



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-25

CHARLES PARKIN
City Attorney

MICHAEL J. MAIS
Assistant City Attorney

PRINCIPAL DEPUTIES

Gary J. Anderson
Charles M. Gale
Anne C. Lattime
Howard D. Russell

DEPUTIES

David R. Albers
C. Geoffrey Allred
Taylor M. Anderson
Richard F. Anthony
William R. Baerg
Sarah E. Green
Monica J. Kilaita
Nicholas J. Masero
Dawn A. McIntosh
Lauren E. Misajon
Matthew M. Peters
Katrina R. Pickett
Arturo D. Sanchez
Chelsen N. Trotter
Todd Vigus
Amy R. Webber
Erin Weesner-McKinley
Theodore B. Zinger

January 19, 2021

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Declare an Ordinance of the City Council of the City of Long Beach amending the Long Beach Municipal Code Chapter 8.120 related to temporary enforcement of Long Beach Health Orders regarding COVID-19, and declaring the urgency thereof, read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION (UPDATED)

In an effort to mitigate the effects of COVID-19 within the City, the Long Beach Health Officer issued Health Orders to control the spread and mitigate the effects of COVID-19, including but not limited to, the "Safer at Home Order for Control of COVID-19", isolation orders, quarantine orders, and testing orders (collectively "Health Orders") and has revised such Health Orders from time to time as necessary for the public health and safety during this ongoing emergency.

The Ordinance initially adopted by Council was set to expire on November 6, 2020 and was amended to expire on January 20, 2021 unless the City Council takes further action. Due to the uncertainty of the pandemic, the proposed Ordinance extends the expiration of the Ordinance One Hundred Eighty (180) days from the effective date of the last amendment of Chapter 8.120 (July 18, 2021), unless further extended by the City Council in its discretion by an amendment to the Ordinance.

This Ordinance requires, where practicable, the City Manager to bring City Health Orders related to COVID-19 before the City Council for confirmation prior to promulgating such Health Orders. In the event it is not feasible to do this, the City Manager is required to, within 14 days of promulgation of said Health Orders, request the City Council to confirm the Health Orders. The proposed Ordinance amends this requirement to allow the City Manager to request the City Council to confirm the Health Orders either within 14 days or at the next duly noticed public meeting of the

City Council. Since City Council meetings do not always occur within 14 days of the promulgation of a Health Order, this amendment ensures the City Manager's promulgation of a Health Order is confirmed by the City Council at the next practicable opportunity.

To address establishments that continue to violate City Health Orders after being provided ample opportunity to comply with City Health Order and where citations and other enforcement efforts by the City have been unsuccessful, the proposed Ordinance allows the City discontinue municipal utility service to those establishments operating in violation of City Health Orders or Chapter 8.120 to protect the public health.

This process recognizes a potential need for the City's Health Officer to quickly amend or update, and the City Manager to promulgate, City Health Orders due to the rapid development of COVID-19, while still ensuring that the City Council maintains oversight of the COVID-19 local emergency and the City Manager's related orders.

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

A handwritten signature in black ink, appearing to be 'T. Anderson', with a stylized flourish extending to the right.

By

TAYLOR M. ANDERSON
Deputy City Attorney

CHAPTER 8.120 - TEMPORARY ENFORCEMENT OF LONG BEACH HEALTH ORDERS RELATED TO COVID-19

8.120.010 - Purpose.

- A. In order to protect the public health, safety, and general welfare, and to mitigate the impacts of the novel coronavirus (COVID-19), this Chapter shall temporarily allow for civil, administrative, and/or criminal enforcement of Health Orders issued by the Long Beach Health Officer and promulgated by the City Manager as more particularly described herein.
- B. The primary intent of the City, in its efforts to mitigate the impacts of COVID-19, shall remain focusing on public outreach and education, and enforcement actions will only be undertaken where such outreach and education, alone, are unsuccessful in compelling compliance with City Health Orders related to COVID-19.
- C. Nothing in this Chapter is intended or shall be interpreted to invalidate Chapter 2.69, "Civil Defense", of this Code, which shall still apply to the COVID-19 local emergency except to the extent it conflicts with the provisions of this Chapter.
- D. This Chapter is intended to be temporary and shall expire one-hundred eighty (180) days from the effective date of the last amendment to this Chapter~~on January 20, 2021~~, unless further extended by the City Council in its discretion by an amendment to this Chapter.

