ORDINANCE NO. ORD-17-0011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY ADDING SECTION 5.90.290 RELATED TO LOCAL ENFORCEMENT AND PENALTIES FOR ILLEGAL MARIJUANA BUSINESSES

WHEREAS, Chapter 5.90, "Medical Marijuana Businesses", of the Long Beach Municipal Code ("LBMC") went into effect on December 23, 2016, and allows for the operation and regulation of medical marijuana businesses, including dispensaries, cultivation, manufacturing, distribution, and testing, in the City of Long Beach; and

WHEREAS, Chapter 5.90 requires a medical marijuana business to be issued a City of Long Beach Business License prior to operation, in addition to other requirements such as issuance of a state license under the Medical Cannabis Regulation and Safety Act ("MCRSA"), when available; and

WHEREAS, the State will not issue a license under MCRSA without a medical marijuana business first obtaining the applicable local license(s); and

WHEREAS, Section 5.90.210, "Violations and Enforcement", of the LBMC allows the City to pursue any and all remedies and actions available and applicable under local and/or State law for any violation related to the operation of a non-licensed medical marijuana business; and

WHEREAS, Section 5.90.210 deems any operation of a medical marijuana business without a business license as unlawful and a public nuisance; and

WHEREAS, Section 5.90.210 further deems the permitting by any person of a public nuisance on real property in which such person has an ownership or possessory interest, as unlawful and a nuisance per se, subject to injunctive relief, revocation of the certificate of occupancy for the property, costs of abatement, and any other relief or
remedy at law and equity; and

WHEREAS, the City of Long Beach does not currently, expressly or otherwise, authorize nonmedical marijuana businesses to operate within the city limits, and the State is not yet issuing licenses for nonmedical marijuana businesses under the Control, Regulate and Tax Adult Use of Marijuana Act; and

WHEREAS, the City desires to implement local enforcement and penalties against unlicensed marijuana businesses and property owners in accordance with the authority granted to it by Chapter 5.90 of the LBMC and any other applicable local or state law, necessary for and in furtherance of the public health, safety and welfare; and

WHEREAS, it is in the interest of the City, its residents, and its lawfully licensed marijuana-related businesses to permit and utilize effective enforcement mechanisms against illegal marijuana operators.

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

Section 1. Section 5.90.290 is added to the Long Beach Municipal Code to read as follows:

5.90.290 Local enforcement and penalties for illegal marijuana businesses.

A. Applicability.

This Section applies to all entities and persons engaging in medical and/or nonmedical marijuana related activity who are legally required to, but do not have, a City issued license, permit or authorization ("Establishment"). This Section also applies to any person or entity who has an ownership or possessory interest in any real property upon which an Establishment is being operated, permitted or maintained ("Property Owner").

B. Actions for injunctive relief and civil penalties.
1. As an alternative or in addition to any other remedy, the City Attorney may enforce the provisions of this Chapter against an Establishment 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 an Establishment and/or Property Owner; to restrain any Establishment and/or Property Owner from taking any action contrary to the provisions of this Chapter or other applicable law; and/or to require any Establishment and/or Property Owner to take any action to comply with this Chapter or other applicable law.

2. In any civil court action brought by the City Attorney pursuant to this Section in which the City succeeds in obtaining an order from the court, the City shall be entitled to recover from an Establishment and/or Property Owner all of the City's costs of investigation, enforcement, abatement, and litigation, including but not limited to attorneys' fees.

3. The City shall also be entitled to recover civil penalties against an Establishment and/or Property Owner in a maximum amount of five thousand dollars ($5,000) per violation for each day an Establishment is operated, permitted, or maintained on the subject property. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the violation, any economic benefit gained through the violation, the number of violations, the length of time over which the violation occurred, the willfulness of the defendant's violation, and the defendant's assets, liabilities, and net worth.

4. The City Attorney is authorized, without further direction from the City Council, to institute any civil actions permitted
pursuant to this Section.

C. Prohibited property sites for marijuana-related operations.

1. The City may in its sole discretion take any action as specified in this subsection.

2. If the City discovers an Establishment is currently and/or was operating within the previous 60 days at or on a property, or any portion thereof, the City may take action as specified herein. The City shall notify the Property Owner in writing of their right to file, within fifteen (15) days after the date of mailing of the Notice, written request of a hearing to the City disputing the alleged Establishment operation. Such written request shall set forth the specific ground(s) on which the dispute is based and the Property Owner shall pay to the City at the time of filing said written request a filing fee in an amount to be set by resolution of the City Council. Failure to file the written request within the time period specified shall result in waiver of any right to dispute the allegation of operation of an Establishment at the subject property. In the event of such waiver, no medical or nonmedical marijuana business, whether licensed or non-licensed, shall be permitted to operate at the subject property for a period of one (1) year from the 16th day after the date of mailing of the Notice.

