

ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 10/08/14
ITEM FROM FINANCE COMMITTEE MEETING OF 09/29/14

ISSUE:

17. Request for Approval of an Ordinance Amending Subsection 20-6.1 SFCC 1987 to Clarify that it is Unlawful to Possess One Ounce or Less of Marijuana and Certain Marijuana Paraphernalia. (Councilors Bushee and Lindell) (Kelley Brennan)

Committee Review:

Public Safety Committee (did not support)	09/16/14
City Council (request to publish)	10/08/14
City Council (public hearing)	11/12/14

Fiscal Impact – No

FINANCE COMMITTEE ACTION: Motion to Approve Failed

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

The City Attorney advised that the item move forward to the City Council for consideration on October 8, 2014 as an item of necessity pursuant to the *Governing Body Procedural Rules, IV(A)(3)*.

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO		X	
COUNCILOR RIVERA		X	
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X Chair		
CHAIRPERSON DOMINGUEZ	Excused		

City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

BILL NO. 2014-30

Marijuana Clarification

SPONSOR(S): Councilors Bushee and Lindell

SUMMARY: At the August 27, 2014 City Council meeting, the Governing Body adopted Ordinance No. 2014-29 which had been introduced by a referendum and initiative petition. The Ordinance created a new Section 20-6 SFCC 1987 to establish that possession of one ounce or less of marijuana and possession and certain marijuana paraphernalia are civil infractions.

Based on the August 22, 2014 opinion of the City Attorney, "the New Ordinance does not contain within its text a specific prohibition for possessing one ounce or less of marijuana...In the event that the Governing Body adopts the New Ordinance, we would propose an amendment to include that language in the text." Therefore, the bill proposes to amend Subsection 20-6.1 SFCC 1987 to clarify that it is unlawful to possess one ounce or less of marijuana and certain marijuana paraphernalia.

PREPARED BY: Melissa Byers, Legislative Liaison

FISCAL IMPACT: No

DATE: October 2, 2014

ATTACHMENTS: Bill

ACTION SHEET
ITEM FROM PUBLIC SAFETY COMMITTEE MEETING OF 09/16/14

ISSUE: AN ORDINANCE AMENDING SUBSECTION 20-6.1 SFCC 1987 TO CLARIFY THAT IT IS UNLAWFUL TO POSSESS ONE OUNCE OR LESS OF MARIJUANA AND CERTAIN MARIJUANA PARAPHERNALIA

PUBLIC SAFETY COMMITTEE ACTION: Recommended not to support

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON DIMAS		X	
VICE-CHAIRPERSON HARRIS		X	
MEMBER MIKE MIER		X	
MEMBER NANCY OWEN-LEWIS		X	
MEMBER PETER MIZRAHI		X	
MEMBER MIKE BOWEN		X	
MEMBER ERIC JOHNSON		X	
MEMBER DAVID TRUJILLO		X	
MEMBER JOE ARELLANO		X	

DISK fc1/fcissue

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2014-30

3 INTRODUCED BY:

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5 Councilor Patti Bushee

6 Councilor Signe Lindell

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10 AN ORDINANCE

11 AMENDING SUBSECTION 20-6.1 SFCC 1987 TO CLARIFY THAT IT IS UNLAWFUL TO
12 POSSESS ONE OUNCE OR LESS OF MARIJUANA AND CERTAIN MARIJUANA
13 PARAPHERNALIA.

14
15 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

16 Section 1. Subsection 20-6.1 SFCC 1987 (being Ord. #2014-29, §3) is amended to
17 read:

18 20-6.1 Possession Prohibited; Lowest Law Enforcement Priority; [~~Possession~~
19 ~~Prohibited~~]; Civil Fine.

20 A. It is unlawful for a person intentionally to possess one (1) ounce or less of marijuana or
21 paraphernalia intended for use, or designed for use in ingesting, inhaling, or otherwise introducing
22 marijuana into the human body.

23 B. It is the duty of the police department to make possession of one ounce or less of
24 marijuana the lowest law enforcement priority.

25 [~~B~~]C. A person who possesses one ounce or less of marijuana may be fined no more than

1 twenty-five dollars (\$25.00). It is not a violation of this section for a person to possess marijuana
2 obtained pursuant to a valid prescription or order of a practitioner while acting in the course of his
3 professional practice or as authorized by the Controlled Substances Act, Section 30-31-1 NMSA
4 1978.

5 [E]D. A person possessing paraphernalia intended for use, or designed for use in ingesting,
6 inhaling, or otherwise introducing marijuana into the human body may be fined no more than twenty-
7 five dollars (\$25.00).

