

Date: September 26, 2022

To: Thomas B. Modica, City Manager

From: Douglas P. Haubert, City Prosecutor *DPH*
Charles Parkin, City Attorney *CP*
Kevin Riper, Director of Financial Management *KR*
Christopher Koontz, Acting Director of Development Services *CK*

For: Mayor and Members of the City Council

Subject: **Nuisance Violation Fine Structure and Opportunities to Expand Code Enforcement**

In response to growing concerns regarding potential impacts (parking, noise, litter) arising from the construction of homes with a large number of bedrooms located in single-family residential neighborhoods, on August 17, 2021 the City Council directed the City Manager to work with the City Attorney and City Prosecutor Offices and the Development Service Department's Code Enforcement Bureau (Bureau) to:

1. Provide a report on the current nuisance violation fine structure;
2. Review of the relevant nuisance provisions of the Municipal Code to align with best practices, including the feasibility of increasing penalties and/or fines or fees on property owners/managers or tenants to allow for more effective enforcement tools and resources to address nuisance activities; and,
3. Evaluate income-based fines/fees as well as community service in lieu of fines, where appropriate.

This memorandum will provide a report of the City Council's request.

Nuisance Abatement Enforcement Process

The Long Beach Municipal Code (LBMC) contains multiple residential-related nuisance enforcement provisions that regulate tree and shrub maintenance, parking enforcement, graffiti removal, noise disturbances and property maintenance. Health and Human Services, Police, Development Services, and Public Works Departments are responsible for enforcing these provisions; the City Prosecutor and City Attorney Offices are also involved.

Each code provision contains rules and principles for enforcement and protection of private rights. These processes include providing notice of the nuisance and a request to cure the violation, a right to appeal such notice and owner or City of Long Beach (City) abatement of such nuisance. Under certain circumstances violators can be found guilty of a misdemeanor and fined and/or imprisoned.

In addition to the nuisance abatement provisions for the various violations, LBMC Chapter 9.37 (Long Beach Nuisance Code) provides general nuisance administrative abatement provisions. The Long Beach Nuisance Code requires the remedy or cessation of nuisance activities as listed under LBMC Section 9.37.090 (Nuisance defined), which includes, in part, abatement for loud, unnecessary or unusual noise which disturbs the peace and quiet of the neighborhood, or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area as well as substandard building conditions, including overgrown vegetation or defective, unsightly deterioration or disrepair causing detrimental activity.

A notice of nuisance and abatement is issued when the City declares or finds any nuisance activity/condition is being maintained. A brief description of the activity or condition is provided within the notice with a request to correct the violation within 30 days. Such notice may include suggested methods to correct the nuisance as well as administrative penalties and/or costs to be assessed if such nuisance is not corrected. The responsible party has seven calendar days to request a hearing to determine if the nuisance activity/condition exists. A Hearing Officer will consider testimony and confirm, amend, or modify nuisance as indicated in the notice. The Hearing Officer's decision is final.

Administrative penalties may not exceed \$250 per day for each violation with total penalties not to exceed \$5,000 if the violation has not been abated. The amount of such penalties is based on numerous factors that include the duration, frequency, and seriousness of the violation as well as the economic impact to the violator. Suspension of penalties may be permitted based on good faith efforts to correct the violation and other relevant factors. In addition to the imposition of administrative penalties/costs, the City may impose costs incurred by the City to abate such nuisance if the violation is not completely abated by the violator. In some but not all types of violations a lien against the property upon which the nuisance was abated may be imposed by the City should penalties and other related costs not be paid by the property owner. A lien can only be placed against a property for the costs incurred by the City in abating nuisance related activities.

The LBMC provides that every violation of City code is a public nuisance. Additionally, California Penal Code Section 373a allows for the criminal prosecution of a property owner, tenant, or occupant of a property who maintains, permits, or allows a public nuisance to exist upon his or her property or premises. Prior to enforcement of Penal Code Section 373a reasonable notice in writing from a Health Officer, District Attorney, City Attorney, or City Prosecutor to remove, discontinue, or abate the public nuisance must be served upon the person. Continued violation is a misdemeanor, and the existence of the public nuisance for each and every day after the service of the notice is a separate and distinct offense. State law also provides for the continuous prosecution until the nuisance is abated and removed. The City Prosecutor's office has several options to address Nuisance Abatement complaints, and in serious cases criminal charges will be filed immediately, while in other cases a notice is sent to the property owner and or person responsible to abate the nuisance, resulting in an office hearing to discuss options to abate the nuisance. If the nuisance is not abated within a reasonable time, the City Prosecutor may proceed with prosecution.

Additionally, those uses which hold a business license from the City may be subject to a business license revocation as outlined in LBMC 5.06.020. If a nuisance or violation of local,

State, or federal law is established the City then has the ability to revoke (or suspend) the business license. The actual license revocation requires a hearing before the City Council. Due to the substantive and procedural steps and costs, the revocation of a business license is an available but resource intensive enforcement tool, meaning it is only an appropriate choice in certain limited circumstances.

