

ORDINANCE NO. C-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH ADDING CHAPTER 8.59 TO THE LONG BEACH MUNICIPAL CODE RELATING TO THE FENCING OF VACANT LOTS

The City Council of the City of Long Beach ordains as follows:

Section 1. The Long Beach Municipal Code is amended by adding Chapter 8.59 as follows:

CHAPTER 8.59

LOT FENCING

8.59.010 Purpose.

This Chapter is enacted pursuant to the City Charter and State law for the purpose, among others, of providing a system to keep all privately owned real property within the City subject to mandatory fencing in order to keep such real property free of weeds, debris, graffiti and other nuisances and providing a system for levy and collection to cover the cost of such fencing by the City including incurred enforcement costs.

8.59.020 Definitions.

For the purpose of this Chapter, certain terms used shall have the meaning provided in this Section unless such meaning would be repugnant to the subject matter or the context in which used:

A. "Board" means the Board of Examiners, Appeals and Condemnation.

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1 B. "Building Official" means the Building Official of the City of Long
2 Beach or designee.

3 C. "Fence" means any unobstructed chain link fence of uniform
4 height not less than six feet high and not more than ten feet high, as
5 determined appropriate by the Building Official, complete with at least one
6 set of lockable gates which provide access to the property from a public
7 street when unlocked.

8 D. "Graffiti" means any unauthorized inscription, word, figure or
9 design which can be seen by any person using any public right-of-way
10 and which is marked, etched, scratched, drawn or painted on any
11 structural component of any building structure, or other facility regardless
12 of the nature of the material of that structural component.

13 E. "Lot" means an unimproved lot, parcel, tract or piece of land in
14 the City.

15 F. "Lot fencing levy" means the charge made by the Building
16 Official for erecting fencing around a lot plus all penalties for nonpayment
17 of the charges which have accrued at the time. In the event the owner
18 fails to comply within the time frame established by the Building Official or
19 as modified on appeal by the Board, the lot fencing levy shall also include
20 all incidental enforcement costs incurred by the City whether or not the
21 work was performed later by the City, by the owner, or by others, except
22 as provided below. Incidental enforcement costs include, but are not
23 limited to, the actual expenses and costs of the City in investigating the
24 nuisance, obtaining title information, preparing notices, and performing
25 inspections.

26 G. "Weeds" and/or "debris" includes all bushes, vines, trees, grass
27 or other vegetation, whether cultivated or uncultivated, and whether dead
28 or growing, and all refuse and rubbish of any kind or description, or wood,

1 asphalt, concrete and similar materials, or tin cans, parts of machinery,
2 implements and automobiles, any of which cause unpleasant or noxious
3 odors, or which are or may become a refuge or breeding place for insects
4 and vermin, or which conceal or are capable of concealing filth and other
5 unsanitary conditions, or which are, or are capable of becoming, a fire or
6 other hazard to the use and occupancy of neighboring property, or which
7 obstruct or hinder the use of any public street, sidewalk, alley or way.

8
9 8.59.030 Nuisance.

10 The existence upon any lot of weeds, debris and/or graffiti, as
11 defined in this Chapter, is expressly declared to be a public nuisance, and
12 at the determination and direction of the Building Official it shall be the
13 duty of both the owner of the lot and any person who may be in
14 possession thereof or who has a right to such possession, to keep such
15 lot fenced until the Building Official determines such fencing is no longer
16 needed.

17
18 8.59.040 Notice-form.

19 Whenever the Building Official finds weeds, debris and/or graffiti on
20 any lot and the Building Official determines that in order to effectively
21 abate such nuisances, and prevent the recurrence of the same, the lot
22 needs to be fenced, the Building Official shall cause a notice to fence
23 premises to be given to the owner or owners of the lot as shown upon the
24 current equalized assessment roll, in the manner provided in this Section.
25 The notice shall be in substantially the following form:

26
27 NOTICE TO FENCE PREMISES

28 To _____, as owner of the hereinafter described

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1 premises:

