



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-27

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July 22, 2014

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to declare ordinance amending the Long Beach Municipal Code Chapter 9.16, regarding the abatement of public nuisances at rental properties related to controlled substances sales and/or manufacturing read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION

The Office of the Long Beach City Attorney has for the past decade, participated in a statewide pilot program enacted as Civil Code section 3486, allowing the Office to file unlawful detainer actions due to narcotics-related nuisance activity occurring at rental properties within the City of Long Beach. These unlawful detainer actions are aimed at evicting tenants who sell or manufacture narcotics from a rental unit. The eviction of a nuisance tenant from a particular rental unit has proven an effective tool to make neighborhoods safer, while at the same time, reducing the need for police services and their associated costs.

In accordance with the Civil Code requirements, the California Research Bureau conducted a study of the California cities participating in the drug eviction program. In 2013, the Long Beach City Attorney's Office reviewed 2,899 reports and caused 282 tenant relocations or evictions. The study concluded that Long Beach made the most efficient and intensive use of the pilot program.

The State's pilot program has sunset. However, the Legislature amended Civil Code section 3486 to allow cities throughout California to adopt similar versions of the pilot program as it pertains to narcotics. Legislation is currently pending to allow cities to adopt similar provisions related to the unlawful possession of weapons and/or ammunition. If and when such legislation passes, City Attorney's Office will provide an ordinance to include this category of nuisance.

In order to continue to keep Long Beach neighborhoods safe, the City Attorney's Office recommends the City Council adopt the proposed ordinance authorizing the City Attorney's Office to cause the eviction of tenants utilizing rental units to illegally sell or manufacture narcotics within the City of Long Beach. The ordinance will require rental property owners to either bring unlawful detainer actions to evict tenant creating such nuisances or, in the alternative, to assign their rights to bring such court actions to the Office of the Long Beach City Attorney. The proposed ordinance is consistent with the City's practices under the pilot program that has been used for many years and is also consistent with the provisions of the new State regulations in this area.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

CHARLES PARKIN, City Attorney

By



KENDRA L. CARNEY
Deputy City Attorney

KLC/jp

Attachment: Redline LBMC 9.16
Ordinance amending LBMC 9.16

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

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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

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),

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

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

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

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

20
21 9.16.050 Severability.

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

27
28 Section 2. The City Clerk shall certify to the passage of this

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

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: _____
(Date) Mayor

22 _____

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REDLINE

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~~9.16.010 Nuisance defined.~~

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

~~9.16.020 Hearing—When authorized.~~

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

~~9.16.030 Hearing—Procedure.~~

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

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

~~After said hearing, and upon a specific finding that a "nuisance" exists, as defined in Section 9.16.010, notification shall be made in writing to all persons of record having legal or equitable interest in the building or place where the nuisance exists, and to any person who shall lease, maintain, manage, conduct or operate the building or place where the nuisance exists. The notice shall provide~~

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.~~

Chapter 9.16

NARCOTICS RELATED NUISANCE ABATEMENT

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.

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.

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

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.

6
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
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owner of the optional assignment provision contained in Subparagraphs (D) through (F) below.

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

The notice shall contain the following language:

“(Date)

(Name of tenant)

(Address of tenant)

Re: Long Beach Municipal Code Chapter 9.16

Dear (name of tenant):

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

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

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

Sincerely,

(Name of Deputy City Attorney)

Deputy City Attorney

Notice to Tenant: This notice is not a notice of eviction. You should call the City Attorney at (562) 570-2200 or a legal assistance provider to stop the eviction

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.