8 APPROVED AS TO FORM:

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10 _____

11 KELLEY A. BRENNAN, CITY ATTORNEY

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M/Melissa/Ordinances 2014/Marijuana Clarification

City of Santa Fe
Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

Section A. General Information

(Check) Bill: X Resolution: X
(A single FIR may be used for related bills and/or resolutions)

Short Title(s):
(1) AN ORDINANCE CLARIFYING THAT IT IS UNLAWFUL TO POSSESS ONE OUNCE OR LESS OF MARIJUANA AND CERTAIN MARIJUANA PARAPHERNALIA.
(2) A RESOLUTION ESTABLISHING ADMINISTRATIVE PROCEDURES RELATING TO CIVIL PENALTIES FOR POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA AND MARIJUANA PARAPHERNALIA.

Sponsor(s): Councilors Bushee and Lindell

Reviewing Department(s): Police Department and City Attorney's Office

Persons Completing FIR: Police Chief Eric F. Garcia & Kelley Brennan Date: 9/24/13 Phone: 955-5010/955-6512

Reviewed by City Attorney: Kelley A. Brennan Date: 9/29/14
(Signature)

Reviewed by Finance Director: Jessita Garcia Date: 9/26/14
(Signature)

Section B. Summary

Briefly explain the purpose and major provisions of the bill/resolution:
The bill amends Subsection 20-6.1 SFCC 1987 to clarify that it is illegal to possess one ounce or less of marijuana; the resolution establishes administrative procedures for administration of the ordinance and restates that possession of one ounce or less of marijuana is the lowest law enforcement priority.

Section C. Fiscal Impact

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
 - b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
 - c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)*
1. Projected Expenditures:
- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
 - b. Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required
 - c. Indicate: "R" – if recurring annual costs
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
 - d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
 - e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Finance Director: _____

_____ Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY <u>14/15</u>	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY <u>15/16</u>	"A" Costs Absorbed or "N" New Budget Required	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

Personnel*	\$ _____	_____	_____	_____	\$ _____	_____	_____	_____
Fringe**	_____	_____	_____	_____	_____	_____	_____	_____
Capital Outlay	\$ _____	_____	_____	_____	\$ _____	_____	_____	_____
Land/ Building	\$ _____	_____	_____	_____	\$ _____	_____	_____	_____
Professional Services	\$ _____	_____	_____	_____	\$ _____	_____	_____	<u>General</u>
All Other Operating Costs	<u>\$16,160</u>	<u>A</u>	<u>R</u>	<u>\$3,700</u>	<u>A</u>	<u>R</u>	<u>General</u>	
Total:	<u>\$16,160</u>			<u>\$3,700</u>				

* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. **For fringe benefits contact the Finance Dept.

2. Revenue Sources:

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY _____	"R" Costs Recurring or "NR" Non-recurring	FY _____	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

<u>N/A</u>	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
Total:	\$ _____		\$ _____			

3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

Expenditures: New scales, form holders and initial print of new civil penalty forms will be required for all personnel the first year and then replacement of equipment and reprinting of forms for subsequent years.

Section D. General Narrative

1. Conflicts: Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

Both the bill and resolution relate to the decriminalization referendum and initiative petition that generated an ordinance which the Governing Body ultimately adopted on August 27, 2014.

2. Consequences of Not Enacting This Bill/Resolution:

Are there consequences of not enacting this bill/resolution? If so, describe.

If the bill is not approved, the Ordinance would not contain within its text a specific prohibition for possessing one ounce or less of marijuana. If the resolution is not adopted, there would not be administrative procedures in place, in the event a civil penalty citation would be appealed.

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

None that staff are aware of.

4. Community Impact:

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

Establishing administrative procedures for the ordinance, sets up a process for when a person wants to appeal a civil penalty for possession.

Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08

5. New Business:

A. School Resource Officer Program – Information Only. (Police Chief Eric Garcia)

Chief Garcia reported that the MOU is in progress, they were able to work through the discrepancies and the resolution should be ready within the next 2-3 weeks.

The Chair reconfirmed that this is a program that we have had in the past, are we trying to revitalize it.

Chief Garcia said that the request is for 2 officers at the high schools, SFPS will fund one officer and the city will fund the other. Chief Johnson said that during his tenure the grant expired.

The Chair said that he supports this program.

B. Zozobra Fiesta de Santa Fe post report (Police Lt. Marvin Paulk)

Lt. Paulk reported on the stats from Zozobra. In 2013 there were a total of 1,831 total calls for service citywide and this year there was a total of 3,282 calls for service. The estimated overtime was \$31,472 and Fiesta total was \$79,149 = \$110,621. The biggest thing the SFPD focused on this year was customer service of officers with the civilians and visitors safety at the events. SFPD went out of their demonstrate to excellent public service is what SFPD they do. Lt. Paulk said that there were very few complaints reported by the officers. Lt. Paulk said that there were calls for medical assistance and the officers handled those professionally. The details in the report were reviewed.

Mr. Arellano was very impressed with the report and stated that the SFPD was moving in the right direction.