8.120.020 - Health Orders related to COVID-19.

- A. Health Orders issued by the Long Beach Health Officer shall be confirmed by the City Council prior to being promulgated by the City Manager, except where impracticable due to the rapid development of the COVID-19 local emergency.
- B. In the event of impracticability as described in Subsection A, the City Manager may promulgate a City Health Order on the condition said Order is confirmed by the City Council at a duly noticed public meeting within fourteen (14) days of promulgation or at the next duly noticed meeting of the City Council after the City Manager's promulgation.

8.120.030 - Enforcement and Penalties of Health Orders related to COVID-19.

- A. Violations. It is unlawful for any person to, after notice, willfully violate or refuse or neglect to conform to any lawful City Health Order related to the COVID-19 local emergency issued by the Long Beach Health Officer and promulgated by the City Manager in accordance with this Chapter.
- B. Declaration of public nuisance.
 - 1. Any violation of a lawfully issued City Health Order as provided for in this Chapter is hereby deemed unlawful and a public nuisance.
 - 2. As a nuisance per se, any violation of this Chapter is subject to any of the following remedies, including, without limitation: injunctive relief, revocation of applicable permits or licenses, revocation of the certificate of occupancy for the real property where the violation occurred, disgorgement and payment to the City of all monies unlawfully obtained, costs of abatement, and costs of investigation, attorney fees to the prevailing party, and any other relief or remedy available at law or equity.
- C. Liability of employees and agents. In construing and enforcing the provisions of this Chapter, the act, omission, or failure of an agent, officer, representative, or other person acting for or employed by a business or similar entity, within the scope of his or her employment or office, will be in every case be deemed the violation, act, omission, or failure of the business or other entity.

D. Failure to comply with any of the provisions of this Chapter will constitute grounds for suspension or revocation of any permit or license issued pursuant to this Code, including but not limited to, health permits and business licenses. The noticing and hearing requirements for suspension or revocation of a permit or license shall be governed by the provisions of this Code.

E. Penalties.

1. Administrative Citations.

- a. In addition to all other legal remedies at law, violations of this Chapter are enforceable using the administrative citation procedures set forth in Chapter 9.65 of this Code.
- b. Administrative penalties imposed pursuant to this Chapter also constitute a personal obligation on each person who causes, permits, maintains, conducts, or otherwise suffers or allows the nuisance or violation to exist. In the event administrative penalties are imposed pursuant to this Chapter on two (2) or more persons for the same violation, all such persons are jointly and severally liable for the full amount of the administrative penalties imposed.
- c. In addition to any other remedy, the City may prosecute a civil action through the City Attorney to collect any administrative penalty imposed pursuant to this Chapter.

2. Disconnection of municipal utilities.

- a. To the maximum extent permitted by law, and in accordance with the processes thereof, the City may discontinue municipal utility services to any premises upon which an establishment is operating in violation of a lawfully issued Health Order or this Chapter.
- b. Prior to the disconnection of municipal utility services, the City must notify, wherever possible, the property owner and occupant of the building, structure, or premises upon which the establishment is operating in violation of a Health Order or this Chapter, of the decision to disconnect the municipal utility service(s) and the reason(s) for service suspension at least twenty-four (24) hours before taking such action, unless a different period of notification is mandated by law.
- c. In the event municipal utilities are disconnected, the Building Official must notify the owner or occupant of the building, structure, or premises in writing of the disconnection as soon as practical thereafter.
- d. Disconnected municipal utilities shall not be re-established until an inspection has been made by the City's Health Department and the Building Official and the Building Official and Health Department have determined that the establishment has ceased operations in violation of a lawfully issued Health Order or this Chapter; that any imminent threat to the public health has been abated or eliminated (if applicable); that the building complies with applicable law; and that any applicable fees for disconnection, reconnection, penalties, and/or other related services have been paid.
- e. Removing or defacing a notice posted in relation to this provision shall constitute a separate and distinct violation of this Chapter.

3. Actions for injunctive relief and civil penalties.

- a. As an alternative, or in addition to any other remedy, the City Attorney may enforce the provisions of this Chapter against any person, business, and/or property owner in any court of competent jurisdiction. The City Attorney may apply to such court for an order seeking injunctive relief to abate or remove any nuisance caused, maintained, or permitted by any person, business, and/or property owner, to restrain any person, business, and/or property owner from taking any action contrary to the provisions of a lawfully issued Health Order or this Chapter, or other applicable law; and/or to require any person, business, and/or property owner to take any action to comply with this Chapter or other applicable law.
- b. In any civil court action brought by the City Attorney pursuant to this Chapter in which the City succeeds in obtaining an order from the court, the City shall be entitled to recover from

any person, business, and/or property owner all of the City's costs of investigation, enforcement, abatement, destruction, and litigation, including but not limited to attorneys' fees.

34. Criminal penalties.

- a. Any person who knowingly violates this Chapter is guilty of a misdemeanor, punishable by a fine of not more than One Thousand Dollars (\$1,000), or by imprisonment in the City or county jail for a period not exceeding six (6) months, or by both such fine and imprisonment.
 - b. Notwithstanding the above subsection, a violation specified in this Chapter may be prosecuted as either a misdemeanor or an infraction in the sole discretion of the City Prosecutor.
- F. Remedies cumulative. The remedies provided for in this Chapter are not mutually exclusive. Pursuit of any one remedy does not preclude the City from availing itself of any or all available administrative, civil, or criminal remedies, at law or equity. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

8.120.040 - Expiration.

This Chapter shall expire one-hundred eighty (180) days from the effective date of the last amendment to this Chapter~~on January 20, 2021~~, unless further extended by the City Council in its discretion by an amendment to this Chapter.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY AMENDING SUBSECTIONS
8.120.010.D, 8.120.020.B, AND 8.120.040; AND
AMENDING AND RESTATING SECTION 8.120.030; ALL
RELATING TO TEMPORARY ENFORCEMENT OF LONG
BEACH HEALTH ORDERS RELATED TO COVID-19;
DECLARING THE URGENCY THEREOF; AND
DECLARING THAT THIS ORDINANCE SHALL TAKE
EFFECT IMMEDIATELY

WHEREAS, the Novel Coronavirus (COVID-19), a new communicable
disease, was first detected in Wuhan City, Hubei Province, China in December 2019,
and has since spread globally; and

WHEREAS, symptoms of COVID-19 include fever, cough, and shortness
of breath, and infected individuals have experienced a range of outcomes, from mild
sickness to severe illness and death; and

WHEREAS, on March 4, 2020 California Governor Gavin Newsom issued
a statewide Proclamation of a State of Emergency due to COVID-19; and

WHEREAS, on March 11, 2020, the World Health Organization declared
the COVID-19 a pandemic; and

WHEREAS, on March 13, 2020, the President of the United States of
America proclaimed a National Emergency as a result of COVID-19; and

WHEREAS, previously, after deep concern by the World Health
Organization and the Federal government, and as a result of the need to proactively
slow the spread of, and combat, COVID-19 in the City of Long Beach, the City Public

1 Health Officer issued a Declaration of Local Health Emergency and the then Acting City
2 Manager issued a Proclamation of Local Emergency; and

3 WHEREAS, on March 10, 2020, the City Council of the City of Long
4 Beach recognized that an emergency did exist and unanimously passed a Resolution
5 ratifying the City Manager's Proclamation of a Local Emergency and the Public Health
6 Officer's Declaration of Local Health Emergency; and

