



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-25

CHARLES PARKIN
City Attorney

MICHAEL J. MAIS
Assistant City Attorney

MONTE H. MACHIT
Assistant City Attorney

June 20, 2017

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to declare Ordinance amending the Long Beach Municipal Code by adding Section 5.90.290 related to Local Enforcement and Penalties for Illegal Marijuana Businesses read for the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION

Pursuant to your request on May 2, 2017, this ordinance amending Chapter 5.90 of the Long Beach Municipal Code ("LBMC") by adding Section 5.90.0290, Local Enforcement and Penalties for Illegal Marijuana Businesses, has been prepared and is submitted for your consideration.

Several cities in California have enacted ordinances authorizing enforcement actions for illegal marijuana operations, such as civil lawsuits for injunctive relief and civil penalties, disconnection of utilities, and criminal penalties. Per your direction, we have included similar provisions in the proposed ordinance, as well as additional enforcement tools, not only to penalize and gain compliance from illegal marijuana establishments and property owners, but also to deter such operations in the first place.

Requests for Injunctive Relief and Civil Penalties

The City, by and through the City Attorney, may file a civil lawsuit to abate a nuisance, or violations of the LBMC. Chapter 5.90 of the LBMC declares a non-licensed marijuana business to be a public nuisance, as well as deems it to be a nuisance per se when property owners allow said public nuisances upon their property.

The proposed ordinance permits the City Attorney to file such lawsuits seeking injunctive relief without requiring further authorization from the City Council. The ordinance would permit a court, in its discretion, to issue a maximum civil penalty of \$5,000 per violation for each day a non-licensed marijuana business is in operation. The objective is to ultimately shut down an illegal marijuana operation via court order so that any re-establishment of said operation would potentially be deemed civil contempt.

PRINCIPAL DEPUTIES

Gary J. Anderson
Charles M. Gale
Anne C. Lattime

DEPUTIES

C. Geoffrey Allred
Richard F. Anthony
William R. Baerg
LaTasha N. Corry
Haleh R. Jenkins
Monica J. Kilaita
Nicholas J. Masero
Dawn A. McIntosh
Barbara J. McTigue
Lauren E. Misajon
Katrina R. Pickett
Howard D. Russell
Arturo D. Sanchez
Victoria A. Silcox
Linda T. Vu
Amy R. Webber
Theodore B. Zinger

Disconnection of Utilities

Most cities allow disconnection of utilities where emergency conditions exist. For instance, even Long Beach currently authorizes its Building Official to disconnect or order the disconnection of utilities for defective electrical installations; to disconnect or order the disconnection of fuel-gas utility service or energy supplies for defective mechanical installations that may pose an immediate hazard to life or property; and to order utilities to be disconnected when necessary to protect life or property from an acutely dangerous condition.

Some cities have additional ordinances permitting disconnection of utilities. The City of Santa Ana authorizes disconnection of utilities in instances where a building, structure, or business does not have the requisite Certificate of Occupancy. The City of Anaheim's municipal code allows disconnection of water or electric service to any premises being used in violation of any City ordinance, or state or federal law. The City of Los Angeles has in place an ordinance authorizing its Department of Water and Power to disconnect utilities specifically to properties upon which non-licensed medical or nonmedical marijuana establishments operate.

The proposed Long Beach ordinance would authorize the disconnection of utilities, upon notice, for any property upon which a non-licensed marijuana business is operating. As the City only provides gas and water services to its utility customers and does not control electric utilities, in most cases, City staff will have to coordinate with Southern California Edison regarding electricity shut-off.

Criminal Penalties

Any person that violates the provisions or fails to comply with requirements of the LBMC is guilty of a misdemeanor, unless otherwise stated as an infraction, by a fine of not more than \$1,000, or by imprisonment not exceeding 6 months, or by both such fine and imprisonment. Chapter 5.90 specifically deems certain violations as misdemeanors in addition to mandating heightened maximum periods of imprisonment for such violations. Violations of the LBMC, including those within Chapter 5.90, may be prosecuted as misdemeanors, or as infractions, at the sole discretion of the City Prosecutor. Because this enforcement tool already exists in the LBMC, the proposed ordinance does not specifically refer to new and distinct criminal violations.

Additional Enforcement Tools

We have added additional tools to potentially deter property owners from permitting non-licensed marijuana operations at their properties and/or turning a blind eye to such operations.

The proposed ordinance provides for the potential prohibition of marijuana-related businesses at a subject property where it has been established that a non-licensed marijuana business has been operating (one-year ban), as well as where a commercial/industrial rental business license for a subject property has been revoked due to a non-licensed marijuana business operating at the property (five-year ban).

The ordinance would require the City to provide notice and an opportunity to be heard via the hearing process prior to instituting such bans. Any business license

application received for a medical or nonmedical marijuana business within the time period of a ban will be denied based solely on said ban.

