

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING CHAPTER 9.16 IN ITS ENTIRETY, RELATING TO ABATEMENT OF PUBLIC NUISANCES CAUSED BY ILLEGAL CONDUCT INVOLVING SALE OR MANUFACTURING OF CONTROLLED SUBSTANCES

WHEREAS, for the last decade, California legislation has allowed the City of Long Beach, as part of a pilot program enacted as Civil Code Section 3486, to initiate and file unlawful detainer actions for drug-related nuisance activity; and

WHEREAS, the unlawful detainer actions are aimed at evicting tenants who occupy a rental property for purposes of illegal drug-related activity; and

WHEREAS, based on a 2013 California Research Bureau report to the California Legislature, Long Beach made the most intensive use of the unlawful detainer program in the State; and

WHEREAS, according to the California Research Bureau report, the eviction of a nuisance tenant from a particular community may decrease the number of police calls for service and the associated costs of police response, and, therefore, the cost to police departments may decrease as the community is made safer; and

WHEREAS, the pilot program was allowed to sunset at the end of day on December 31, 2013, and the California legislature has amended relevant Civil Code sections to allow cities throughout the state to adopt similar versions of the unlawful detainer pilot program; and

WHEREAS, pursuant to the City's police powers authorized in Article XI, Section 7 of the California Constitution, the Long Beach Municipal Code, and other

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

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1 provisions of California law, including, but not limited to California Civil Code Section  
2 3486, the City has the power through its City Council to declare actions and activities  
3 that constitute a public nuisance; and

4 WHEREAS, the City Council wishes to adopt regulations further prohibiting  
5 the illegal sale or manufacture of narcotics in the City of Long Beach; and

6 WHEREAS, the City Council now desires to expand the City's ability to  
7 deter and respond to drug related illegal activity;

8 NOW, THEREFORE, the City Council of the City of Long Beach  
9 ordains as follows:

10 Section 1. Chapter 9.16 of the Long Beach Municipal Code is  
11 amended in its entirety to read as follows:

12 Chapter 9.16

13 NARCOTICS RELATED NUISANCE ABATEMENT

14  
15 9.16.010 Purpose.

16 The purpose of this Chapter is to promote public health, safety, and  
17 welfare by allowing the City Attorney to abate the nuisance caused by illegal  
18 conduct involving a controlled substance purpose on real property.

19  
20 9.16.015 Additional enforcement remedies.

21 The procedures provided for in this Chapter shall be cumulative and in  
22 addition to any other procedure or legal remedy provided for in this Code or  
23 by State law for the abatement of nuisance related activities or conditions.  
24 Nothing in this Chapter shall be deemed to prevent the City from  
25 commencing a civil or criminal proceeding to abate a nuisance under  
26 applicable Civil, Penal, or Municipal Code provisions as an alternative to the  
27 proceedings set forth in this Chapter.  
28

1 9.16.020 Definitions.

2 A. "Controlled substance" means a drug, substance, or immediate  
3 precursor which is listed in any schedule in Health and Safety Code Sections  
4 11054, 11055, 11056, 11057, or 11058.

5 B. "Controlled substance purpose" means the manufacture,  
6 cultivation, importation into the state, transportation, possession, possession  
7 for sale, sale, furnishing, administering, or giving away, or providing a place  
8 to use or fortification of a place involving, cocaine, phencyclidine, heroin,  
9 methamphetamine, or any other controlled substance including synthetic  
10 narcotics, in a violation of Subdivision (a) of Sections 11350, Sections 11351,  
11 11351.5, 11352, or 11359, Subdivision (a) of Section 11360, or Sections  
12 11366, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11383  
13 of the Health and Safety Code.

14  
15 9.16.030 Narcotics nuisance abatement.

16 A. The City Attorney may file an action for unlawful detainer  
17 against any person who is in violation of the nuisance or illegal purpose  
18 provisions of Subdivision 4 of Section 1161 of the California Code of Civil  
19 Procedure, with respect to the controlled substance purpose.

20 B. The unlawful detainer action shall be based upon an arrest  
21 report or other report by a law enforcement agency, documenting a narcotics  
22 offense committed on the property observed by a police officer.

