person cited be
22 given notice of the administrative hearing and an opportunity to be heard.

23 *Administrative hearing officer or hearing officer* means a person appointed by the City
24 Manager to conduct a hearing and render a written decision based on evidence presented at the
25 hearing.

1 *City* means the City of Santa Fe.

2 *District Court* means the First Judicial District Court, County of Santa Fe, State of New
3 Mexico.

4 *Mail* means any item properly addressed with postage prepaid delivered by the United States
5 Postal Service or any other public or private enterprise primarily engaged in the transport and delivery
6 of letter, packages and parcels.

7 *Notice* means verbal or written communication. Written notice is presumed to have been
8 given if placed in the mail five (5) days or more prior to the event noticed if directed to the to the
9 cited person's address on the administrative citation or any address of which the hearing officer has
10 been notified.

11 *Person* means natural persons.

12 *Police department* means the Santa Fe Police Department.

13 *Preponderance of the evidence* means the greater weight of the evidence, not necessarily
14 established by the greater number of witnesses testifying to a fact but by evidence that has the most
15 convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from
16 all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue
17 rather than the other.

18 **7. RESPONSE TO A FINE.**

19 Within fifteen (15) days from the date of issuance of a fine pursuant to the Marijuana Ordinance, the
20 recipient of the fine shall pay the fine or submit a request for a hearing.

21 7.1 **Payment of the fine.** Upon receipt of the fine, the recipient may elect to admit the
22 violation and pay the fine. To proceed under this paragraph, the recipient shall forego
23 contesting the violation by signing and dating the fine notification on a space
24 provided and returning the fine notification with payment to the City of Santa Fe at
25 the address indicated on the fine notification, within fifteen (15) days. The City may

1 provide alternative methods of payment of fines using the internet or other on-line
2 services. There shall be a fifty dollar (\$50.00) penalty for any payment tendered that
3 is not honored or is returned for any reason.

4 7.2 **Request for hearing.** The recipient of a fine may submit a request for hearing by so
5 indicating and returning the fine notification to the City at the address indicated on
6 the fine notification, within fifteen (15) days of the date of the fine notification. There
7 is no fee for a hearing. The hearing shall be scheduled by the hearing officer.

8 **8. DEFAULT WITH FORFEIT OF HEARING ON THE MERITS.**

9 If the City does not receive payment of the fine or a request for a hearing within fifteen (15) days
10 from the date of the fine notification, the recipient of the fine is in default. Default automatically
11 results in liability to the recipient for the administrative violation and the recipient is barred from
12 requesting or obtaining any hearing on the merits of the fine after the date of the default. The City
13 shall mail the notice of default to the recipient of the fine. The notice of default shall inform the
14 recipient that they have fifteen (15) days from the date of mailing of the notice of default to pay the
15 fine. If the default is not cured within fifteen (15) days, the City may pursue all remedies for
16 collection of the debt and is entitled to an award of reasonable attorney's fees incurred. An uncured
17 notice of default shall be entered into the records of the City's police department and, at the City's
18 discretion, the default may be cured even after fifteen (15) days from the mailing of the notice of
19 default by payment in full, or the default may be promptly sent to a contracted collection agency and,
20 once sent to a collection agency, the default may only be cured by payment to the collection agency.

21 **9. ADMINISTRATIVE HEARING.**

22 The recipient of a fine notification, pursuant to the Marijuana Ordinance may request that a hearing
23 be scheduled before a hearing officer.

24 9.1 The hearing shall be held within sixty (60) City business days of receipt of the
25 request unless the hearing is continued with agreement of the parties.

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9.2 The New Mexico Rules of Evidence apply to the administrative hearing, but the New Mexico Rules of Civil Procedure do not apply. Scientific evidence of the character of the substance believed to be marijuana is not required, as long as the administrative hearing officer believes the substance is marijuana based on a witness' training and experience or other competent evidence. The only procedural requirement is that the person cited be given notice of the administrative hearing and an opportunity to be heard.

9.3 The hearing officer shall only determine by a preponderance of the evidence, whether there was a violation of Section 20-6.1 SFCC 1987.

9.4 The hearing officer shall provide written notice of the hearing officer's decision, either immediately following the due process hearing or within two days of the due process hearing.

9.5 The hearing officer's decision may be appealed to the First Judicial District Court pursuant to Rule 1-074 NMRA.