7 WHEREAS, in order to mitigate the effects of COVID-19 within the City,
8 the Long Beach Health Officer issued Heath Orders, including, but not limited to, the
9 Safer at Home Order for Control of COVID-19, Isolation Order, Quarantine Order, and
10 Long Term Care Facility Order (collectively "Health Orders"), and thereafter revised said
11 Health Order from time to time as necessary in furtherance of the public health and
12 safety; and

13 WHEREAS, to further protect the public health and safety, it is necessary
14 to adopt ordinance provisions that will provide administrative, civil, and criminal
15 enforcement remedies for violations of the lawfully issued Health Orders of the City; and

16 WHEREAS, the proposed Ordinance would require, where practicable, the
17 City Manager to bring City Health Orders related to COVID-19 before the City Council
18 for confirmation prior to promulgating such Orders; and

19 WHEREAS, in the event it is not feasible to do this, the City Manager
20 shall, within a 14-day period from promulgation of said Health Orders or at the next duly
21 noticed public meeting of the City Council, request the City Council to confirm the
22 Health Orders; and

23 WHEREAS, this alternative process recognizes the potential need for the
24 City's Health Officer to quickly amend or update City Health Orders due to the rapid
25 development of COVID-19, while still ensuring the City Council maintains oversight of
26 the COVID-19 local emergency and the City Manager's related orders; and

27 WHEREAS, the City's primary goal is to ensure the public health and
28 safety during the COVID-19 local, state, and federal emergencies through outreach

1 efforts and education of the Long Beach community regarding the City Health Orders
2 and COVID-19; and

3 WHEREAS, where such outreach and education efforts do not on their
4 own gain compliance, the proposed Ordinance allows for civil, administrative, and/or
5 criminal enforcement of City Health Orders related to COVID-19, issued by the Health
6 Officer and promulgated by the City Manager; and

7 WHEREAS, with respect to criminal enforcement of violations of the
8 lawfully issued Health Orders, such violations may be prosecuted as misdemeanors or
9 infractions in the sole discretion of the City Prosecutor; and

10 WHEREAS, it is the City's intent that the authorized enforcement of the
11 City Health Orders as described in the proposed Ordinance shall only occur after a
12 person is provided ample opportunity to comply after being notified of an alleged
13 violation; and

14 WHEREAS, where an establishment has been provided ample opportunity
15 to comply with City Health Orders after being notified of an alleged violation and where
16 citations and other enforcement efforts have been unsuccessful, the City may
17 discontinue municipal utility service to those establishments operating in violation of City
18 Health Orders or this Chapter; and

19 WHEREAS, the City efforts shall be in furtherance of the health, safety,
20 and welfare of those residing in, doing business in, or visiting the City of Long Beach
21 during the proclaimed COVID-19 emergency; and

22 WHEREAS, the proclaimed emergency related to COVID-19 remains a
23 threat to the public health of City residents, therefore the proposed Ordinance shall
24 expire One Hundred Eighty (180) days from the effective date of the last amendment of
25 Chapter 8.120, unless further extended by the City Council in its discretion by an
26 amendment to this Ordinance;

27 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
28 follows:

1 Section 1. Chapter 8.120.010.D of the Long Beach Municipal Code is
2 amended to read as follows:

3 D. This Chapter is intended to be temporary and shall expire
4 one-hundred eighty (180) days from the effective date of the last
5 amendment to this Chapter, unless further extended by the City Council in
6 its discretion by an amendment to this Chapter.

7 Section 2. Subsection 8.120.020.B of the Long Beach Municipal Code is
8 amended to read as follows:

9 B. In the event of impracticability as described in Subsection A,
10 the City Manager may promulgate a City Health Order on the condition said
11 Order is confirmed by the City Council at a duly noticed public meeting
12 within fourteen (14) days of promulgation or at the next duly noticed public
13 meeting of the City Council after the City Manager's promulgation.

