ORDINANCE NO. ORD-21-0003

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
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 Officer's Declaration of Local Health Emergency; and

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

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

WHEREAS, 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 Orders; and

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

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

WHEREAS, the City's primary goal is to ensure the public health and safety during the COVID-19 local, state, and federal emergencies through outreach.
efforts and education of the Long Beach community regarding the City Health Orders
and COVID-19; and

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

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

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

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

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

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

NOW, THEREFORE, the City Council of the City of Long Beach ordains as
follows:
Section 1. Chapter 8.120.010.D of the Long Beach Municipal Code is amended to read as follows:

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, unless further extended by the City Council in its discretion by an amendment to this Chapter.

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

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 public meeting of the City Council after the City Manager’s promulgation.

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

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.

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.
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.

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

8.120.040 Expiration.

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

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

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

Section 7. This ordinance shall also be adopted by the City Council as a regular ordinance, to the end that in the event of any defect or invalidity in connection with the adoption of this ordinance as an emergency ordinance, the same shall, nevertheless, be and become effective on the thirty-first (31st) day after it is approved by 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 January 19, 2021, the ordinance was declared to be an
emergency by the following vote:

Ayes: Councilmembers: Zendejas, Allen, Price,
Supernaw, Mungo, Saro,
Uranga, Austin, Richardson.

Noes: Councilmembers: None.

Absent: Councilmembers: None.

Recusal(s): Councilmembers: None.
I further certify that thereafter, at the same meeting, upon a roll call and vote on adoption of the ordinance, it was adopted by the City Council of the City of Long Beach by the following vote:

Ayes: Councilmembers: Zendejas, Allen, Price, Supernaw, Mungo, Saro, Uranga, Austin, Richardson.

Noes: Councilmembers: None.

Absent: Councilmembers: None.

Recusal(s): Councilmembers: None.
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: 

Approved: 1/21/21
(Date)

Mayor
AFFIDAVIT OF POSTING

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

Tamela Austin being duly sworn says: That I am employed in the Office of the City Clerk of the City of Long Beach; that on the 21st day of January, 2021, I posted three true and correct copies of Emergency Ordinance No. ORD-21-0003 in three conspicuous places in the City of Long Beach, to wit: One of said copies in the lobby of Civic Chambers; one of said copies in the Main Library; and one of said copies on the front counter of the Office of the City Clerk.

Subscribed and sworn to before me
This 21st day of January 2021.