ANALYSIS

This ordinance adds Chapter 13.90 to Title 13 – Public Peace, Morals, and Welfare of the Los Angeles County Code to establish the County's Counterfeit Goods Nuisance Abatement Law to address problems associated with properties used for the manufacture, distribution, and sale of counterfeit goods in the unincorporated areas of the County of Los Angeles.

RAYMOND G. FORTNER, JR.
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By

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Property Division

DP:sh

01/28/08 (requested)

03/18/08 (revised)

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ORDINANCE NO. 2008-0020

An ordinance adding Chapter 13.90 to Title 13 - Public Peace, Morals, and Welfare of the Los Angeles County Code to establish the County's Counterfeit Goods Nuisance Abatement Law to address problems associated with properties used for the manufacture, distribution, and sale of counterfeit goods in the unincorporated areas of the County of Los Angeles.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Chapter 13.90 is hereby added to read as follows:

Chapter 13.90

COUNTERFEIT GOODS NUISANCE ABATEMENT LAW

13.90.010 **Legislative findings.**

13.90.020 **Short title.**

13.90.030 **Person and property defined.**

13.90.040 **Public nuisance defined.**

13.90.050 **Maintaining nuisance unlawful.**

13.90.060 **Remedies.**

13.90.070 **Temporary closing order; defendant's remedies.**

13.90.080 **Violation of injunction; penalty.**

13.90.090 **Attorney's fees.**

13.90.100 **Abatement cost recovery.**

13.90.110 **Treble damages.**

13.90.120 **Nonexclusive remedies.**

13.90.010 Legislative findings.

The board of supervisors of the county of Los Angeles finds that the use of properties within the unincorporated areas of the county for the manufacturing, distributing, selling, or possessing for sale of counterfeit goods, or recordings or audiovisual works which are improperly labeled under California Penal Code section 653w, substantially interferes with the interest of the public in the quality of life and community peace, lawful commerce in the county, property values, and is detrimental to the public health, safety, and welfare of the county's citizens, its businesses, and its visitors. As a result, the board of supervisors finds that such properties constitute a public nuisance. This chapter provides nonexclusive procedures to address such public nuisances, which are supplemental to any other remedies available under county, state, or federal law.

13.90.020 Short title.

This chapter shall be known as the "Counterfeit Goods Nuisance Abatement Law."

13.90.030 Person and property defined.

"Person" means any individual, partnership, limited liability company, corporation, joint venture, association, estate, trust, unincorporated organization, or any other legal entity.

"Property" means any real property located in the unincorporated areas of the county of Los Angeles, including any buildings, structures or other improvements thereon.

13.90.040 Public nuisance defined.

Every property used for the purpose of willfully manufacturing, intentionally selling, or knowingly possessing for sale: 1) any counterfeit of a mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark office; or 2) any recording or audiovisual work whose cover, box, jacket, or label fails to accurately disclose the information regarding the manufacturer and the author, artist, performer, producer, programmer, or group, as proscribed by California Penal Codes section 653w, is a public nuisance which may be restrained, enjoined, abated, and prevented pursuant to the provisions of this chapter.

13.90.050 Maintaining nuisance unlawful.

No person shall intentionally conduct, or knowingly maintain or permit the nuisance defined in Section 13.90.040 on any property in the unincorporated areas of the county of Los Angeles. Each day any such nuisance continues to exist shall be a new and separate offense.

13.90.060 Remedies.

A. Restraining order and injunction. The district attorney or the county counsel may bring and maintain a civil proceeding in the name of the county of Los Angeles in the superior court to abate and prevent a public nuisance within the scope of this chapter, and temporarily restrain, preliminarily enjoin, and/or permanently enjoin the person or persons intentionally conducting, or knowingly maintaining or permitting the public nuisance from further conducting, maintaining, or permitting such

public nuisance. The existence of an adequate remedy at law shall not prevent the granting of temporary or permanent relief pursuant to this chapter.