23 C. The City Attorney shall utilize the procedures set forth in  
24 Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the  
25 California Code of Civil Procedure for filing an unlawful detainer action,  
26 except that in cases filed under this Section, the following also shall apply:

27 1. Prior to filing an action pursuant to this Section, the City  
28 Attorney shall give thirty (30) calendar days written notice to the property

1 owner, requiring the property owner to file an unlawful detainer action for the  
2 removal of the person who is in violation of the nuisance or illegal purpose  
3 provisions of Subdivision 4 of Section 1161 of the Code of Civil Procedure  
4 with respect to the controlled substance purpose.

5 2. The notice to the property owner shall inform the  
6 property owner of a violation of the nuisance or illegal purpose provisions of  
7 Subdivision 4 of Section 1161 of the Code of Civil Procedure and an  
8 advisement to the property owner of the optional assignment provision  
9 contained in Subparagraphs (D) through (F) below.

10 3. The notice to the tenant shall, in at least 13-point bold  
11 type, meet the following requirements:

12 The notice shall contain the following language:

13 “(Date)

14 (Name of tenant)

15 (Address of tenant)

16 Re: Long Beach Municipal Code Chapter 9.16

17 Dear (name of tenant):

18 This letter is to inform you that an eviction action may soon be filed in  
19 court against you for suspected drug activity. Long Beach Municipal Code  
20 Chapter 9.16, in accordance with State law, provides for the eviction of  
21 persons engaging in such conduct, as described below.

22 Long Beach Police Department records indicate that you, (name of  
23 arrestee), were arrested on (date) for violations of (list violations) at (address  
24 of property). A letter has been sent to the property owner(s) advising of your  
25 arrest and the requirements of the City’s law, as well as the landlord’s option  
26 to assign the unlawful detainer action to the City Attorney’s Office.

27 A list of legal assistance providers is provided below. Please note, this  
28 list is not exclusive and is provided for your information only; the City

1 Attorney's Office does not endorse or recommend any of the listed agencies.

2 Sincerely,

3 (Name of Deputy City Attorney)

4 Deputy City Attorney

5 Notice to Tenant: This notice is not a notice of eviction. You should call  
6 the City Attorney at (562) 570-2200 or a legal assistance provider to stop the  
7 eviction action if any of the following is applicable:

8 (1) You are not the person named in this notice;

9 (2) The person named in the notice does not live with you;

10 (3) The person named in the notice has permanently moved;

11 (4) You do not know the person named in the notice;

12 (5) You want to request that only the person involved in the nuisance  
13 be evicted, allowing the other residents to stay; or

14 (6) You have any other legal defense or legal reason to stop the  
15 eviction action. A list of legal assistance providers is attached to this notice.  
16 Some provide free legal assistance if you are eligible."

17 4. The respective notices shall be given in writing and  
18 served upon the owner and the tenant either by personal delivery or by  
19 deposit in the United States mail in a sealed envelope, postage prepaid,  
20 addressed to the owner at the address known to the City, or as shown on the  
21 last equalized assessment roll, if not known. Separate notice of not less than  
22 thirty (30) calendar days and documentation shall be provided to the tenant in  
23 accordance with this Subdivision. Service by mail shall be deemed to be  
24 completed at the time of deposit in the United States mail. Proof of giving the  
25 notice may be made by a declaration signed under penalty of perjury by any  
26 City employee that shows service in conformity with this Section.

27 D. The property owner shall, within thirty (30) calendar days of the  
28 mailing of the written notice, either provide the City Attorney with all relevant

1 information pertaining to the unlawful detainer case, or provide a written  
2 explanation setting forth any safety-related reasons for noncompliance, and  
3 an assignment to the City Attorney of the right to bring an unlawful detainer  
4 action against the tenant.

5 E. The assignment shall be on a form provided by the City  
6 Attorney and may contain a provision for costs of investigation, discovery,  
7 and reasonable attorney's fees, in an amount not to exceed six hundred  
8 dollars (\$600). An additional fee payable to the Los Angeles County Sheriff  
9 for lock-out services may be required.

10 F. If the City Attorney accepts the assignment of the right of the  
11 owner to bring the unlawful detainer action, the owner shall retain all other  
12 rights and duties, including the handling of the tenant's personal property,  
13 following issuance of the writ of possession and its delivery to and execution  
14 by the appropriate agency.