The Chair and members of the Public Safety Committee extended their congratulations to the SFPD for the excellent public safety service during this largely attended event.

C. Proposed ordinance amending subsection 20-6.1 SFCC 1987 to clarify that it is unlawful to possess one ounce or less of marijuana and certain marijuana and certain marijuana paraphernalia (Kelley Brennan)

Alfred Walker, City Attorney

Mr. Walker reported that there was a petition that achieved enough signatures to first go to the City Council for consideration and on to ballot if defeated by the City Council. At the August 27, 2014 the City Council passed the initiative to decriminalize marijuana within the city limits of the City of Santa Fe in our city code. During that process Ms. Brennan stated that the ordinance needed tweaking because it did not specifically make the

possession of marijuana unlawful. It does make it not a criminal offense it is a civil offense. However, in order to clarify the ordinance and make it clear that the ordinance decriminalizes marijuana, it does not legalize it. It was felt that the ordinance should contain a provision similar to the former criminal ordinance stating that it is still unlawful to possess marijuana.

Mr. Harris asked if the ordinance has already been passed.

Mr. Walker responded, no.

Dr. Lewis asked for clarification on the term, "lowest law enforcement priority", is that a category of offenses.

Mr. Walker stated that the initiative and the action of the council in passing that ordinance were to make this a lowest law enforcement priority. That remains the same, this clarification only adds in the provision of what already exists. To make it clear, it is still illegal, however as the ordinance now stands it simply means that it is not a high priority for the police officers to issue a civil citation for the possession of less than an ounce of marijuana.

Chief Johnson said that he believes the officers still do not understand the language lowest priority.

Mr. Bowen said that he feels that this puts the police officers in a bad position as they take the laws of the city of Santa Fe and the State of New Mexico, United States, very serious, as it is still illegal under US laws.

Public Safety members echoed the same sentiment that it is important to know if it is legal or illegal. The community also needs to understand that it is unlawful to be carrying marijuana or other paraphernalia.

Chief Johnson said that it would also have an effect on prosecution.

Dr. Mier noted that this ordinance would only apply to the SFPD.

Mr. Walker stated that possessing less than an ounce of marijuana is still a petty misdemeanor under state law, police officers will still have the discretion to charge somebody under state criminal law in magistrate court if possession is less than an ounce of marijuana or cite them under the civil ordinance in Santa Fe or do both.

Mr. Bowen said that he still has a concern about the term lowest priority as it is mentioned in the title line but not mentioned anywhere in the bill.

Mr. Walker clarified that under the ordinance that has been passed and with the amendment, Section B states that the duty of the police department in the possession of one ounce or less to follow law enforcement. It is in the existing ordinance and will continue being there.

Chair Dimas feels that this should come before the voters, he does not feel that this is an action that the City Council should take; he believes this is a

legislative matter of the state and that he cannot support this in any shape or form under the conditions that it came under. State statute still supersedes city ordinances.

Chief Garcia said what he does want to see is the officer issuing administrative citations on top of a magistrate court citation. It has to be one or the other, which is my request.

Mr. Walker stated that from a legal standpoint depending on the city attorney's office, it could be done. You have heard the Chief say that he does not want the officers doing that and the discretion is left with the Chief at the Police Department. The fact that it is both a civil issue and a criminal issue, I believe would allow them both to be done, but they do not have to be done.

Dr. Mier moved that the Public Safety Committee not support the proposed ordinance amending subsection 20-6.1 SFCC 1987 to clarify that it is unlawful to possess one ounce or less of marijuana and certain marijuana and certain marijuana paraphernalia, second by Mr. Bowen, roll call vote reflects 8 against. Motion carries unanimously.

Vote: 8-0 Against

NAME	FOR	AGAINST	ABSTAIN
Chair Dimas			
Vice Chair Harris		X	
Member Mike Mier		X	
Member Nancy Owen-Lewis		X	
Member Peter Mizrahi		X	
Member Mike Bowen		X	
Member Eric Johnson		X	
Member David Trujillo		X	
Member Joe Arellano		X	

- ~~D. Proposed resolution establishing administrative procedures relating to civil penalties for marijuana and marijuana paraphernalia possession and restating that possession of one ounce or less of marijuana is the lowest law enforcement priority of the City of Santa Fe Police Department (Councilor Bushee and Councilor Lindell) (Kelley Brennan)~~**

~~Mr. Walker informed the PSC members that the ordinance has already been passed. This resolution is adopting administrative procedures for the enforcement. The purpose was to take the existing administrative procedures and apply them to the marijuana issue. Unfortunately the City Attorney's Office was caught off guard when the City Council adopted the ordinance rather than voting it down and sending it for ballot so we were not prepared for that eventuality. There is also an amendment sheet (handed out) (Exhibit A) changing some of those procedures to make it more clear that this is an administrative proceeding and that the situation where the decision is made is vital if someone hasn't voluntarily paid for a citation but has~~