1. A judgment awarding a permanent injunction pursuant to this chapter may direct the closing by the sheriff of the property whereon the nuisance is being conducted, maintained, or permitted to the extent necessary to abate the nuisance, and shall direct the sheriff to post a copy of the judgment and a printed notice of such closing at the property. Mutilation or removal of such a posted judgment or notice while it remains in force, in addition to any other punishment prescribed by law, shall be a misdemeanor, which shall be punishable, on conviction, by a fine of not more than $1,000 or by imprisonment not exceeding six months, or by both, provided such judgment contains therein a notice of such penalty. The closing directed by the judgment shall be for such period as the court may direct, but in no event shall the closing be for a period of more than one year from the posting of the judgment and notice provided for in this section. If the owner files a bond in the amount equal to the full assessed value of the property ordered to be closed and submits proof to the court that the nuisance has been abated and will not be created, maintained, or permitted for such period of time as the property has been directed to be closed in the judgment, the court may vacate the provisions of the judgment that direct the closing of the property. The proof that the nuisance will not be created, maintained, or permitted in the future, shall include, but not be limited to, a written statement setting forth the proactive steps the owner will take to ensure that no such nuisances occur on the property. A closing of such property by the sheriff pursuant to the provisions of this section shall not

constitute an act of possession, ownership, or control of the closed property by the sheriff.

2. A judgment awarding a permanent injunction pursuant to this chapter may also include an abatement order directing the sheriff to seize and remove from the property all material, equipment, and instrumentalities used in the creation and/or maintenance of the public nuisance and shall direct the sale by the sheriff of such personal property in the manner provided for the sale of chattels under execution. The net proceeds of any such sale shall be used to first defray all the lawful expenses incurred by the county, including, but not limited to, fees and costs of the removal and sale, allowances and costs of keeping the property closed, and costs of the county's action. The balance, if any, shall be paid to the property owner.

B. In rem jurisdiction. The district attorney or the county counsel may name as a defendant, in any action under this chapter, the property whereon the public nuisance is being intentionally conducted, or knowingly maintained or permitted, by describing it by assessor's parcel number and street address and identifying at least one of the owners of some part of or interest in the property.

1. In rem jurisdiction shall be complete over the property whereon the public nuisance is being conducted, maintained, or permitted by affixing the summons to the principal door or entrance of the property, or other visible, conspicuous place thereon, and by mailing the summons by certified or registered mail, return receipt requested, to one of the owners of some part of or interest in the property.

C. Civil penalty. The district attorney or the county counsel shall be authorized to bring and maintain a civil proceeding in the name of the county of Los Angeles, in the superior court, to recover a civil penalty for a public nuisance defined in Section 13.90.040 of this chapter, in the manner provided in this chapter.

1. If upon a judgment in an action under this chapter a finding is made that the defendant has intentionally conducted, or knowingly maintained or permitted a public nuisance defined in this chapter, a penalty, to be included in the judgment, may be awarded in an amount not to exceed $1,000 for each counterfeit of a mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark office, or each recording or audiovisual work whose cover, box, jacket, or label fails to accurately disclose the information regarding the manufacturer and the author, artist, performer, producer, programmer, or group, as proscribed by California Penal Code section 653w, manufactured, sold, or possessed on the property. Upon recovery, such penalties shall be paid to the treasurer of the county of Los Angeles.

2. In assessing the amount of the civil penalty under this chapter, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the action, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, and the defendant's assets, liabilities, and net worth.

D. Temporary closing order. A temporary closing order not to exceed a period of one year may be granted on a hearing for a temporary restraining order or a preliminary injunction where it appears to the satisfaction of the court that a public nuisance within the scope of this chapter is being intentionally conducted, or knowingly maintained or permitted, that the public health, safety, or welfare immediately requires the granting of a temporary closing order, and that a prior order or injunction did not result in the abatement of the nuisance.

1. If on an application for a temporary restraining order or motion for a preliminary injunction, the district attorney or the county counsel show to the satisfaction of the court that a public nuisance within the scope of this chapter is being intentionally conducted, or knowingly maintained or permitted, that the public health, safety, or welfare immediately requires a temporary closing order, and that a prior order or injunction did not result in the abatement of the nuisance, a temporary order closing the whole or any part of such nuisance property may be granted, pending order of the court granting or refusing the permanent injunction and until further order of the court, but in no event more than one year.