15 G. Upon the failure of the owner to file an action pursuant to this  
16 Section, or to respond to the City Attorney as provided in Paragraph (D), or  
17 having filed an action, if the owner fails to prosecute it diligently and in good  
18 faith, the City Attorney may file and prosecute the action, and join the owner  
19 as a defendant in the action. This action shall have precedence over any  
20 similar proceeding thereafter brought by the owner, or to one previously  
21 brought by the owner and not prosecuted diligently and in good faith. Service  
22 of the summons and complaint upon the defendant owner shall be in  
23 accordance with Sections 415.10 - 415.50 of the Code of Civil Procedure.

24 H. If a jury or court finds the defendant tenant guilty of unlawful  
25 detainer in a case filed pursuant to Paragraph (G), the City Attorney may be  
26 awarded costs, including the costs of investigation and discovery and  
27 reasonable attorney's fees. These costs shall be assessed against the  
28 defendant owner, to whom notice was directed pursuant to Paragraph (C)(1),

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and once an abstract of judgment is recorded, it shall constitute a lien on the subject real property.

I. This Section shall not prevent a tenant from receiving relief against a forfeiture of a lease pursuant to Section 1179 of the Code of Civil Procedure.

J. In any proceeding brought under this Section, the Court may, upon a showing of good cause, issue a partial eviction ordering the removal of any person, including, but not limited to, members of the tenant's household if the Court finds that the person has engaged in the activities described in Subdivision (A). Persons removed pursuant to this Section may be permanently barred from returning to or reentering any portion of the entire premises. The Court may further order as an express condition of the tenancy that the remaining tenants shall not give permission to or invite any person who has been removed pursuant to this Subdivision to return to or reenter any portion of the entire premises.

K. Notwithstanding Subdivision (b) of Section 68097.2 of the Government Code, the City may waive all or part of the costs incurred in furnishing the testimony of a peace officer in an unlawful detainer action brought pursuant to this Section.

9.16.050 Severability.

If any provision of this Chapter, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provision or application; and to this end, the provisions or applications of this Chapter are severable.

Section 2. The City Clerk shall certify to the passage of this

1 ordinance by the City Council and cause it to be posted in three (3) conspicuous  
2 places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day  
3 after it is approved by the Mayor.  
4

5 I hereby certify that the foregoing ordinance was adopted by the City  
6 Council of the City of Long Beach at its meeting of \_\_\_\_\_, 20\_\_, by  
7 the following vote:

8 Ayes: Councilmembers: \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 Noes: Councilmembers: \_\_\_\_\_

13 \_\_\_\_\_

14 Absent: Councilmembers: \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 City Clerk

19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 Approved: \_\_\_\_\_  
22 (Date)

23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 Mayor

OFFICE OF THE CITY ATTORNEY  
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333 West Ocean Boulevard, 11th Floor  
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REDLINE

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3 ~~9.16.010 Nuisance defined.~~

4           Every building or place in the City which is used for the purpose of  
5 unlawfully selling, serving, storing, keeping, manufacturing or giving away of any  
6 controlled substance, precursor or analog specified in Division 10 of the California  
7 Health and Safety Code is a nuisance, which shall be abated and prevented.

8  
9 ~~9.16.020 Hearing—When authorized.~~

10           The City Council may, upon its own motion or upon written charges filed  
11 with the City Council by the City Manager, set a public hearing before the City  
12 Council to determine if a nuisance, as set forth in Section 9.16.010, exists. Unless  
13 otherwise set forth, said hearing shall be conducted pursuant to the provisions of  
14 Chapter 2.93 of the Municipal Code.

15  
16 ~~9.16.030 Hearing—Procedure.~~

17           At said hearing any interested person, including, but not limited to, any  
18 owner, tenant, lessor, manager or operator of the building or place alleged to  
19 constitute a nuisance, shall be given an opportunity to appear, either personally or  
20 by counsel, to be heard, and to call witnesses on his or her behalf.

21  
22 ~~9.16.040 Violation—Authority to commence legal action.~~

23           After said hearing, and upon a specific finding that a "nuisance" exists, as  
24 defined in Section 9.16.010, notification shall be made in writing to all persons of  
25 record having legal or equitable interest in the building or place where the  
26 nuisance exists, and to any person who shall lease, maintain, manage, conduct or  
27 operate the building or place where the nuisance exists. The notice shall provide  
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1 that if said nuisance is not abated within thirty (30) days, the City Attorney will  
2 institute legal action to abate said nuisance and to recover all damages provided  
3 by law.  
4

5 Chapter 9.16  
6 NARCOTICS RELATED NUISANCE ABATEMENT  
7

8 9.16.010 Purpose.