14 Section 3. Section 8.120.030 of the Long Beach Municipal Code is
15 amended and restated to read as follows:

16 A. Violations. It is unlawful for any person to, after notice, willfully
17 violate or refuse or neglect to conform to any lawful City Health Order
18 related to the COVID-19 local emergency issued by the Long Beach Health
19 Officer and promulgated by the City Manager in accordance with this
20 Chapter.

21 B. Declaration of public nuisance.

22 1. Any violation of a lawfully issued City Health Order as
23 provided for in this Chapter is hereby deemed unlawful and a public
24 nuisance.

25 2. As a nuisance per se, any violation of this Chapter is
26 subject to any of the following remedies, including, without limitation:
27 injunctive relief, revocation of applicable permits or licenses, revocation of
28 the certificate of occupancy for the real property where the violation

1 occurred, disgorgement and payment to the City of all monies unlawfully
2 obtained, costs of abatement, and costs of investigation, attorney fees to
3 the prevailing party, and any other relief or remedy available at law or
4 equity.

5 C. Liability of employees and agents. In construing and enforcing the
6 provisions of this Chapter, the act, omission, or failure of an agent, officer, representative,
7 or other person acting for or employed by a business or similar entity, within the scope of
8 his or her employment or office, will be in every case be deemed the violation, act,
9 omission, or failure of the business or other entity.

10 D. Failure to comply with any of the provisions of this Chapter will
11 constitute grounds for suspension or revocation of any permit or license issued pursuant
12 to this Code, including but not limited to, health permits and business licenses. The
13 noticing and hearing requirements for suspension or revocation of a permit or license
14 shall be governed by the provisions of this Code.

15 E. Penalties.

16 1. Administrative Citations.

17 a. In addition to all other legal remedies at law,
18 violations of this Chapter are enforceable using the administrative citation
19 procedures set forth in Chapter 9.65 of this Code.

20 b. Administrative penalties imposed pursuant to
21 this Chapter also constitute a personal obligation on each person who
22 causes, permits, maintains, conducts, or otherwise suffers or allows the
23 nuisance or violation to exist. In the event administrative penalties are
24 imposed pursuant to this Chapter on two (2) or more persons for the same
25 violation, all such persons are jointly and severally liable for the full amount
26 of the administrative penalties imposed.

27 c. In addition to any other remedy, the City may
28 prosecute a civil action through the City Attorney to collect any

1 administrative penalty imposed pursuant to this Chapter.

2 2. Disconnection of municipal utilities.

3 a. To the maximum extent permitted by law, and in
4 accordance with the processes thereof, the City may discontinue municipal
5 utility services to any premises upon which an establishment is operating in
6 violation of a lawfully issued Health Order or this Chapter.

7 b. Prior to the disconnection of municipal utility
8 services, the City must notify, wherever possible, the property owner and
9 occupant of the building, structure, or premises upon which the
10 establishment is operating in violation of a Health Order or this Chapter, of
11 the decision to disconnect the municipal utility service(s) and the reason(s)
12 for service suspension at least twenty-four (24) hours before taking such
13 action, unless a different period of notification is mandated by law.

14 c. In the event municipal utilities are disconnected,
15 the Building Official must notify the owner or occupant of the building,
16 structure, or premises in writing of the disconnection as soon as practical
17 thereafter.

18 d. Disconnected municipal utilities shall not be re-
19 established until an inspection has been made by the City's Health
20 Department and the Building Official and the Building Official and Health
21 Department have determined that the establishment has ceased operations
22 in violation of a lawfully issued Health Order or this Chapter; that any
23 imminent threat to the public health has been abated or eliminated (if
24 applicable); that the building complies with applicable law; and that any
25 applicable fees for disconnection, reconnection, penalties, and/or other
26 related services have been paid.

27 e. Removing or defacing a notice posted in relation
28 to this provision shall constitute a separate and distinct violation of this

Chapter.

