

Exhibit 3

City of Duarte

Chapter 9.31 - ABATEMENT OF DRUG AND/OR GANG RELATED NUISANCES

Sections: s

9.31.010 - Definitions.

For the purpose of this chapter, the words set out in this section shall have the following meanings:

- (a) "Drug" or "drugs" means one or more controlled substances, including precursors and analogs, defined in Health and Safety Code Section 11007.
- (b) "Gang" means any ongoing organization, association or group of three or more persons, whether formal or informal, which has a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of illegal conduct.
- (c) "Illegal conduct" means a misdemeanor or felony as defined by state or federal law.

(Ord. 661 § 1 (part), 1990)

9.31.020 - Public nuisances to be abated.

- (a) Any building or place used for the purpose of illegal conduct by a gang or gangs or gang members, or wherein or upon which illegal conduct takes place, or as defined in Health and Safety Code Section 11570, is a public nuisance and may be abated as set out herein.
- (b) Abatement procedures for a nuisance as defined in Health and Safety Code Section 11570 may be commenced as set out herein.

(Ord. 661 § 1 (part), 1990)

9.31.030 - Identification of nuisance.

- (a) The police department and/or the department of public safety may identify a building or place which is a nuisance as defined in this chapter by documenting a pattern of continuous and repeated drug or illegal conduct in or at such building or place.
- (b) Alternatively, the owner or manager of property who believes that a nuisance as defined herein may exist on his property may provide the police department and/or the department of public safety with written evidence of such nuisance and a written request that the police department and/or the department of public safety investigate under its procedures, and, where appropriate, request abatement of the nuisance.

(Ord. 661 § 1 (part), 1990)

9.31.040 - Notification of nuisance.

- (a) Where it has been determined that a nuisance exists as defined herein, notice of the existence of such nuisance and request for immediate abatement thereof shall be given to the owner, occupant,

manager, or agent for the property and to any other person interested in the property or who has requested such notice.

- (b) The first notice shall be by letter, which shall state the location of the nuisance, the type of illegal or drug activity, and the requested manner of abatement. The letter shall give thirty calendar days in which to commence voluntary abatement of the nuisance in the manner requested. Abatement may include but is not limited to eviction of the tenant(s) creating the nuisance or closure of the building.
- (c) Within that thirty day period, the owner of any property so identified may request in writing that the police department and/or department of public safety proceed with abatement against the property as set out in this chapter and under state law. As a condition to abatement, the police department and the city may enter into an agreement with the owner or agent to assist in such proceedings or to bring the building into compliance with applicable state, federal and local building codes and regulations.
- (d) At the end of the thirty day period, it shall be determined whether or not the nuisance is being or has been abated. If it is found that such nuisance continues to exist, the owner, occupant, manager or agent and any other interested person or person requesting notice shall be served with a second notice. The second notice shall state that the nuisance continues to exist, its location, type and manner of abatement and that abatement must commence within five working days or the matter will be referred to the city attorney for civil action.
- (e) The notices required by this section shall be served by personal delivery or by mailing, first class, postage prepaid, return receipt requested, to the owner at his last known mailing address as it appears on the last equalized assessment roll of the county, and to the occupant, manager or agent at the address of the building or any other known address. The failure of any person entitled to receive such notice shall not affect the validity of any proceedings under this chapter.
- (f) Upon receipt of a response from the person served, the police department and the city may agree in writing to extend the time to commence, perform or complete abatement, and may condition such extension on the performance of actions by the owner, occupant, manager, or agent, including but not limited to bringing the building into compliance with any and all applicable local, state and federal building codes and regulations.

(Ord. 661 § 1 (part), 1990)

9.31.050 - Civil action by city attorney.

When the owner, occupant, manager, agent or other interested and responsible person has failed to abate the nuisance after notification as set out in Section 9.31.040, or has violated the terms of any agreement reached under subsections (c) and (f) thereof, the city attorney is authorized to commence a civil action to abate the nuisance as set out under Health and Safety Code Sections 11570 et seq. and the Civil Code of California, and to seek a temporary injunction, protection of witnesses and any and all applicable damages and remedies, including attorneys fees and costs. Any such damages or costs when unpaid shall become a lien and charge against the building or property.

(Ord. 661 § 1 (part), 1990)

City of Livermore

Chapter 8.13

ABATEMENT OF PROPERTY USED FOR UNLAWFUL DRUG ACTIVITIES

Sections:

[8.13.010](#) Purpose and findings.

[8.13.020](#) Definitions.

[8.13.030](#) Nuisance.

[8.13.040](#) Abatement referral and notification.

[8.13.050](#) Compliance following notification.

[8.13.060](#) Nuisance abatement.

8.13.010 Purpose and findings.

A. Purpose. The purpose of this chapter is to abate the use of property for the unlawful selling, serving, storing, keeping, manufacturing, or giving away of any controlled substance as defined under Health and Safety Code Section [11570](#) et seq. when the use negatively affects the surrounding neighborhood. The city council desires to enact local legislation complementary to the California Uniform Controlled Substances Act (Health and Safety Code Section [11000](#) et seq.), in order to accomplish the following:

1. To discourage the use of property for unlawful drug activities;
2. To encourage property owners, landlords, and occupants to initiate appropriate actions to eliminate the use of property in their ownership, possession, or control for unlawful drug activities;
3. To encourage and assist property owners, landlords, and occupants in their efforts to exercise their private right of action to abate the use of property in their ownership, possession, or control for unlawful drug activities through unlawful detainer procedures set forth in California Code of Civil Procedure Section [1159](#) et seq.; and
4. As allowable by state law to authorize and enable the city attorney to initiate abatement actions against property owners, landlords, and occupants that refuse to take appropriate action to eliminate the use of property in their ownership, possession, or control for unlawful drug activities that negatively affect the surrounding neighborhood.

B. Findings. The city council, as the legislative authority, finds and declares that every and any building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away of any drugs or controlled substances, as defined under the California Uniform Controlled Substance Act (Health and Safety Code Section [11000](#) et seq.) is a nuisance. The city council expressly finds that regulating and prohibiting the unlawful selling, serving, storing, keeping, manufacturing, or giving away of any controlled substance are necessary to preserve the public's health, safety, and welfare, and that:

1. The unlawful selling, serving, storing, keeping, manufacturing, or giving away of any controlled substance in any building or place in the city is injurious to the health, safety, morals, and general welfare of the community, and interferes with the comfortable enjoyment of life and property;
2. Section [11570](#) of the California Health and Safety Code states that every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away of controlled substances, and every building or place wherein and upon which such acts take place, is a nuisance which shall be enjoined, abated, and prevented;
3. The laws of the state defining nuisance and the abatement thereof provide for civil and criminal enjoinder of such acts, and that the city council intends hereby to declare those activities set forth in this section to be nuisances and to provide a procedure for determining a nuisance exists, the necessary order of abatement thereof, and for the civil prosecution for enforcement of any such findings and orders;
4. The use of property for unlawful drug activities tends to debilitate family life and has the potential to cause negative secondary effects in the neighborhood where the property is located such as: continuing unlawful drug activity; increases in other criminal activity; usual accumulations of trash; complaints for noise, fights and verbal altercations; unusual amounts of pedestrians and vehicles not associated with a subject property visiting it at all hours of the day and night for short periods of time; and other effects that can lead to an unsafe environment which interferes with the comfortable enjoyment of life and property and diminishes the quality of life in the neighborhood; and
5. Regulating and prohibiting the use of property for unlawful drug activity are necessary to preserve the public's health, safety, and welfare.

C. Facts and Circumstances. This chapter is enacted based upon the following facts and circumstances:

1. California Health and Safety Code Section [11571](#) authorizes the city attorney, whenever there is reason to believe that a building or place is being used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away of any controlled substance, to commence an action to abate and prevent such nuisance and perpetually enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place in or upon which the nuisance exists, from directly or indirectly maintaining or permitting the nuisance.

2. California Health and Safety Code Section [11366](#) provides that it is a criminal act for any person to open or maintain any place for the purpose of unlawfully selling, giving away, or using any controlled substance.

3. California Health and Safety Code Section [11366.5](#) provides that it is a criminal act for any person who has under his or her management or control any building, room, space or enclosure, either as an owner, lessee, agent, employee or mortgagee, to knowingly rent, lease or make available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution.

4. California Code of Civil Procedure Section [1161](#)(4) provides that any tenant or subtenant of real property who maintains, commits, or permits the maintenance or commission of a nuisance upon the demised premises, or uses such premises for an unlawful purpose, thereby terminates the lease, and the landlord shall, upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of such demised premises. (Ord. 1983 § 1 (Exh. A), 2013)

8.13.020 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

A. "Controlled substance" means any drug, substance or immediate precursor thereof listed in any schedule as defined in Health and Safety Code Section [11007](#).

B. "Landlord" means any individual or entity, or an agent or other representative thereof, that has ownership, possession, or control over a property for its lease or rent to other persons.

C. "Negative effects" means any secondary effects related to the use of property of unlawful drug activities that create an unreasonable interference with the comfortable enjoyment of life, property, and/or safe residents of the premises. Such activity includes, but is not limited to, the effects identified in LMC [8.13.010\(B\)\(4\)](#), and any activity commonly associated with illegal drug dealing, such as noise, steady traffic day and night into a particular unit, barricaded units, the display or observance of weapons, drug loitering as defined in Health and Safety Code Section [11532](#), or other drug-related occurrences which when taken as a whole tend to substantially affect or interfere with the comfortable use and enjoyment of property.