9 The purpose of this Chapter is to promote public health, safety, and welfare  
10 by allowing the City Attorney to abate the nuisance caused by illegal conduct  
11 involving a controlled substance purpose on real property.  
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13 9.16.015 Additional enforcement remedies.

14 The procedures provided for in this Chapter shall be cumulative and in  
15 addition to any other procedure or legal remedy provided for in this Code or by  
16 State law for the abatement of nuisance related activities or conditions. Nothing in  
17 this Chapter shall be deemed to prevent the City from commencing a civil or  
18 criminal proceeding to abate a nuisance under applicable Civil, Penal, or Municipal  
19 Code provisions as an alternative to the proceedings set forth in this Chapter.  
20

21 9.16.020 Definitions.

22 A. "Controlled substance" means a drug, substance, or immediate  
23 precursor which is listed in any schedule in Health and Safety Code Sections  
24 11054, 11055, 11056, 11057, or 11058.

25 B. "Controlled substance purpose" means the manufacture, cultivation,  
26 importation into the state, transportation, possession, possession for sale, sale,  
27 furnishing, administering, or giving away, or providing a place to use or fortification  
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1 of a place involving, cocaine, phencyclidine, heroin, methamphetamine, or any  
2 other controlled substance including synthetic narcotics, in a violation of  
3 Subdivision (a) of Sections 11350, Sections 11351, 11351.5, 11352, or 11359,  
4 Subdivision (a) of Section 11360, or Sections 11366, 11366.6, 11377, 11378,  
5 11378.5, 11379, 11379.5, 11379.6, or 11383 of the Health and Safety Code.

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7 9.16.030 Narcotics nuisance abatement.

8 A. The City Attorney may file an action for unlawful detainer against any  
9 person who is in violation of the nuisance or illegal purpose provisions of  
10 Subdivision 4 of Section 1161 of the California Code of Civil Procedure, with  
11 respect to the controlled substance purpose.

12 B. The unlawful detainer action shall be based upon an arrest report or  
13 other report by a law enforcement agency, documenting a narcotics offense  
14 committed on the property observed by a police officer.

15 C. The City Attorney shall utilize the procedures set forth in Chapter 4  
16 (commencing with Section 1159) of Title 3 of Part 3 of the California Code of Civil  
17 Procedure for filing an unlawful detainer action, except that in cases filed under  
18 this Section, the following also shall apply:

19 1. Prior to filing an action pursuant to this Section, the City  
20 Attorney shall give thirty (30) calendar days written notice to the property owner,  
21 requiring the property owner to file an unlawful detainer action for the removal of  
22 the person who is in violation of the nuisance or illegal purpose provisions of  
23 Subdivision 4 of Section 1161 of the Code of Civil Procedure with respect to the  
24 controlled substance purpose.

25 2. The notice to the property owner shall inform the property  
26 owner of a violation of the nuisance or illegal purpose provisions of Subdivision 4  
27 of Section 1161 of the Code of Civil Procedure and an advisement to the property  
28

1 owner of the optional assignment provision contained in Subparagraphs (D)  
2 through (F) below.

3 3. The notice to the tenant shall, in at least 13-point bold type,  
4 meet the following requirements:

5 The notice shall contain the following language:

6 "(Date)

7 (Name of tenant)

8 (Address of tenant)

9 Re: Long Beach Municipal Code Chapter 9.16

10 Dear (name of tenant):

11 This letter is to inform you that an eviction action may soon be filed in court  
12 against you for suspected drug activity. Long Beach Municipal Code Chapter  
13 9.16, in accordance with State law, provides for the eviction of persons engaging  
14 in such conduct, as described below.

15 Long Beach Police Department records indicate that you, (name of  
16 arrestee), were arrested on (date) for violations of (list violations) at (address of  
17 property). A letter has been sent to the property owner(s) advising of your arrest  
18 and the requirements of the City's law, as well as the landlord's option to assign  
19 the unlawful detainer action to the City Attorney's Office.

20 A list of legal assistance providers is provided below: Please note, this list is  
21 not exclusive and is provided for your information only; the City Attorney's Office  
22 does not endorse or recommend any of the listed agencies.