If the written request is filed within the time period specified, within thirty (30) days following the filing of said written request, the City shall set a hearing to be held not less than ten (10) days nor not more than thirty (30) days thereafter, and such hearing may for good cause be continued by the City. The hearing shall be held in accordance with Chapter 2.93 of this Code, except that the matter shall be automatically referred to the City Clerk for selection of a Hearing Officer, without the City Council's referral, in accordance with Section 2.93.050.B of this Code. The City shall thereupon make a written report to the Hearing Officer reflecting such determination.
that an Establishment exists and/or existed at the subject property.

Whenever it has been determined that an Establishment was and/or is in operation, no medical or nonmedical marijuana business, whether licensed or non-licensed, shall be permitted to operate at the subject property for a period of one (1) year from the effective date of such determination.

The prohibitions contained in this subsection shall be sufficient grounds to deny any application for operation of a marijuana-related business at the subject property received within the one-year time period.

3. In the event the City revokes a Property Owner's Non-Residential Rental Business License for violating this Chapter, no medical or nonmedical marijuana business, whether licensed or non-licensed, shall be permitted to operate at the subject property for a period of five (5) years from the effective date of revocation of the Non-Residential Rental Business License. Such revocation shall be sufficient grounds to deny any application for operation of a marijuana-related business at the subject property received within the five-year period. This prohibition shall also remain in effect in the event a Property Owner (or an entity owned by or affiliated with such Property Owner) obtains another Non-Residential Rental Business License anytime within the five-year period for the subject property.

D. Disconnection of utilities.

1. To the maximum extent permitted by law, and in accordance with the processes thereof, the City may discontinue utility services to any premises upon which an Establishment is operating.

2. Prior to the disconnection of 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, of the decision to disconnect the utility service(s) and the reason(s) for
service suspension at least seven (7) calendar days before taking such
action, unless a different period of notification is mandated by law; provided
that the City's Building Official may dispense with any attempt at prior
notification if, in the sole discretion of the Building Official, the nature or
severity of any apparent dangerous hazard justifies such inaction in
accordance with other provisions of this Code.

3. In the event 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.

4. Disconnected utilities shall not be re-established until
an inspection has been made by the City's Building Official and the Building
Official has determined that the unlawful Establishment has ceased
operations; that any imminent hazard 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.

5. Removing or defacing a notice posted in relation to this
provision shall constitute a separate and distinct violation of this Chapter.

E. Miscellaneous.

1. The enforcement and penalties stated herein are in
addition to any additional civil or criminal remedies and actions available at
law or equity for such violations.

2. Nothing in this Section shall be construed as requiring
the City to allow, permit, license, authorize, or otherwise regulate medical or
nonmedical marijuana, or as abridging the City's police power with respect
to enforcement regarding medical or nonmedical marijuana, or as restricting
or otherwise limiting the enforcement authority conferred upon the City or
any State agency by other provisions of this Municipal Code or State law.
3. In the event any provision in this Section shall be deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

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 __July 11__, 2017, by the following vote:

Ayes: Councilmembers: Gonzalez, Pearce, Price, Mungo, Andrews, Austin, Richardson.

Noes: Councilmembers: None.

Absent: Councilmembers: Supernaw, Uranga.

Approved: 07/13/17

(Date)

Mayor

City Clerk
AFFIDAVIT OF POSTING

STATE OF CALIFORNIA ) ss
COUNTY OF LOS ANGELES )
CITY OF LONG BEACH )

Samantha Vargas Rios being duly sworn says: That I am employed in the Office of the City Clerk of the City of Long Beach; that on the 12th day of July, 2017, I posted three true and correct copies of Ordinance No. ORD-17-0011 in three conspicuous places in the City of Long Beach, to wit: One of said copies in the entrance lobby of City Hall in front of the Information Desk; one of said copies in the Main Library; and one of said copies on the front counter of the Office of the City Clerk.

[Signature]

Subscribed and sworn to before me
this 12th day of July, 2017.

[Signature]
CITY CLERK