



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-37

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October 6, 2015

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Declare ordinance amending the Long Beach Municipal Code by adding Chapter 9.17 relating to nuisance abatement of illegal conduct involving unlawful weapons or ammunition on real property read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION

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 who utilize rental units in nuisance activity involving weapons and ammunition in the City of Long Beach. This ordinance will require rental property owners to either bring unlawful detainer actions to evict tenants 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 similar to the drug eviction program that has been used for many years and is also consistent with the provisions of the new State regulations in this area. The California legislature enacted Civil Code section 3485 to allow for abatement of these types of nuisance activity by initiating and filing unlawful detainer actions for illegal conduct involving weapons and ammunition on real property. 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.

10/06/15

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By



ARTURO D. SANCHEZ
Deputy City Attorney

ADS:kjm
Attach.
A15-01978

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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 ADDING CHAPTER
9.17, RELATING TO NUISANCE ABATEMENT OF
ILLEGAL CONDUCT INVOLVING UNLAWFUL
WEAPONS OR AMMUNITION ON REAL PROPERTY

WHEREAS, the California legislature enacted Civil Code section 3485 to allow abatement of nuisance activity by initiating and filing unlawful detainer actions for illegal conduct involving unlawful weapons or ammunition on real property; and

WHEREAS, unlawful detainer actions are aimed at evicting tenants who occupy a rental property for purposes of conducting nuisance activity related to illegal weapons or ammunition on real property; 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, pursuant to the City's police powers authorized in Article XI, Section 7 of the California Constitution, the Long Beach Municipal Code, and other provisions of California law, including, but not limited to California Civil Code Section 3485, the City has the power through its City Council to declare actions and activities that constitute a public nuisance; and

WHEREAS, the City Council wishes to adopt regulations further prohibiting

1 unlawful weapons or ammunition on real property in the City of Long Beach; and

2 WHEREAS, the City Council now desires to expand the City's ability to
3 deter and respond to nuisance activity related unlawful weapons or ammunition on real
4 property.

5 NOW, THEREFORE, the City Council of the City of Long Beach
6 ordains as follows:

7 Section 1. Chapter 9.17 is added to the Long Beach Municipal
8 Code to read as follows:

9 Chapter 9.17

10 UNLAWFUL WEAPONS OR AMMUNITION ON REAL PROPERTY ABATEMENT

11
12 9.17.010 Purpose.

13 The purpose of this Chapter is to promote public health, safety, and
14 welfare by allowing the City Attorney to abate the nuisance caused by illegal
15 conduct involving unlawful weapons or ammunition on real property.
16

17 9.17.015 Additional enforcement remedies.

18 The procedures provided for in this Chapter shall be cumulative and in
19 addition to any other procedure or legal remedy provided for in this Code or
20 by State law for the abatement of nuisance related activities or conditions.

21 Nothing in this Chapter shall be deemed to prevent the City from
22 commencing a civil or criminal proceeding to abate a nuisance under
23 applicable Civil, Penal, or Municipal Code provisions as an alternative to the
24 proceedings set forth in this Chapter.
25

26 9.17.020 Definitions.

27 A. "Unlawful weapons or ammunition purpose" means the illegal
28 use, manufacture, causing to be manufactured, importation, possession,

1 possession for sale, sale, furnishing, or giving away of any of the following:

2 1. A firearm, as defined in subdivision (a) of Section 16520
3 of the Penal Code.

4 2. Any ammunition, as defined in subdivision (b) of Section
5 16150 of the Penal Code or in Section 16650 or 16660 of the Penal Code.

6 3. Any assault weapon, as defined in Section 30510 or
7 30515 of the Penal Code.

8 4. Any .50 BMG rifle, as defined in Section 30530 of the
9 Penal Code.

10 5. Any tear gas weapon, as defined in Section 17250 of the
11 Penal Code.

12
13 9.17.030 Illegal weapons or ammunition on real property nuisance
14 abatement.

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

20 B. The unlawful detainer action shall be based upon an arrest
21 report or other report by a law enforcement agency, documenting an illegal
22 weapons or ammunition on real property offense 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 illegal weapons or ammunition on real property.

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 14-point bold
11 type, and provided in English and as translated in all of the languages
12 identified in subdivision (b) of Section 1632 of the Civil Code, meet the
13 following requirements:

14 The notice shall contain the following language:

15 “(Date)

16 (Name of tenant)

17 (Address of tenant)

18 Re: Long Beach Municipal Code Chapter 9.17

19 Dear (name of tenant):

20 This letter is to inform you that an eviction action may soon be filed in
21 court against you for suspected illegal weapons or ammunition on real
22 property activity. Long Beach Municipal Code Chapter 9.17, in accordance
23 with State law, provides for the eviction of persons engaging in such conduct,
24 as described below.

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

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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 action if any of the following is applicable:

- (1) You are not the person named in this notice;
- (2) The person named in the notice does not live with you;
- (3) The person named in the notice has permanently moved;
- (4) You do not know the person named in the notice;
- (5) You want to request that only the person involved in the nuisance be evicted, allowing the other residents to stay; or
- (6) You have any other legal defense or legal reason to stop the eviction action. A list of legal assistance providers is attached to this notice. Some provide free legal assistance if you are eligible."

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

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City employee that shows service in conformity with this Section.

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

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

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

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

H. If a jury or court finds the defendant tenant guilty of unlawful detainer in a case filed pursuant to Paragraph (G), the City Attorney may be

1 awarded costs, including the costs of investigation and discovery and
2 reasonable attorney's fees. These costs shall be assessed against the
3 defendant owner, to whom notice was directed pursuant to Paragraph (C)(1),
4 and once an abstract of judgment is recorded, it shall constitute a lien on the
5 subject real property.

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

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

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

23
24 9.17.050 Severability.

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

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applications of this Chapter are severable.

Section 2. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) 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 _____, 20__, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor