



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 19 - 0118
APR 24 2019

REPORT RE:

**ADMINISTRATIVE NUISANCE ABATEMENT PROCEEDINGS RELATING TO
UNLAWFULLY OPERATING CANNABIS BUSINESSES**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 14-0366-S26

Honorable Members:

The City Council directed the Los Angeles Department of City Planning (DCP) and the Department of Building and Safety (DBS), with the assistance of the City Attorney, to report on the City enacting legislation to enable DBS to barricade, padlock, fence or secure an unlawfully operating cannabis business that has failed to comply with an order by the City to cease operations. We have considered this issue and provide you with the results of our review in this report.

City law already provides a legal framework for the City to prevent access to a property where unlawful activity occurs, including unlicensed commercial cannabis activity. The City's existing administrative nuisance abatement procedures, codified in Los Angeles Municipal Code (LAMC) Sections 12.27.1 and 91.9003.3, establish a process by which DBS may padlock, barricade, and/or fence a property following a violation of an abatement order issued by DCP.

Under LAMC Section 12.27.1, "nuisance activity" includes illegal drug activity, any activity that adversely affects public health, peace or safety, or violations of other

City and state law. Conducting commercial cannabis activity without authorization from the Department of Cannabis Regulation (DCR) would in most circumstances constitute nuisance activity under Section 12.27.1.

When notified of such nuisance activity, DCP may initiate administrative proceedings that result in an order to modify, discontinue or revoke any land use or discretionary zoning approval. The order is issued following a public hearing administered by DCP, and is subject to an appeal before City Council and review by the Mayor. Once appeals are exhausted, or if the order is not appealed, the order becomes final and any failure to comply is subject to enforcement proceedings by DBS.

In the event of a failure to comply with the order, DBS provides 15 days' notice of impending enforcement proceedings. DBS may enter the property and padlock the premises if the activity has not ceased at the end of the 15-day period. The property cannot be reoccupied until the required permits and/or clearances are obtained from DBS and DCP. (LAMC Sec. 91.9003.2.5.) Additionally, the business operator or property owner is responsible for all costs incurred by DBS, and any business operator, property owner or person in control of the property who fails to comply, or who fails to vacate, is guilty of a misdemeanor. (LAMC Sec. 91.9003.3.1; 91.9003.3.3.)

In conclusion, City law already provides a process by which the City can barricade, padlock or fence a property where unlawful commercial cannabis activity occurs. The City's existing law affords adequate legal due process by providing notice and several opportunities for affected property owners and business operators to be heard. The City's implementation of this nuisance abatement procedure has survived scrutiny by the courts. (See, e.g., *Benetatos v. City of Los Angeles* (2015) 235 Cal.App.4th 1270, 1272.)

We have enclosed a chart that chronologically lists the steps that must be followed to implement the City's existing nuisance abatement law, including the relevant time periods where specified by ordinance. It may be possible, at Council's request, to amend the relevant ordinances to streamline the existing process without infringing on a property owner's or business operator's due process rights. For example, the current procedure provides Council up to 75 days to act on an appeal before the appeal is deemed denied (step 5 on the following page). This 75-day window could be reduced. The current procedure also allows for a 10-day period for Mayoral review of Council's appeal determination (step 6). This period may also be reduced or removed. Finally, LAMC 12.27.1(C)(2) is silent as to the time in which DCP must issue its written order following a public hearing (step 4). The addition of a reasonable deadline may add efficiencies.

If you have any questions concerning this matter, please contact Deputy City Attorney Taylor Wagniere at (213) 978-7439.

Sincerely,

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON
Chief Assistant City Attorney

TW:DM:cl
Enclosure

cc: Eric Garcetti, Mayor of the City of Los Angeles
Sharon Tso, Chief Legislative Analyst
Richard Llewellyn, Chief Administrative Officer
Vince Bertoni, Director of Planning, Dept of City Planning
Michel Moore, Chief of Police
Cat Parker, General Manager, Dept of Cannabis Regulation
Frank Bush, General Manager, Dept of Building and Safety

**ADMINISTRATIVE NUISANCE ABATEMENT PROCEEDINGS RELATING TO
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	Action	Days
1.	Los Angeles Police Department (LAPD), or other City agency, discovers evidence of nuisance activity and notifies DCP.	--
2.	LAPD, DCP, DCR, City Attorney, or another City agency takes action to eliminate nuisance activity, such as sending a cease and desist letter to the business operator and property owner. ¹	--
3.	If the activity does not cease, DCP sets a hearing to show cause why the land use or discretionary zoning approval should not be modified, discontinued or revoked. (LAMC Sec. 12.27.1(C).) Twenty-four calendar days' notice of the hearing must be sent by mail to the owner and lessee(s) of the subject property. (LAMC Sec. 12.27.1(C)(1).)	24
4.	A public hearing is held, after which DCP issues a written order. (LAMC Sec. 12.27.1(C)(2).) The order may require the modification, discontinuance or revocation of the land use or discretionary zoning approval, or impose conditions of operation designed to reduce detrimental effects on the surrounding property and/or to assure compliance with other law. The order becomes final and effective upon the close of the 15-day appeal period if not appealed to City Council. (LAMC Sec. 12.24(I)(1).)	15
5.	If appealed to Council, Council must act within 75 days. Council's failure to act within this time is deemed a denial of the appeal. (LAMC Sec. 12.24(I)(4).)	75 (max.)
6.	Council's determination is transmitted to the Mayor, who has 10 days to review. (LAMC Sec. 12.24(I)(6)(a).) If the Mayor disapproves, the matter is sent to the City Clerk for presentation to the Council, together with Mayor's written objections, after which Council may override the disapproval within 60 days. (LAMC Sec. 12.27.1(C)(4); LAMC Sec. 12.24(I)(6).) If the Mayor does not act within 10 days, the order becomes final. (LAMC Sec. 12.27.1(C)(4); LAMC Sec. 12.24(I)(6).)	10 (max.)

¹ DCP may revoke or discontinue a land use only after prior governmental efforts to cause the owner or operator to eliminate the problem associated with the land use have failed. (LAMC Sec. 12.27.1(C)(2)(a)-(b).) Thus, it is important that a cease and desist letter, or some other documented effort to stop the activity, occurs at the outset.

7.	If the property owner or business operator violates the order, DBS sends a notice, by mail or delivered in person, to the business operator and property owner, notifying them that they have 15 days to discontinue, vacate, and secure the property. (LAMC Sec. 91.9003.2). A 30-day notice period is required for properties with a residential use.	15
8.	If the property is not vacated and secured within 15 days, DBS institutes an enforcement action by causing the property to be "vacated and secured by whatever means the [DBS] determines is reasonable and necessary," including by "padlock, barricade and/or fence." (LAMC Sec. 91.9003.2.2.)	--