3. Actions for injunctive relief and civil penalties.

a. As an alternative, or in addition to any other remedy, the City Attorney may enforce the provisions of this Chapter against any person, business, and/or property owner in any court of competent jurisdiction. The City Attorney may apply to such court for an order seeking injunctive relief to abate or remove any nuisance caused, maintained, or permitted by any person, business, and/or property owner, to restrain any person, business, and/or property owner from taking any action contrary to the provisions of a lawfully issued Health Order or this Chapter, or other applicable law; and/or to require any person, business, and/or property owner to take any action to comply with this Chapter or other applicable law.

b. In any civil court action brought by the City Attorney pursuant to this Chapter in which the City succeeds in obtaining an order from the court, the City shall be entitled to recover from any person, business, and/or property owner all of the City's costs of investigation, enforcement, abatement, destruction, and litigation, including but not limited to attorneys' fees.

4. Criminal penalties.

a. Any person who knowingly violates this Chapter is guilty of a misdemeanor, punishable by a fine of not more than One Thousand Dollars (\$1,000), or by imprisonment in the City or county jail for a period not exceeding six (6) months, or by both such fine and imprisonment.

b. Notwithstanding the above subsection, a violation specified in this Chapter may be prosecuted as either a misdemeanor or an infraction in the sole discretion of the City Prosecutor.

1 F. Remedies cumulative. The remedies provided for in this
2 Chapter are not mutually exclusive. Pursuit of any one remedy does not
3 preclude the City from availing itself of any or all available administrative,
4 civil, or criminal remedies, at law or equity. The remedies provided by this
5 Chapter are cumulative and in addition to any other remedies available at
6 law or in equity.

7 Section 4. Subsection 8.120.040 of the Long Beach Municipal Code is
8 amended to read as follows:

9 8.120.040 Expiration.

10 This Chapter shall expire one-hundred eighty (180) days from the effective
11 date of the last amendment to this Chapter, unless further extended by the City Council in
12 its discretion by an amendment to this Chapter.

13 Section 5. This ordinance is urgently required to control the spread and
14 mitigate the effects of the Novel Coronavirus (COVID-19) within the City of Long Beach
15 through authorized actions, such as the enforcement of the Safer at Home Order For
16 Control of COVID-19 and any additional COVID-19 Health Orders that may be issued by
17 the City Health Officer and promulgated by the City Manager.

18 Section 6. This ordinance is an emergency ordinance duly adopted by
19 the City Council by a vote of five of its members and shall take effect immediately. The
20 City Clerk shall certify to a separate roll call and vote on the question of the emergency of
21 this ordinance and to its passage by the vote of five members of the City Council of the
22 City of Long Beach, and cause the same to be posted in three conspicuous places in the
23 City of Long Beach, and it shall thereupon take effect and shall be operative immediately.

24 Section 7. This ordinance shall also be adopted by the City Council as a
25 regular ordinance, to the end that in the event of any defect or invalidity in connection
26 with the adoption of this ordinance as an emergency ordinance, the same shall,
27 nevertheless, be and become effective on the thirty-first (31st) day after it is approved by
28 the Mayor. The City Clerk shall certify to the passage of this ordinance by the City

Council of the City of Long Beach and shall cause the same to be posted in three (3) conspicuous places in the City of Long Beach.

I hereby certify that on a separate roll call and vote which was taken by the City Council of the City of Long Beach upon the question of emergency of this ordinance at its meeting of _____, 2021, the ordinance was declared to be an emergency by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

Recusal(s): Councilmembers: _____

///

///

///

///

///

///

///

///

///

///

///

1 I further certify that thereafter, at the same meeting, upon a roll call and vote on
2 adoption of the ordinance, it was adopted by the City Council of the City of Long Beach
3 by the following vote:

4

5 Ayes: Councilmembers: _____

6 _____

7 _____

8 Noes: Councilmembers: _____

9 _____

10 Absent: Councilmembers: _____

11 _____

12 Recusal(s): Councilmembers: _____

13 _____

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

I further certify that the foregoing ordinance was thereafter adopted on final reading by the City Council of the City of Long Beach at its meeting of _____, 2021, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

Recusal(s): Councilmembers: _____

Clerk

Approved: _____
(Date)

Mayor