

ORDINANCE NO. C-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING SECTION 1.32.010.E, AND BY ADDING CHAPTER 9.65 RELATING TO ADMINISTRATIVE CITATIONS AND PENALTIES

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

Section 1. The Long Beach Municipal Code is amended by amending Section 1.32.010.E as follows:

E. In the sole discretion of the city prosecutor, any violation of this Code, unless provision is otherwise made herein, may be prosecuted as either a misdemeanor or an infraction. Notwithstanding the foregoing, violations of Municipal Code sections 21.51.227 and 21.41.170 shall be prosecuted as misdemeanor violations.

Sec. 2. The Long Beach Municipal Code is amended by adding Chapter 9.65 as follows:

IX. Enforcement

Chapter 9.65

ADMINISTRATIVE CITATIONS AND PENALTIES

Sections:

- 9.65.010 Legislative findings and statement of purpose.
- 9.65.020 Definitions
- 9.65.030 Weed abatement activity
- 9.65.040 Inoperative vehicle activity

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- 1 9.65.050 Prohibited canopy structure
- 2 9.65.060 Issuance of administrative citation
- 3 9.65.070 Service procedures
- 4 9.65.080 Contents of notice
- 5 9.65.090 Satisfaction of administrative citation
- 6 9.65.100 Appeal of administrative citation
- 7 9.65.110 Appeal hardship waiver
- 8 9.65.120 Hearing procedure
- 9 9.65.130 Hearing officer's decision
- 10 9.65.140 Failure to pay fines
- 11 9.65.150 Failure to remedy weed abatement activity
- 12 9.65.160 Failure to remedy inoperative vehicle activity
- 13 9.65.170 Appeal of lot cleaning and inoperative vehicle levy
- 14 9.65.180 Dismissal of citation
- 15 9.65.190 Right to judicial review
- 16 9.65.200 Recovery of code enforcement abatement costs

17

18 9.65.010 Legislative findings and statement of purpose.

19 A. Enforcement of the Long Beach Municipal Code throughout the
20 City is an important public service. Code enforcement is vital to the
21 protection of the public's health, safety, welfare, and quality of life. The
22 City Council recognizes that a comprehensive code enforcement system
23 that uses a combination of administrative and judicial remedies helps to
24 gain compliance with code regulations.

25 B. The overburdening of the criminal courts system has
26 necessitated the alternative use of an administrative citation program to
27 more effectively adjudicate the majority of nuisance related code
28 violations. An administrative citation program and the establishment of

1 appropriate fines are intended to act as a reasonable deterrent in
2 preventing violations of the Long Beach Municipal Code.

3 C. The City Council hereby finds that there is a need for an
4 alternative method of enforcement of the Municipal Code in accordance
5 with the City's constitutional police power. The City Council further finds
6 that an appropriate method of enforcement is the imposition of
7 administrative penalties as independently authorized by both California
8 Constitution Article XI, Section 7, and Government Code Section 53069.4.

9 D. The procedures established in this Chapter shall be in addition
10 to any criminal, civil or other legal remedy established by law for violation
11 of the Municipal Code.

12 E. The City Council hereby finds and determines that enforcement
13 of the Long Beach Municipal Code pursuant to the City's police power is a
14 matter of public health, safety and welfare and serves important public
15 purposes. The City of Long Beach adopts this administrative citation and
16 penalty program in order to achieve the following goals and objectives:

- 17 1. To protect the public health, safety and welfare of the
18 citizens of the City.
- 19 2. To gain compliance with the Municipal Code in a timely
20 and efficient manner.
- 21 3. To provide for an administrative process to appeal the
22 imposition of administrative citations and fines.
- 23 4. To provide a method to hold parties responsible when
24 they fail or refuse to comply with the provisions of the Municipal Code.
- 25 5. To avoid and/or minimize the expense and delay of
26 enforcement in the civil or criminal justice system.

27 F. Use of this Chapter shall be at the sole discretion of the City,
28 subject to subsection D of this Section.

1 9.65.020 Definitions.

2 A. "Canopy Structure" includes free standing exterior shade
3 structures that consist of a cover made from canvas, fabric, plastic,
4 rubber, nylon, acetate or other pliable material that is fitted over a free
5 standing metal frame or a frame constructed from some other material,
6 which is not entirely supported by an exterior wall of a building.