The ordinance would maintain the City's ability to pursue any additional civil or criminal remedies available at law. The proposed ordinance will assist the City's efforts, in conjunction with enforcement remedies already available to the City, to ensure compliance with Chapter 5.90 and other applicable provisions of the LBMC,

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By: 

Gary J. Anderson
Principal Deputy City Attorney

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING SECTION 5.90.290
RELATED TO LOCAL ENFORCEMENT AND PENALTIES
FOR ILLEGAL MARIJUANA BUSINESSES

WHEREAS, Chapter 5.90, "Medical Marijuana Businesses", of the Long
Beach Municipal Code ("LBMC") went into effect on December 23, 2016, and allows for
the operation and regulation of medical marijuana businesses, including dispensaries,
cultivation, manufacturing, distribution, and testing, in the City of Long Beach; and

WHEREAS, Chapter 5.90 requires a medical marijuana business to be
issued a City of Long Beach Business License prior to operation, in addition to other
requirements such as issuance of a state license under the Medical Cannabis Regulation
and Safety Act ("MCRSA"), when available; and

WHEREAS, the State will not issue a license under MCRSA without a
medical marijuana business first obtaining the applicable local license(s); and

WHEREAS, Section 5.90.210, "Violations and Enforcement", of the LBMC
allows the City to pursue any and all remedies and actions available and applicable under
local and/or State law for any violation related to the operation of a non-licensed medical
marijuana business; and

WHEREAS, Section 5.90.210 deems any operation of a medical marijuana
business without a business license as unlawful and a public nuisance; and

WHEREAS, Section 5.90.210 further deems the permitting by any person of
a public nuisance on real property in which such person has an ownership or possessory
interest, as unlawful and a nuisance per se, subject to injunctive relief, revocation of the
certificate of occupancy for the property, costs of abatement, and any other relief or

1 remedy at law and equity; and

2 WHEREAS, the City of Long Beach does not currently, expressly or
3 otherwise, authorize nonmedical marijuana businesses to operate within the city limits,
4 and the State is not yet issuing licenses for nonmedical marijuana businesses under the
5 Control, Regulate and Tax Adult Use of Marijuana Act; and

6 WHEREAS, the City desires to implement local enforcement and penalties
7 against unlicensed marijuana businesses and property owners in accordance with the
8 authority granted to it by Chapter 5.90 of the LBMC and any other applicable local or
9 state law, necessary for and in furtherance of the public health, safety and welfare; and

10 WHEREAS, it is in the interest of the City, its residents, and its lawfully
11 licensed marijuana-related businesses to permit and utilize effective enforcement
12 mechanisms against illegal marijuana operators.

13
14 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
15 follows:

16
17 Section 1. Section 5.90.290 is added to the Long Beach Municipal Code
18 to read as follows:

19 5.90.290 Local enforcement and penalties for illegal marijuana businesses.

20 A. Applicability.

21 This Section applies to all entities and persons engaging in
22 medical and/or nonmedical marijuana related activity who are legally
23 required to, but do not have, a City issued license, permit or authorization
24 ("Establishment"). This Section also applies to any person or entity who has
25 an ownership or possessory interest in any real property upon which an
26 Establishment is being operated, permitted or maintained ("Property
27 Owner").

28 B. Actions for injunctive relief and civil penalties.

1 1. As an alternative or in addition to any other remedy, the
2 City Attorney may enforce the provisions of this Chapter against an
3 Establishment and/or Property Owner in any court of competent jurisdiction.
4 The City Attorney may apply to such court for an order seeking injunctive
5 relief to abate or remove any nuisance caused, maintained, or permitted by
6 an Establishment and/or Property Owner; to restrain any Establishment
7 and/or Property Owner from taking any action contrary to the provisions of
8 this Chapter or other applicable law; and/or to require any Establishment
9 and/or Property Owner to take any action to comply with this Chapter or
10 other applicable law.

11 2. In any civil court action brought by the City Attorney
12 pursuant to this Section in which the City succeeds in obtaining an order
13 from the court, the City shall be entitled to recover from an Establishment
14 and/or Property Owner all of the City's costs of investigation, enforcement,
15 abatement, and litigation, including but not limited to attorneys' fees.

16 3. The City shall also be entitled to recover civil penalties
17 against an Establishment and/or Property Owner in a maximum amount of
18 five thousand dollars (\$5,000) per violation for each day an Establishment is
19 operated, permitted, or maintained on the subject property. In assessing
20 the amount of the civil penalty, the court shall consider any one or more of
21 the relevant circumstances presented by any of the parties to the case,
22 including, but not limited to, the following: the nature and seriousness of the
23 violation, any economic benefit gained through the violation, the number of
24 violations, the length of time over which the violation occurred, the
25 willfulness of the defendant's violation, and the defendant's assets,
26 liabilities, and net worth.

27 4. The City Attorney is authorized, without further
28 direction from the City Council, to institute any civil actions permitted

1 pursuant to this Section.