2 Pursuant to the provisions of Chapter 8.59 of the Municipal Code of
3 the City of Long Beach, you are hereby notified to erect an unobstructed
4 chain link fence of uniform height not less than _____ feet high and
5 not more than _____ feet high complete with at least one set of
6 lockable gates which provide access to the property from a public street
7 when unlocked. The fence shall completely enclose that certain real
8 property known as:

9 _____
10 (Description of property)

11
12 AKA _____
13 (address)

14 A permit shall be obtained and the fence shall be erected within
15 twenty (20) days from the date of this notice. If such fence is not erected
16 within that time, the undersigned will cause it to be erected and the
17 charges for erection, including all incidental enforcement costs incurred by
18 the City, shall become a lien upon your property. Be advised that
19 incidental enforcement costs will become a lien upon your property if the
20 fence is not erected within twenty (20) days even if you perform the work
21 later.

22 If you intend to erect a fence on your account, you are required,
23 pursuant to the Long Beach Municipal Code, to obtain from the
24 undersigned a certificate stating that your premises have been
25 satisfactorily fenced; otherwise the undersigned will, if dissatisfied with the
26 manner in which said work has been done, cause the premises to be re-
27 fenced at your expense.

28 If you object to the fencing of your premises you may appeal to the

1 Board by filing a written notice of appeal in the office of the undersigned
2 within fifteen (15) calendar days from the date of this notice. Failure to
3 appeal shall be construed as your acceptance of the Building Official's
4 determination and any and all remedies provided by the Long Beach
5 Municipal Code. Further, if you elect not to appeal this action, said
6 conduct shall be considered on your part a failure to exhaust
7 administrative remedies.

8 Dated: _____

9 _____
10 Superintendent of Building and Safety
11 City of Long Beach

12
13 8.59.050 Notice-service.

14 The notice to fence premises shall be served upon the person
15 whose name appears on the current equalized assessment roll as the
16 owner of the premises involved. Such service may be made either by
17 personal delivery of the notice or by depositing the same in the United
18 States mail, postage prepaid, as certified, first class mail, return receipt
19 requested, addressed to the owner at the most recent address appearing
20 on the assessment roll, or if no address appears thereon, such service
21 may be made by posting the notice in a conspicuous place upon the
22 property. Proof of the service of the notice shall be made by declaration
23 of the person effecting the service.

24
25 8.59.060 Appeal hearing-service of notice.

26 A. The Building Official shall serve on the owner who has
27 appealed, a copy of the notice of hearing by certified mail.

28 B. The notice of hearing shall be served at least ten days before

1 the hearing. Proof of service shall be made by declaration filed with the
2 Board.

3 C. Service shall be completed at the time of the deposit of the
4 notice in a receptacle maintained by the United States Postal Service,
5 with postage thereon fully prepaid.

6 D. "Owner", as used in this Section, means any person so
7 designated on the last equalized assessment roll and also any person
8 having or claiming to have any legal or equitable interest in the premises.

9 E. The failure of any person to receive such notice shall not affect
10 the validity of any proceedings under this Chapter.

11
12 8.59.070 Appeal-hearing-procedure.

13 A. At the time stated in the notice, the Board shall hear and
14 consider all relevant evidence, objections or protests, and shall receive
15 testimony from owners, witnesses, including City personnel, and
16 interested persons relative to the alleged public nuisance and to the
17 proposed fencing of the premises. The hearing may be continued without
18 further notice.

19 B. Upon conclusion of the hearing, the Board shall determine
20 whether the premises, or any part thereof, as maintained, constitute a
21 public nuisance as defined in this Chapter. If the Board finds that such
22 public nuisance does exist, it shall determine if fencing would be
23 appropriate to effectively abate the nuisance and any recurrence of the
24 same and shall establish a time, not to exceed twenty (20) days, within
25 which the erection of the fencing shall take place; and in the event the
26 owner fails to erect the fence within the time prescribed, the City shall
27 cause the fence to be erected and the cost incurred by the City, including
28 incidental enforcement costs, plus any prescribed penalties, shall become

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a lien upon the property.