7 B. "Cited Party" means a legally responsible person who has been
8 issued an administrative citation.

9 C. "City" means the City of Long Beach.

10 D. "Continuing Violation" means any condition or activity in
11 violation of the Municipal Code that continues beyond the date given in
12 the administrative citation to correct the violation.

13 E. "Correction Period" means that period of time in which
14 responsible persons are required to correct or otherwise remedy the
15 violation(s).

16 F. "Enforcement Officer" shall mean any officer or employee of the
17 City designated with the authority to enforce the applicable provisions of
18 the Long Beach Municipal Code.

19 G. "Hearing Officer" means a member of the Board of Examiners,
20 Appeals, and Condemnation who has been designated to adjudicate
21 administrative citations.

22 H. "Highway" means a way or place of whatever nature, publicly
23 maintained and open to the use of the public for purposes of vehicular
24 travel. Highway includes street.

25 I. "Inoperative Vehicle" shall include:

26 1. Any vehicle, by which any person or property may be
27 propelled, moved, or drawn upon a highway, except a device moved by
28 human power, which is not currently and validly registered for operation or

1 use on the streets and highways in the State as required under the
2 provisions of the California Vehicle Code; or

3 2. Any motor vehicle which currently is incapable of being
4 driven under its own motor power; or

5 3. Any non-motor vehicle which currently is incapable of
6 being moved or drawn.

7 J. "Lot" means an area of land, parcel, or tract, whether improved
8 or unimproved, the boundaries of which have been established in
9 conformance with the State Subdivision Map Act, and which has either
10 been recorded via a final Tract Map or Certificate of Compliance on record
11 with the Los Angeles County Recorder.

12 K. "Lot Cleaning Levy" means all computed expenses incurred by
13 the City in removal of weeds and/or debris, from any lot, and shall consist
14 of processing fees, incidental enforcement costs, including but not limited
15 to, actual expenses for weeds and/or debris removal charged to the cited
16 party.

17 L. "Responsible Person" shall mean any individual who is the
18 owner, partial owner, or occupant of real property, last registered owner
19 and/or legal owner of a vehicle, the holder or the agent of the holder of
20 any permit or entitlement, or the party or agent of a party to any
21 agreement covered by this Chapter; or the owner or authorized agent of
22 any business, company, or entity subject to this Chapter, who creates,
23 commits, or maintains a violation subject to the enforcement provisions of
24 this Chapter.

25 M. "Vehicle Removal Levy" means all computed expenses incurred
26 by the City in the removal of inoperative vehicle(s) from public or private
27 property within the City, and shall consist of processing fees, incidental
28 enforcement costs, including but not limited to, land and vehicle title

1 search information, and actual expenses incurred for inoperative vehicle
2 removal, impoundment, or disposal.

3 N. "Weeds" and/or "Debris" includes all bushes, vines, trees,
4 grass, or other vegetation, whether cultivated or uncultivated, and whether
5 dead or growing, and all refuse, trash, and rubbish of any kind or
6 description, or wood, asphalt, concrete or similar materials, tin cans, parts
7 of machinery, implements and automobiles, any of which cause
8 unpleasant or noxious odors, or which are or may become a refuge or
9 breeding place for insect and vermin, or which conceal or are capable of
10 concealing filth and other unsanitary conditions, or which are, or are
11 capable of becoming, a fire or other hazard to the use and occupancy of
12 property, or which obstruct or hinder the use of any public street, sidewalk,
13 alley or way.

14
15 9.65.030 Weed abatement activity.

16 It shall be the duty of all responsible person(s) to at all times keep
17 lots clean and free from weeds and/or debris.

18
19 9.65.040 Inoperative vehicle activity.

20 It shall be the duty of responsible person(s) to prevent
21 accumulation and storage of abandoned, wrecked, dismantled, or
22 inoperative vehicles or parts thereof, except for those vehicles or parts
23 thereof exempted pursuant to Long Beach Municipal Code section
24 10.46.030.

25
26 9.65.050 Prohibited canopy structure.

27 Canopy structures as defined in section 9.65.020(A) may be
28 located only in the rear yard and shall be located not less than three feet

1 (3') from the side and rear property lines. Such structures may only be
2 erected for temporary residential use not to exceed seventy-two (72)
3 hours as permitted pursuant to Titles 18 and 21 of the Long Beach
4 Municipal Code. These structures may not be located in front or side yard
5 setback areas, or driveway areas used for automobile parking.

6
7 9.65.060 Issuance of administrative citation.

8 A. Any responsible person who violates any provision of Titles 3, 5,
9 6, 8, 9, 10, 14, 18 and 21 of the Long Beach Municipal Code may be
10 issued an administrative citation by an enforcement officer designated to
11 issue such citations.

12 B. Each and every day a violation exists constitutes a separate
13 and distinct offense.

14 C. A civil fine shall be assessed by means of an administrative
15 citation issued by the enforcement officer and shall be payable directly to
16 the City of Long Beach.

17 D. Fines shall be assessed in the following amounts for Code
18 violations committed by the same responsible person.

19 1. A fine not exceeding \$100.00 for each initial violation;

20 2. A fine not exceeding \$200.00 for each instance of a
21 second violation of the same Code section within one year from the date
22 of the first violation;

23 3. A fine not exceeding \$500.00 for each additional violation
24 of the same Code section within one year from the date of the first
25 violation;

26 4. A fine not exceeding \$1,000.00 for each violation of
27 Municipal Code section 21.41.170 relating to illegal garage conversions;

28 5. A fine not exceeding \$500.00 for each violation of

1 Municipal Code section 21.51.227 relating to illegal automotive repair
2 work.

3
4 9.65.070 Service procedures.

5 An administrative citation on a form approved by the City Manager
6 may be served upon any responsible person by an enforcement officer in
7 the following manner:

8 A. Personal Service. In any case where an administrative citation
9 is issued:

10 1. The enforcement officer shall attempt to locate and
11 personally serve the responsible person(s) and obtain the signature of the
12 responsible person(s) on the administrative citation;

13 2. If the responsible person(s) refuses or fails to sign the
14 administrative citation, the failure or refusal to sign shall not affect the
15 validity of the administrative citation or any subsequent proceedings.

16 B. Service of Citation by Posting Notice. If the enforcement officer
17 does not succeed in personally serving a responsible person(s):

18 1. The enforcement officer shall post the administrative
19 citation or duplicate thereof in a conspicuous place on the lot where the
20 violation(s) exists or has occurred, and such posting shall be deemed
21 effective service;

22 2. Any posted notice shall be photographed on the date of
23 posting by the enforcement officer, and a proof of service of the notice
24 shall be made by declaration of the enforcement officer effecting the
25 service.

26 C. Service of Citation by Mail. If the enforcement officer does not
27 succeed in personally serving a responsible person(s), in addition to
28 posting notice:

1 1. The administrative citation or duplicate thereof shall be
2 mailed to the responsible person(s) at his or her residence or place of
3 business by depositing the same in the United States mail postage
4 prepaid as first class mail;

5 2. A proof of service of the notice shall be made by
6 declaration of the enforcement officer effecting the service.

7
8 9.65.080 Contents of notice.

9 Each administrative citation shall contain the following information:

10 A. The date of service of the citation and the date, time, address or
11 description of the location where the violation(s) was observed.

12 B. The Code section(s) and condition(s) violated and a description
13 of the violation(s).

14 C. An order to the responsible person(s) to correct the violation(s)
15 no later than the specified correction date.

16 D. An explanation of the consequences of failure to correct the
17 violation(s) in a timely manner.

18 E. The amount of the fine for the violation(s).

19 F. An explanation of how the fine shall be paid and the fine
20 payment due date.

21 G. Notice of the right to appeal the citation, the time within which
22 the citation may be appealed and the place to obtain a Request for
23 Hearing form to appeal the administrative citation.

24 H. The name and signature of the enforcement officer and, if
25 obtained, the signature(s) of the responsible person(s).

26
27 9.65.090 Satisfaction of administrative citation.

28 Upon service of an administrative citation, the cited party shall do

1 the following:

2 A. Remedy the violation(s) no later than thirty (30) days from the
3 date of issuance of the citation as specified on the administrative citation.
4 Correcting the violation(s) shall not excuse or discharge payment of the
5 fine.

6 B. Pay the fine no later than thirty (30) days from the date of
7 issuance of the citation as specified on the administrative citation.
8 Payment of a fine shall not excuse or discharge the failure to correct the
9 violation(s), nor shall it bar further enforcement action by the City. Late
10 charges shall be imposed for fine payments made after the fine payment
11 due date. The late charge shall be calculated at a rate of 25% of the fine,
12 and will be imposed in addition to any outstanding fine.

13
14 9.65.100 Appeal of administrative citation.

15 A. Any recipient of an administrative citation may appeal said
16 citation by completing a written Department of Community Development
17 Request for Hearing form and returning it to the Department of
18 Community Development within thirty (30) calendar days from the date
19 the administrative citation is served or deemed to have been served,
20 together with a deposit in the total amount of the fine and any late
21 charges.

22 B. A failure to file a timely appeal of the administrative citation shall
23 be deemed a waiver of the right to appeal and to seek judicial review.

24
25 9.65.110 Appeal hardship waiver.

26 A. Any person who intends to appeal the administrative citation
27 and who is financially unable to make the advance deposit of the fine as
28 required in Section 9.65.100 may request an advance deposit hardship

1 waiver by completing a written Department of Community Development
2 Request for Deposit Waiver form.

3 B. The Deposit Waiver Request form shall be filed together with
4 the appeal in the Department of Community Development within thirty (30)
5 calendar days from the date the administrative citation is served or
6 deemed to have been served.

7 C. The requirement of depositing the full amount of the fine and
8 any late charges as described in 9.65.100(A) shall be stayed unless or
9 until the Director of Community Development, or his/her designee, makes
10 a determination regarding the waiver request.

11 D. The Director of Community Development, or his/her designee,
12 may waive the requirement of an advance deposit only if the Cited Party
13 submits to the Director of Community Development, or his/her designee, a
14 statement under penalty of perjury, together with any supporting
15 documents or materials, demonstrating to the satisfaction of the Director
16 of Community Development, or his/her designee, the Cited Party's actual
17 financial inability to deposit with the City the full amount of the fine and
18 late charge(s) in advance of the hearing.

19 E. If the Director of Community Development, or his/her designee,
20 declines to issue a waiver, the Cited Party shall remit the full deposit to
21 the City within ten (10) calendar days of the date of that decision or thirty
22 (30) calendar days from the date the administrative citation is served or
23 deemed to have been served, whichever is later.

24 F. The Director of Community Development, or his/her designee,
25 shall issue a written determination listing the reasons for his/her
26 determination to issue or not issue the hardship waiver. The written
27 determination of the Director of Community Development shall be final.

28 G. The written determination of the Director of Community

1 Development shall be served personally or by first class mail, postage
2 prepaid, upon the Cited Party who applied for the hardship waiver.

3
4 9.65.120 Hearing procedure.

5 A. No hearing to appeal an administrative citation shall be held
6 unless and until a Department of Community Development Request for
7 Hearing form has been completed and submitted, and the deposit has
8 been paid, or a hardship waiver has been issued.

9 B. A hearing before the hearing officer shall be set for a date not
10 sooner than fifteen (15) calendar, and not more than sixty (60) calendar
11 days from the date the request for hearing is completed and submitted in
12 accordance with the provisions of this Chapter. The Cited Party
13 requesting the hearing shall be notified in writing of the time and place set
14 for the hearing at least ten (10) calendar days prior to the date of the
15 hearing.

16 C. The hearing officer shall only consider evidence that is relevant
17 to whether the violation(s) occurred and whether the Cited Party has
18 created, committed, or maintained the violation(s). Courtroom rules of
19 evidence shall not apply. Relevant hearsay evidence and written reports
20 may be admitted whether or not the speaker or author is present to testify,
21 if the hearing officer determines that such evidence is reliable. Admission
22 of evidence and the conduct of the hearing shall be controlled by the
23 hearing officer in accordance with the fundamentals of due process. The
24 hearing officer may set reasonable limits on the length of the hearing, and
25 shall allow the appellant at least as much time to present his/her case as
26 is allowed to the City.

27 D. The Cited Party contesting the administrative citation shall be
28 given the opportunity to testify and present witnesses and evidence

1 concerning the administrative citation. The City's case shall be presented
2 by any person designated by the City Manager. The appellant and City
3 may be represented by counsel.

4 E. The failure of the appellant to appear at the hearing shall
5 constitute a forfeiture of the fine and a failure to exhaust administrative
6 remedies.

7 F. The administrative citation and any additional documents
8 prepared by the City in connection with the violation(s) may be submitted
9 and shall constitute prima facie evidence of the respective facts contained
10 in those documents.

11 G. If the enforcement officer or his/her designee submits any
12 additional documents concerning the administrative citation to the hearing
13 officer for consideration at the hearing, then, whenever possible, a copy of
14 such document(s) shall be served by mail on the Appellant at least five (5)
15 calendar days prior to the date of the hearing.

16 H. The hearing officer may continue the hearing or request
17 additional information from the enforcement officer, his/her designee or
18 the appellant prior to issuing a written decision.

19
20 9.65.130 Hearing officer's decision.

21 A. After considering all of the testimony and evidence submitted at
22 the hearing, the hearing officer shall issue a written decision within fifteen
23 (15) business days of the hearing. The decision of the hearing officer
24 shall be final.

25 B. If the hearing officer denies the appeal, then the deposit shall
26 be retained by the City.

27 C. If the hearing officer grants the appeal, then the City shall
28 refund the deposit within thirty (30) business days from the date of the

1 final written decision.

2 D. The appellant and City shall each be served with a copy of the
3 hearing officer's written decision.

4 9.65.140 Failure to pay fines.

5 A. The failure of the Cited Party to pay a civil fine or late penalty in
6 a timely manner may result in the imposition of a special assessment
7 and/or lien against the real property on which the violation occurred,
8 and/or filing of an action with the Small Claims Court for recovery of the
9 fine and late penalty. The only issue to be adjudicated by the Small
10 Claims Court shall be whether or not the fines and possible late fees were
11 paid. A Cited Party may only obtain judicial review of the validity of the
12 citation by first requesting and participating in an administrative hearing
13 before a hearing officer. In the Small Claims Court action, the City may
14 also recover its costs, according to proof.

15 B. The City may also refuse to issue, extend, or renew to any
16 Cited Party who has unpaid delinquent fines, interest, penalties, liens, or
17 assessments, any City permit, license, entitlement, or other City approval
18 pertaining to the lot that is the subject of the fine and administrative
19 citation.

20 C. Any permit, license, entitlement, or land use approval issued by
21 the City may be subject to suspension or revocation of the permit, license,
22 entitlement, or land use approval in accordance with the procedures set
23 forth in Titles 3, 5, 6, 8, 9, 10, 14, 18 and 21 of the Long Beach Municipal
24 Code if any unpaid fine, interest or penalties remain delinquent for a
25 period of more than thirty (30) days.

26
27 9.65.150 Failure to remedy weed abatement activity.

28 In the event a responsible person(s) is cited for violation of weed

1 abatement, pursuant to section 9.65.030 of this Chapter, and fails to
2 correct the violation within the specified correction period, and also fails to
3 file a timely appeal of the administrative citation as set forth in section
4 9.65.100 of this Chapter, in addition to fine(s), late charges, and
5 consequences resulting from failure to pay fines as defined in this
6 Chapter, a lot cleaning levy shall also be imposed. A lot cleaning levy
7 payment notice shall be served upon the Cited Party in the same manner
8 as provided for service of the administrative citation set forth in section
9 9.65.070 of this Chapter.

10
11 9.65.160 Failure to remedy inoperative vehicle activity.

12 In the event a responsible person(s) is cited for violation of
13 inoperative vehicles pursuant to 9.65.040 of this Chapter, and fails to
14 correct the violation within the specified period and also fails to file a
15 timely appeal of the administrative citation as set forth in section 9.65.100
16 of this Chapter, in addition to fine(s), late charges, and consequences
17 resulting from failure to pay fines as defined in this Chapter, a vehicle
18 removal levy shall also be imposed. A vehicle removal levy payment
19 notice shall be served upon the Cited Party in the same manner as
20 provided for service of the administrative citation set forth in section
21 9.65.070 of this Chapter.

22
23 9.65.170 Appeal of lot cleaning and inoperative vehicle levy.

24 A. Any recipient of lot cleaning or inoperative vehicle levy payment
25 notice may appeal the reasonableness of the computed charges by
26 completing a levy hearing request form and returning it to the Department
27 of Community Development within fifteen (15) calendar days from the
28 date the levy notice was served, together with a deposit in the total

1 amount of the administrative citation fine, late charges, and levy.

2 B. A hearing on the appeal shall be set for a date that is not
3 sooner than fifteen (15) calendar and not more than sixty (60) calendar
4 days from the date that the request for hearing is completed and
5 submitted in accordance with the provisions of this Chapter. The person
6 requesting the hearing shall be notified in writing of the time and place set
7 for the hearing at least ten (10) calendar days prior to the date of the
8 hearing.

9 C. The hearing officer shall only consider evidence that is relevant
10 to whether the costs used to compute the levy are reasonably related to
11 abatement costs incurred by the City. Courtroom rules of evidence shall
12 not apply. Relevant hearsay evidence and written reports may be
13 admitted whether or not the speaker or author is present to testify if the
14 hearing officer determines that such evidence is reliable. Admission of
15 evidence and the conduct of the hearing shall be controlled by the hearing
16 officer in accordance with the fundamentals of due process. The hearing
17 officer may set reasonable limits on the length of the hearing, and shall
18 allow the appellant at least as much time to present its case as is allowed
19 the City.

20 D. The Cited Party contesting the reasonableness of the levy shall
21 be given the opportunity to testify and present witnesses and evidence
22 concerning the computed cost. The Appellant and City may be
23 represented by Counsel.

24 E. The administrative citation and any additional documents
25 prepared by the City in connection with the levy may be submitted and
26 shall constitute prima facie evidence of the respective facts contained in
27 those documents.

28 F. In the event additional documents concerning the levy are

1 provided to the hearing officer for consideration, whenever possible, a
2 copy of such document(s) shall be served by mail on the appellant at least
3 five (5) calendar days prior to the date of the hearing.

4 G. The hearing officer may continue the hearing or request
5 additional information from the City or the appellant prior to issuing a
6 written decision.

7 H. After considering all of the testimony and evidence submitted at
8 the hearing, the hearing officer shall issue a written decision within fifteen
9 (15) business days of the hearing.

10 I. The appellant and the City shall each be served by mail with a
11 copy of the hearing officer's written decision.

12 J. If the hearing officer determines that the levy was properly
13 computed, and should be upheld as reasonable, then the entire deposit
14 with the City shall be retained by the City.

15 K. In the event the hearing officer determines the levy, or any
16 portion thereof, to be unreasonable, then that amount shall be refunded
17 within fifteen (15) business days of the date of the written determination.

18 L. The failure of the appellant to appear at the hearing shall
19 constitute a forfeiture of the entire deposit and a failure to exhaust
20 administrative remedies.

21 M. A failure to file a timely appeal shall be deemed a waiver of the
22 right to appeal the levy.

23
24 9.65.180 Dismissal of citation.

25 The enforcement officer, with the approval of the Director of
26 Community Development, may dismiss an administrative citation at any
27 time if it is determined to have been issued in error, in which event any
28 deposit will be refunded.

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9.65.190 Right to Judicial Review.

A. Either the City or the appellant aggrieved by a decision of a hearing officer on an administrative citation or levy, may obtain review of the decision by filing a Petition for Review with the Los Angeles Superior Court in accordance with the timelines and provisions as set forth in California Government Code Section 53069.4(b). Said procedure shall be available for all judicial review under this Chapter, notwithstanding that the term or condition being enforced pursuant to this Chapter may not be a matter covered by Section 53069.4(a). Judicial review of a citation shall not be available unless all administrative remedies have been exhausted as provided in this Chapter.

B. Failure to receive any notice specified in this Chapter does not affect the validity of proceedings conducted hereunder.

9.65.200 Recovery of code enforcement abatement costs.

The administrative citation process described in this Chapter does not preclude the City from recovering any other code violation or nuisance abatement costs incurred by the City in performing its code enforcement efforts.

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

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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