2 C. Prohibited property sites for marijuana-related operations.

3 1. The City may in its sole discretion take any action as
4 specified in this subsection.

5 2. If the City discovers an Establishment is currently
6 and/or was operating within the previous 60 days at or on a property, or any
7 portion thereof, the City may take action as specified herein. The City shall
8 notify the Property Owner in writing of their right to file, within fifteen (15)
9 days after the date of mailing of the Notice, written request of a hearing to
10 the City disputing the alleged Establishment operation. Such written
11 request shall set forth the specific ground(s) on which the dispute is based
12 and the Property Owner shall pay to the City at the time of filing said written
13 request a filing fee in an amount to be set by resolution of the City Council.
14 Failure to file the written request within the time period specified shall result
15 in waiver of any right to dispute the allegation of operation of an
16 Establishment at the subject property. In the event of such waiver, no
17 medical or nonmedical marijuana business, whether licensed or non-
18 licensed, shall be permitted to operate at the subject property for a period of
19 one (1) year from the 16th day after the date of mailing of the Notice.

20 If the written request is filed within the time period specified,
21 within thirty (30) days following the filing of said written request, the City shall
22 set a hearing to be held not less than ten (10) days nor not more than thirty
23 (30) days thereafter, and such hearing may for good cause be continued by
24 the City. The hearing shall be held in accordance with Chapter 2.93 of this
25 Code, except that the matter shall be automatically referred to the City Clerk
26 for selection of a Hearing Officer, without the City Council's referral, in
27 accordance with Section 2.93.050.B of this Code. The City shall thereupon
28 make a written report to the Hearing Officer reflecting such determination

1 that an Establishment exists and/or existed at the subject property.

2 Whenever it has been determined that an Establishment was and/or is in
3 operation, no medical or nonmedical marijuana business, whether licensed
4 or non-licensed, shall be permitted to operate at the subject property for a
5 period of one (1) year from the effective date of such determination.

6 The prohibitions contained in this subsection shall be sufficient
7 grounds to deny any application for operation of a marijuana-related
8 business at the subject property received within the one-year time period.

9 3. In the event the City revokes a Property Owner's Non-
10 Residential Rental Business License for violating this Chapter, no medical
11 or nonmedical marijuana business, whether licensed or non-licensed, shall
12 be permitted to operate at the subject property for a period of five (5) years
13 from the effective date of revocation of the Non-Residential Rental Business
14 License. Such revocation shall be sufficient grounds to deny any
15 application for operation of a marijuana-related business at the subject
16 property received within the five-year period. This prohibition shall also
17 remain in effect in the event a Property Owner (or an entity owned by or
18 affiliated with such Property Owner) obtains another Non-Residential Rental
19 Business License anytime within the five-year period for the subject
20 property.

21 D. Disconnection of utilities.

22 1. To the maximum extent permitted by law, and in
23 accordance with the processes thereof, the City may discontinue utility
24 services to any premises upon which an Establishment is operating.

25 2. Prior to the disconnection of utility services, the City
26 must notify, wherever possible, the Property Owner and occupant of the
27 building, structure, or premises upon which the Establishment is operating,
28 of the decision to disconnect the utility service(s) and the reason(s) for

1 service suspension at least seven (7) calendar days before taking such
2 action, unless a different period of notification is mandated by law; provided
3 that the City's Building Official may dispense with any attempt at prior
4 notification if, in the sole discretion of the Building Official, the nature or
5 severity of any apparent dangerous hazard justifies such inaction in
6 accordance with other provisions of this Code.

7 3. In the event utilities are disconnected, the Building
8 Official must notify the owner or occupant of the building, structure, or
9 premises in writing of the disconnection as soon as practical thereafter.

10 4. Disconnected utilities shall not be re-established until
11 an inspection has been made by the City's Building Official and the Building
12 Official has determined that the unlawful Establishment has ceased
13 operations; that any imminent hazard has been abated or eliminated (if
14 applicable); that the building complies with applicable law; and that any
15 applicable fees for disconnection, reconnection, penalties and/or other
16 related services have been paid.

17 5. Removing or defacing a notice posted in relation to this
18 provision shall constitute a separate and distinct violation of this Chapter.

19 E. Miscellaneous.

20 1. The enforcement and penalties stated herein are in
21 addition to any additional civil or criminal remedies and actions available at
22 law or equity for such violations.

23 2. Nothing in this Section shall be construed as requiring
24 the City to allow, permit, license, authorize, or otherwise regulate medical or
25 nonmedical marijuana, or as abridging the City's police power with respect
26 to enforcement regarding medical or nonmedical marijuana, or as restricting
27 or otherwise limiting the enforcement authority conferred upon the City or
28 any State agency by other provisions of this Municipal Code or State law.

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664

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3. In the event any provision in this Section shall be deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

Section 2. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 2017, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor