



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-16
REVISED

CHARLES PARKIN
City Attorney

MICHAEL J. MAIS
Assistant City Attorney

DEPUTY CITY ATTORNEY

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

DEPUTY CITY ATTORNEY

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

May 12, 2020

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 by adding 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

Per your request on May 5, 2020, this Ordinance amending the Long Beach Municipal Code ("LBMC") by adding Chapter 8.120, "Temporary Enforcement of Long Beach Health Orders Related to COVID-19", has been prepared and is submitted for your consideration.

In an effort to mitigate the effects of COVID-19 within the City, the Long Beach Health Officer issued the "Safer at Home Order for Control of COVID-19" ("Health Order") and has revised the Health Order from time to time as necessary for the public health and safety during this ongoing emergency.

The proposed Ordinance would require, 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. 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.

Although it is vital that the City is able to effectively enforce City Health Orders during the COVID-19 emergency, the City's primary goal is to ensure the public health and safety is achieved through outreach efforts and education of the Long Beach community. However, where such education and outreach efforts are unsuccessful in compelling compliance, the proposed Ordinance allows for civil, administrative, and/or criminal enforcement of City Health Orders related to COVID-19, as may be necessary. In the case of a criminal prosecution, the City Prosecutor would have the discretion to charge the offense as either an infraction or a misdemeanor.

It is the intent of the City that enforcement of City Health Orders related to COVID-19 will only occur after a person is provided ample opportunity to comply after being notified of an alleged violation. The proposed Ordinance is temporary and expires 180 days from its effective date, unless further extended by the City Council in its discretion by an amendment to the Ordinance.

Ideally, the City will be able to garner compliance through its outreach and education efforts. It is anticipated that civil, administrative, or criminal enforcement will only be necessary when all other reasonable efforts in seeking compliance have failed. With respect to criminal enforcement, the Long Beach City Prosecutor submits the following for your consideration:

The City Prosecutor's Office has been in close communication with the Police Department on enforcement strategies and getting updates from the field. From all appearances, Long Beach residents are voluntarily complying with both the spirit and letter of the [COVID-19 Health] Orders. We are aware of no arrests and only two citations for individuals who, after notice and an opportunity to comply with specific orders, continued to violate the orders. Indications to date suggest that people in Long Beach understand the orders, find the orders to be clear, and are following the orders without the need for significant enforcement action by police. Officers are exercising judgment and discretion. In the instances where officers find people in clear violation of an order, an explanation or warning from the officer is resulting in compliance virtually every time.

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By



MONICA J. KILAITA
Deputy City Attorney

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING CHAPTER 8.120,
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 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 declared 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
Health Officer issued a Declaration of Local Health Emergency and the then Acting City
Manager issued a Proclamation of Local Emergency; and

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

1 Officer's Declaration of Local Health Emergency; and

2 WHEREAS, in order to mitigate the effects of COVID-19 within the City,
3 the Long Beach Health Officer issued the Safer at Home Order for Control of COVID-19
4 ("Health Order"), and thereafter revised said Health Order from time to time as
5 necessary in furtherance of the public health and safety; and

6 WHEREAS, in order to further protect the public health and safety, it is
7 necessary to adopt ordinance provisions that will provide administrative, civil, and
8 criminal enforcement remedies for violations of the lawfully issued Health Orders of the
9 City; and

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

13 WHEREAS, although the City Council has authority on the City Manager's
14 promulgation of City Health Orders, the Health Orders are issued in the sole discretion
15 of the City Health Officer in accordance with authority granted to the Health Officer
16 under State law; and

17 WHEREAS, as such, Council's confirmation is not on the contents of the
18 Health Order, itself, but on whether the City Manager may promulgate such Health
19 Order to be enforceable under the provisions of the proposed Ordinance; and

20 WHEREAS, in the event it is not feasible for the City Manager to bring the
21 Health Orders before the Council prior to promulgation, the City Manager shall, within a
22 14-day period from promulgation of said Health Orders, request the City Council to
23 confirm promulgation of the Health Orders; and

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

28 WHEREAS, the City's primary goal is to ensure the public health and

1 safety during the COVID-19 local, state, and federal emergencies through outreach
2 efforts and education of the Long Beach community regarding the City Health Orders
3 and COVID-19; and

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

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

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

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

18 WHEREAS, the proposed Ordinance is temporary and shall expire One
19 Hundred Eighty (180) days from its effective date, unless further extended by the City
20 Council in its discretion by an amendment to this Ordinance;

21 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
22 follows:

23 Section 1. Chapter 8.120 is added to the Long Beach Municipal Code to
24 read as follows:

25 ///

26 ///

27 ///

28 ///

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 after its effective date, 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. The City Council shall confirm Health Orders issued by the Long Beach Health Officer only to the extent of authorizing the City Manager to promulgate such Health Orders in order to deem the Orders as City regulations enforceable under the provisions of this Chapter, except

1 where impracticable due to the rapid development of the COVID-19 local
2 emergency.