C. A copy of the Board's determination shall be served by mail upon the owner of the affected premises. Service shall be complete at the time of its deposit in a receptacle maintained by the United States Postal Service, with postage thereon fully prepaid.

D. No legal proceeding or action shall lie against the City or any officer, agent or employee of the City, to review or enjoin the enforcement of its determination or orders made pursuant to this Chapter, unless such legal action is commenced within thirty (30) days after the decision of the Board.

8.59.080 Owner fencing notice.

Every owner served with a notice or order to fence premises, who upon his own account erects a fence around his lot shall upon completion of the work immediately give written notice thereof to the Building Official. Such notice shall be either delivered or mailed to the office of the Building Official. Upon receipt of such notice the Building Official shall cause the lot to be inspected, and if the fencing is acceptable, the Building Official shall issue to the owner a certificate so stating. If the fencing is unacceptable, the Building Official shall cause the same to be reconstructed and the cost thereof shall be assessed against the lot as if no such notice was received from the owner.

8.59.090 City fencing-authorized.

If any owner served with a notice to fence premises fails to erect a fence around his lot within the time stated in the notice, or order of the Board after appeal, he shall be deemed to have consented to such erection by the Building Official who shall thereupon be authorized, and it

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shall be his duty to enter upon the lot and erect the fence thereon.

8.59.100 City fencing levy computation.

The Building Official shall, after the erection of a fence on any lot, compute all expenses so incurred by the City in connection therewith including the applicable processing fees as set forth by City Council resolution and all incidental enforcement costs plus any prescribed penalties. All expenses shall be charged to and become an indebtedness of the owner of such premises.

8.59.110 City removal-lot fencing levy payment notice.

Upon computing the expenses, the Building Official shall serve upon the owners of all lots on which fencing was erected, as said owners are determined from the current assessment roll, and in the same manner as provided for service of the notice to fence premises, a notice to pay lot fencing levy (sometimes referred to in this Chapter as a notice to pay), which notice shall be in substantially the following form:

NOTICE TO PAY LOT
FENCING LEVY

In accordance with the provisions of Chapter 8.59 of the Long Beach Municipal Code, the Building Official has caused a fence to be erected enclosing the following real property: _____

(legal description)

AKA _____

(address)

The fence was erected either at City expense or the work was

1 accomplished by that owner or others after the established deadline.

2 You are hereby notified that the total cost, including incidental
3 enforcement costs and any prescribed penalties, in the amount of
4 _____ are now due and payable to the City of Long Beach.

5 Section 8.59.120 of the Long Beach Municipal Code provides, in
6 part, that the property owner or any interested person may demand a
7 hearing within fifteen (15) days of this notice before the Board on the
8 reasonableness of the charges. Such demand shall be in writing, filed
9 with the Building Official and shall describe the property involved, the
10 reasons for objecting, and the name, address and interest of the
11 appellant.

12 If no hearing is demanded, this payment shall become delinquent
13 thirty (30) days from this notice and a lien for said amount, plus a fee for
14 preparation of the lien, shall be attached to the affected property and
15 thereafter bear interest at the rate of twelve percent (12%) per annum until
16 paid. An additional fee will be incurred in the event that payment is not
17 received before the end of the fiscal year and transfer of collection to the
18 City Treasurer becomes necessary.

19
20 8.59.120 Hearing on charges.

21 Within fifteen days from the date of the notice to pay, the property
22 owner, or any interested person, may demand a hearing as to the
23 reasonableness of such charges. Such demand shall be in writing and
24 filed with the Building Official. It shall describe the property involved, state
25 the reasons for objecting, and include the address of the applicant for
26 service of notices in connection with such hearing. The Building Official
27 shall thereupon set a date for hearing such protest by the Board within a
28 reasonable time. The Building Official shall send written notice of such

1 hearing in the manner provided in Section 8.59.060. At the time set for
2 such hearing, the Board shall hear all evidence pertinent to the
3 reasonableness of such charges and shall then either confirm or modify
4 the charges. The decision of the Board shall be final, and the Building
5 Official shall give notice to the parties affected in the manner provided in
6 Section 8.59.070.