D. "Occupant" means any tenant or other person inhabiting or otherwise residing in or at a property.

E. "Owner" means any person or entity that is the titleholder to a property based upon the records maintained by the Alameda County recorder's office.

F. "Property" means any building, place, dwelling unit, mobile home, and recreational vehicle as defined in California Civil Code Section [799.24](#), situated on land in the city of Livermore,

irrespective of whether or not the land is permitted or zoned for the particular use, and includes the land and the buildings appurtenant thereto, common areas, garage facilities, alleyways, stairwells and elevators.

G. “Surrounding neighborhood” means an area of the community that is in close physical proximity to a property, and includes other properties on the same street as well as those that may be adjacent to a property. Depending upon where a particular property is located, and the size of the lots that were created when the property was subdivided, a “surrounding neighborhood” may be larger or smaller, but the term is intended to mean the properties grouped together are near a particular street.

H. “Unlawful drug activities” means the unlawful selling, serving, storing, keeping, manufacturing, or giving away of any controlled substance. (Ord. 1983 § 1 (Exh. A), 2013)

8.13.030 Nuisance.

No property owner, landlord, or occupant shall cause or permit any property under his or her ownership, possession, or control to be used or maintained for any unlawful drug activities that negatively affect the surrounding neighborhood. (Ord. 1983 § 1 (Exh. A), 2013)

8.13.040 Abatement referral and notification.

A. If the police department determines that a property is being used for unlawful drug activities affecting a surrounding neighborhood, and traditional law enforcement efforts have not eliminated the nuisance, it shall refer the property to the city attorney for abatement. However, the police department may immediately refer the property to the city attorney for abatement when an investigation of the unlawful drug activities leads to an arrest and the activities present an immediate threat to the health, safety, and welfare of the neighborhood and its residents.

B. Upon receipt of an abatement referral from the police department, the city attorney shall exercise his or her prosecutorial discretion to review the investigation and facts from the police department to determine whether they provide sufficient evidence that a property is being used for unlawful drug activities to accept the referral and to initiate a formal abatement action. If the city attorney accepts the referral, he or she shall give written notice, by personal service or certified mail with return receipt requested, to the property owner, landlord, or occupant that has ownership, possession, or control of the property that it is being used for unlawful drug activities and demand the immediate abatement of the nuisance. In the event the abatement referral states the unlawful drug activities present an immediate threat to the health, safety, and welfare of the neighborhood and its residents, the city attorney’s notification shall include that information and the notification shall also be posted on the subject property. The city attorney shall provide the property owner, landlord, or occupant sufficient documentation to establish that the property is being used for unlawful drug activities. Nothing herein shall be construed as requiring the release of documentation that would violate an individual’s right to privacy or any applicable provision of law that precludes the release of law enforcement records. Nothing herein shall authorize a search or seizure of any property by a property owner, landlord, or occupant under color of authority of the city or any employee or official thereof. (Ord. 1983 § 1 (Exh. A), 2013)

8.13.050 Compliance following notification.

Within 30 days after the receipt of the notification provided for in LMC [8.13.040](#)(B), the property owner, landlord, or occupant that has ownership, possession, or control of the property shall abate the nuisance, or initiate good faith efforts to abate the nuisance, by doing one of the following:

- A. Eliminating the nuisance;
- B. Obtaining the voluntary surrender of the property by the individuals involved in the nuisance;
- C. Initiating an unlawful detainer action to remove the occupants involved in the nuisance; or
- D. Submitting a written response to the city attorney that an action in unlawful detainer is neither supported by the documentation provided by the city, nor by the personal knowledge of the property owner, landlord, or occupant not involved with the nuisance. The city attorney shall consider any such written response when exercising his or her prosecutorial discretion to initiate an abatement action provided for in LMC [8.13.060](#).

When an abatement referral states the unlawful drug activities present an immediate threat to the health, safety, and welfare of the neighborhood and its residents, the time for compliance shall be reduced from 30 days to 10 court days. (Ord. 1983 § 1 (Exh. A), 2013)

8.13.060 Nuisance abatement.

If a nuisance is not abated after notice has been served in accordance with LMC [8.13.040](#)(B), the city attorney is authorized to exercise his or her prosecutorial discretion to abate the nuisance, and pursuant to California Health and Safety Code Section [11571](#) et seq. and this chapter, to commence a civil action to abate, prevent, and perpetually enjoin the use of the property for unlawful drug activities and obtain such additional orders from the appropriate court as may be appropriate.

The city attorney may also pursue such other actions and remedies provided by this chapter, LMC [1.16.030](#), and any applicable statutes to abate the nuisance. (Ord. 2016 § 1(G), 2015; Ord. 1983 § 1 (Exh. A), 2013)