3 B. In the event of impracticability as described in Subsection A,
4 the City Manager may promulgate a City Health Order to be enforceable
5 under the provisions of this Chapter on the condition said promulgation is
6 confirmed by the City Council at a duly noticed public meeting within
7 fourteen (14) days of promulgation.

8
9 8.120.030 Enforcement and Penalties of Health Orders related to
10 COVID-19.

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

16 B. Declaration of public nuisance.

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

20 2. As a nuisance per se, any violation of this Chapter is
21 subject to any of the following remedies, including, without limitation:
22 injunctive relief, revocation of applicable permits or licenses, revocation of
23 the certificate of occupancy for the real property where the violation
24 occurred, disgorgement and payment to the City of all monies unlawfully
25 obtained, costs of abatement, and costs of investigation, attorney fees to
26 the prevailing party, and any other relief or remedy available at law or
27 equity.

28 C. Liability of employees and agents. In construing and enforcing

1 the provisions of this Chapter, the act, omission, or failure of an agent,
2 officer, representative, or other person acting for or employed by a business
3 or similar entity, within the scope of his or her employment or office, will be
4 in every case be deemed the violation, act, omission, or failure of the
5 business or other entity.

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

12 E. Penalties.

13 1. Administrative Citations.

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

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

24 c. In addition to any other remedy, the City may
25 prosecute a civil action through the City Attorney to collect any
26 administrative penalty imposed pursuant to this Chapter.

27 2. Actions for injunctive relief and civil penalties.

28 a. As an alternative, or in addition to any other

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

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

17 3. Criminal penalties.

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

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

26 F. Remedies cumulative. The remedies provided for in this
27 Chapter are not mutually exclusive. Pursuit of any one remedy does not
28 preclude the City from availing itself of any or all available administrative,

1 civil, or criminal remedies, at law or equity. The remedies provided by this
2 Chapter are cumulative and in addition to any other remedies available at
3 law or in equity.

4
5 8.120.040 Expiration.

6 This Chapter shall expire One Hundred Eighty (180) days after its effective
7 date, unless further extended by the City Council in its discretion by an
8 amendment to this Chapter.

9
10 Section 2. This ordinance is urgently required to control the spread and
11 mitigate the effects of the Novel Coronavirus (COVID-19) within the City of Long Beach
12 through authorized actions, such as the enforcement of the Safer at Home Order For
13 Control of COVID-19 and any additional COVID-19 Health Orders that may be issued by
14 the City Health Officer and promulgated by the City Manager.

15
16 Section 3. This ordinance is an emergency ordinance duly adopted by
17 the City Council by a vote of five of its members and shall take effect immediately. The
18 City Clerk shall certify to a separate roll call and vote on the question of the emergency of
19 this ordinance and to its passage by the vote of five members of the City Council of the
20 City of Long Beach, and cause the same to be posted in three conspicuous places in the
21 City of Long Beach, and it shall thereupon take effect and shall be operative immediately.

22
23 Section 4. This ordinance shall also be adopted by the City Council as a
24 regular ordinance, to the end that in the event of any defect or invalidity in connection
25 with the adoption of this ordinance as an emergency ordinance, the same shall,
26 nevertheless, be and become effective on the thirty-first (31st) day after it is approved by
27 the Mayor. The City Clerk shall certify to the passage of this ordinance by the City
28 Council of the City of Long Beach and shall cause the same to be posted in three (3)

1 conspicuous places in the City of Long Beach.

2 I hereby certify that on a separate roll call and vote which was taken by the
3 City Council of the City of Long Beach upon the question of emergency of this ordinance
4 at its meeting of _____, 2020, the ordinance was declared to be an
5 emergency by the following vote:

6 Ayes: Councilmembers: _____

7 _____

8
9 Noes: Councilmembers: _____

10 _____

11 Absent: Councilmembers: _____

12 _____

13 Recusal(s): Councilmembers: _____

14 _____

15
16 I further certify that thereafter, at the same meeting, upon a roll call and vote on
17 adoption of the ordinance, it was adopted by the City Council of the City of Long Beach
18 by the following vote:

19
20 Ayes: Councilmembers: _____

21 _____

22
23 Noes: Councilmembers: _____

24 _____

25 Absent: Councilmembers: _____

26 _____

27 Recusal(s): Councilmembers: _____

28 _____

1
2
3
4
5
6
7
8
9
10
11
12
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 _____, 2020, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

Recusal(s): Councilmembers: _____

Clerk

Approved: _____
(Date)

Mayor