7
8 8.59.130 Interest on charges.

9 If the amount of the charges as determined by the Board has not
10 been paid within thirty (30) days of its decision, the payment shall
11 thereupon become delinquent and a lien against the real property and the
12 amount so determined shall thereafter bear interest at the rate of twelve
13 percent per annum until paid. If no hearing is demanded as to the
14 reasonableness of the charges, the payment shall become delinquent and
15 a lien against the real property shall be recorded thirty (30) days after the
16 notice of the charges for abatement is served by the Building Official; and
17 such amount shall thereafter bear interest at the rate of twelve percent per
18 annum until paid.

19
20 8.59.140 Transfer for collection.

21 The Building Official shall certify a list of all delinquent charges for
22 lot fencing or nuisance abatement to the City Treasurer who shall submit
23 the list to the City Council for confirmation. Each parcel of property shall
24 be described sufficiently to identify it in accordance with the records of the
25 county tax collector. The amount of the charges including such interest as
26 has accrued after the delinquent date shall be set forth opposite the
27 description by the City Treasurer.
28

1 8.59.150 Method of collection.

2 Upon receipt of the list, the county tax collector shall enter the
3 charges shown thereon for each parcel of property upon the current tax
4 roll and shall proceed to collect the charges in the same manner as ad
5 valorem taxes, and penalties and interest for nonpayment thereafter shall
6 attach as though the amounts were ad valorem taxes; provided, however,
7 that no receipt for payment of ad valorem taxes appearing upon the tax
8 roll as against a particular parcel shall be issued unless all such charges
9 for collection for lot fencing, correction of substandard conditions or
10 nuisance abatement, and penalties thereon, entered upon that tax roll
11 against the lot are first paid in full.

12
13 8.59.160 Tax-sold property.

14 Upon the sale of any lot to the state for nonpayment of taxes, all
15 charges for lot fencing, correction of substandard conditions or nuisance
16 abatement for the parcel appearing upon the tax roll, together with the
17 penalties thereon, shall be added to and become a part of the same
18 delinquent tax record.

19
20 8.59.170 Tax-sold property-redemptions.

21 No certificate of redemption from sale for delinquent taxes shall be
22 issued until all charges for lot fencing, correction of substandard
23 conditions and nuisance abatement, and penalties entered on the
24 delinquent tax records against the property involved, have first been paid
25 in full.

26
27 8.59.180 Error correction-assessment cancellation.

28 A. The Building Official may, prior to certifying any such unpaid

1 charges to the City Treasurer, correct any errors with respect to such
2 levies appearing upon his records.

3 B. After such levies have been certified to the City Treasurer and
4 confirmed by the City Council, the Council, by order entered on its
5 minutes, may cancel any charges for lot fencing, correction of
6 substandard conditions or nuisance abatement, or penalty, or any portion
7 of either thereof, appearing on the tax records, which, because of error, is
8 charged against the wrong property, or which has been paid but such
9 payment has not been recorded upon the tax records, or which is based
10 upon a clerical error in such records, or which was charged against
11 property acquired subsequent to the lien date by the United States, by the
12 state, or any city, or any school district or other political subdivision and,
13 because of this public ownership, not subject to sale for delinquent
14 assessments.

15
16 8.59.190 Interfering with enforcement prohibited.

17 No person as owner, lessee, or agent or person in possession of
18 any property within the City shall allow a public nuisance, as defined in
19 Section 8.59.030, to exist within the City, or refuse to allow the Building
20 Official to enter upon any property during the hours of daylight where any
21 such nuisance exists, for the purpose of inspecting or abating same, after
22 notice has been given as provided in Section 8.59.040, or after appeal is
23 concluded or time for appeal has expired, or interfere with the Building
24 Official in any manner whatsoever in the abating of the nuisance or the
25 fencing of the property.

26
27 Sec. 2. The City Clerk shall certify to the passage of this ordinance by the
28 City Council and cause it to be posted in three conspicuous places in the City of Long

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Beach, and it shall take effect on the thirty-first 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 _____, 2005, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____

Mayor