23 Sincerely,

24 (Name of Deputy City Attorney)

25 Deputy City Attorney

26 Notice to Tenant: This notice is not a notice of eviction. You should call the  
27 City Attorney at (562) 570-2200 or a legal assistance provider to stop the eviction  
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1 action if any of the following is applicable:

2 (1) You are not the person named in this notice;

3 (2) The person named in the notice does not live with you;

4 (3) The person named in the notice has permanently moved;

5 (4) You do not know the person named in the notice;

6 (5) You want to request that only the person involved in the nuisance be  
7 evicted, allowing the other residents to stay; or

8 (6) You have any other legal defense or legal reason to stop the eviction  
9 action. A list of legal assistance providers is attached to this notice. Some provide  
10 free legal assistance if you are eligible.”

11 4. The respective notices shall be given in writing and served  
12 upon the owner and the tenant either by personal delivery or by deposit in the  
13 United States mail in a sealed envelope, postage prepaid, addressed to the owner  
14 at the address known to the City, or as shown on the last equalized assessment  
15 roll, if not known. Separate notice of not less than thirty (30) calendar days and  
16 documentation shall be provided to the tenant in accordance with this Subdivision.  
17 Service by mail shall be deemed to be completed at the time of deposit in the  
18 United States mail. Proof of giving the notice may be made by a declaration  
19 signed under penalty of perjury by any City employee that shows service in  
20 conformity with this Section.

21 D. The property owner shall, within thirty (30) calendar days of the  
22 mailing of the written notice, either provide the City Attorney with all relevant  
23 information pertaining to the unlawful detainer case, or provide a written  
24 explanation setting forth any safety-related reasons for noncompliance, and an  
25 assignment to the City Attorney of the right to bring an unlawful detainer action  
26 against the tenant.

27 E. The assignment shall be on a form provided by the City Attorney and  
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1 may contain a provision for costs of investigation, discovery, and reasonable  
2 attorney's fees, in an amount not to exceed six hundred dollars (\$600). An  
3 additional fee payable to the Los Angeles County Sheriff for lock-out services may  
4 be required.

5 F. If the City Attorney accepts the assignment of the right of the owner  
6 to bring the unlawful detainer action, the owner shall retain all other rights and  
7 duties, including the handling of the tenant's personal property, following issuance  
8 of the writ of possession and its delivery to and execution by the appropriate  
9 agency.

10 G. Upon the failure of the owner to file an action pursuant to this  
11 Section, or to respond to the City Attorney as provided in Paragraph (D), or having  
12 filed an action, if the owner fails to prosecute it diligently and in good faith, the City  
13 Attorney may file and prosecute the action, and join the owner as a defendant in  
14 the action. This action shall have precedence over any similar proceeding  
15 thereafter brought by the owner, or to one previously brought by the owner and not  
16 prosecuted diligently and in good faith. Service of the summons and complaint  
17 upon the defendant owner shall be in accordance with Sections 415.10 - 415.50 of  
18 the Code of Civil Procedure.

19 H. If a jury or court finds the defendant tenant guilty of unlawful detainer  
20 in a case filed pursuant to Paragraph (G), the City Attorney may be awarded costs,  
21 including the costs of investigation and discovery and reasonable attorney's fees.  
22 These costs shall be assessed against the defendant owner, to whom notice was  
23 directed pursuant to Paragraph (C)(1), and once an abstract of judgment is  
24 recorded, it shall constitute a lien on the subject real property.

25 I. This Section shall not prevent a tenant from receiving relief against a  
26 forfeiture of a lease pursuant to Section 1179 of the Code of Civil Procedure.

27 J. In any proceeding brought under this Section, the Court may, upon a  
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showing of good cause, issue a partial eviction ordering the removal of any person, including, but not limited to, members of the tenant's household if the Court finds that the person has engaged in the activities described in Subdivision (A). Persons removed pursuant to this Section may be permanently barred from returning to or reentering any portion of the entire premises. The Court may further order as an express condition of the tenancy that the remaining tenants shall not give permission to or invite any person who has been removed pursuant to this Subdivision to return to or reenter any portion of the entire premises.

K. Notwithstanding Subdivision (b) of Section 68097.2 of the Government Code, the City may waive all or part of the costs incurred in furnishing the testimony of a peace officer in an unlawful detainer action brought pursuant to this Section.

9.16.050 Severability.

If any provision of this Chapter, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provision or application; and to this end, the provisions or applications of this Chapter are severable.