Penalties, Fines and Fees

City staff reviewed nuisance abatement ordinances from several cities and found that the rules and principles for enforcement and protection of private rights are similar. Cities provide notice of the nuisance, provide a right to appeal such notice, and require the owner to abate the nuisance. Similar to Long Beach, cities impose fines and penalties; however, some cities are able to issue administrative citations for certain violations without the need to declare the property a nuisance first. Some cities impose administrative citations of up to \$25,000.

The City has the ability to levy administrative citations and penalties, however by procedure and practice those are only levied for certain violations. In some cases, the Municipal Code establishes penalties that are set significantly below the statutory maximum. It is important to understand that the focus of all code enforcement is to achieve compliance, the goal is the upholding of community standards and quality of life. As such, the primary purpose is not to levy penalties that are overly punitive especially as increased penalties may have a disproportionate impact on lower-income violators facing penalties for minor infractions. The City Council can always review the overall penalty approach and structure within the framework of achieving compliance.

Income-Based Fines/Penalties

As described above, an increase to the standard one-size-fits-all approach for the issuance of fines and penalties could cause a disproportionate amount of money and significant economic hardships to low-income offenders and result in an inability to correct the violation. Whereas a penalty for those with means could have no meaningful consequences and would not deter violations. Although not often used, income-based fines have been determined to be constitutional. While some call for economic fairness and redistributionism, others indicate that culpability should not be related to financial means or that the income-based approach could result in enforcement against the wealthy.

To treat everyone fairly and encourage compliance with law, solutions have been developed that impose fines based on the seriousness of the violation and daily income of the violator. Other approaches cap fines for low-level offenses. Administration of income-based fines and penalties is resource intensive as it would require obtaining and verifying the violators daily income. In Long Beach fines and penalty are already capped and LBMC Section 9.37.120 (B) allows the city to assess the economic impact of the penalty to the violator and adjust the penalty amount accordingly. After an examination of jurisdictions in California, City staff did not identify any occurrences where community service was an option in lieu of fines/penalties. City Departments and the City Prosecutor always retain prosecutorial discretion including the ability to waive or reduce fees as appropriate. City staff recommends maintaining the existing fee structure and using the ability to waiver or reduce as the best mechanism to address lower-

income violators who do come into compliance but may not be able to pay the accrued fines and penalties. City staff do not recommend any reduction in stated fines and penalties as such an action would reduce the deterrent effectiveness of those penalties.

Recommendations

Based on the review of best practices and consultation with peer cities, City staff do not recommend any immediate changes to the fine, penalty, or enforcement process in the immediate term. The City Council does have options to improve ability to address violations and enforcement in the longer-term through the following approaches:

- *Strengthening Code Enforcement* – throughout the COVID-19 pandemic code enforcement resources have been diverted away from “typical” enforcement to enforcing the health order, emergent issues related to boarded-up or otherwise vacant buildings and properties and most recently, assisting with building construction inspections due to overall staff vacancies in the Development Services Department. The Code Enforcement Bureau is operating with very high levels of vacancy, however the recruitment and hiring process is underway for those vacancies. By the spring of 2023 Code Enforcement staffing and duties will have return to a more baseline pre-pandemic condition allowing for increased and improved response to nuisance and other prohibited activity which may occur throughout Long Beach.

As human and fiscal resources become available code enforcement effectiveness can also be improved through additional staffing, increased training including that for Penal Code 832 certification. Code Enforcement in Long Beach has traditionally addressed violations of the building and zoning code (Titles 19, 20 and 21 of the LBMC), however if the City Council has an interest in a more comprehensive response to behavior, be it illegal leasing arrangements, party houses, business operations, etc., that will require increased training within the Code Enforcement Bureau and a balancing of competing priorities for enforcement within established limits for personnel and budget.

- *Strengthening Nuisance Tools* – The City Attorney’s process for addressing nuisance works well in most circumstances. Future opportunities for improvement could be focused on those cases where compliance is not obtained and in fact the violation is ongoing or increasing. Additional tools such as civil orders, administrative penalties without a declaration of nuisance, and escalation or additional penalties for the most egregious or sustained violations could be evaluated over time.
- *Strengthening Prosecutorial Tools* – The City Prosecutor independently evaluates and handles nuisance violations according to the nature and severity of the violation. The City Prosecutor’s Office used to have a robust community prosecution unit that focused on nuisance properties and collaborated with other departments to solve problems that included noise abatement, drug sales, building code violations, graffiti, theft, vandalism, and loitering for the purpose of committing crimes. However, community prosecution was ended as a result of budget cuts in 2009. In recent years, smaller, targeted versions of community prosecution in Downtown Long Beach and Council Districts Three and

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Four have shown that bringing back community prosecution would be successful on a larger scale, but this would require additional resources.

Next Steps

The responsible departments will continue to enforce the LBMC and nuisance standards as outlines in this memo. The departments will also coordinate with the City Manager on the longer-term improvements described herein. If you have any questions, please contact Code Enforcement Bureau Manager, Karl Wiegelman, at (562) 570-6336.

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