2. A temporary closing order may direct the sheriff serving a temporary closing order to forthwith make and return to the court an inventory of personal property situated at the property and used in conducting, maintaining, or permitting a public nuisance within the scope of this chapter and permit the sheriff to enter upon the property for such purpose. Such inventory shall be taken in any manner which is deemed likely to evidence a true and accurate representation of the personal

property subject to such inventory including, but not limited to, photographing such personal property.

3. The sheriff serving a temporary closing order at the property shall, upon service of the order, command all persons present on the property to vacate the premises forthwith. Upon the property being vacated, the premises shall be securely locked and the keys turned over to the sheriff. If the fee owner, lessee, or agent is not at the property when the order is being executed, the sheriff shall securely padlock the premises and retain the keys until further order of the court.

4. Upon service of a temporary closing order, the sheriff shall post a copy thereof upon one or more of the principal doors or entrances, or at another visible, conspicuous place, on the property where the public nuisance is being conducted, maintained, or permitted. In addition, where a temporary closing order has been granted, the sheriff shall affix upon one or more of the principal doors or entrances, or at another visible, conspicuous place, on such property, a printed notice that the premises have been closed by court order, which notice shall contain the legend "CLOSED BY COURT ORDER" in block lettering of sufficient size to be observed by anyone intending or likely to enter the property, the date of the order, the name of the court that issued the order, and the name of the office or agency posting the notice. Mutilation or removal of such a posted order or such a posted notice while it remains in force, in addition to any other punishment prescribed by law, shall be a misdemeanor, which shall be punishable on conviction by a fine of not more than $1,000 or by

imprisonment not exceeding six months, or by both, provided such order or notice contains therein a notice of such penalty.

5. Any person who intentionally violates a temporary closing order issued pursuant to this section shall be liable for a civil penalty not to exceed $1,000 for each violation. The penalty imposed by this section shall be in addition to any other penalties imposed by law.

13.90.070 Temporary closing order; defendant's remedies.

A. A temporary closing order shall be vacated, upon notice to the district attorney or the county counsel, if the defendant shows to the satisfaction of the court, by affidavit and such other proof as may be submitted, that the public nuisance has been abated and will not be created, maintained, or permitted for such period of time as the property has been directed to be closed in the order; or in the alternative, the defendant posts a bond in an amount equal to the full assessed value of the property where the public nuisance is being conducted, maintained, or permitted, or in such other amount as may be fixed by the court, and shows to the satisfaction of the court, by affidavit and such other proof as may be submitted, that the public health, safety and welfare will be adequately protected during the pendency of the action. The aforementioned proof shall additionally include, but not be limited to, a written statement setting forth the proactive steps the owner will take to ensure that no nuisances are created, maintained, or permitted on the property during the pendency of the action. The Bond and Undertaking Law of the Code of Civil Procedure,

sections 995.010 et seq., shall be applicable to the provisions of this chapter requiring the posting of a bond.

B. An order vacating a temporary closing order shall include a provision authorizing agencies of the county of Los Angeles to inspect the property, which is the subject of an action pursuant to this chapter, periodically without notice, during the pendency of the action for the purpose of ascertaining whether or not the public nuisance has been resumed. Intentional disobedience of or resistance to an inspection provision of an order vacating a temporary closing order, in addition to any other punishment prescribed by law, shall be a misdemeanor, which shall be punishable, on conviction, by a fine of not more than $1,000 or by imprisonment not exceeding six months, or by both.

13.90.080 Violation of injunction; penalty.

Any person who intentionally violates any injunction issued pursuant to this chapter shall be liable for a civil penalty of $1,000 for each violation. The penalty imposed by this section shall be in addition to any other penalties imposed by law.

13.90.090 Attorney's fees.

The prevailing party shall be authorized to recover attorney's fees in any action or special proceeding commenced to enforce the provisions of this chapter. Recovery of attorney's fees shall be limited to those actions or special proceedings in which the county elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorney's fees. In no action or special proceeding shall an award of attorneys'

fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the county in the action or proceeding.

13.90.100 Abatement cost recovery.

A. In any action to abate a nuisance pursuant to this chapter, the owner of the property upon which the nuisance is found to exist shall be liable for all costs of abatement incurred by this county, including but not limited to, administrative costs and any and all costs incurred in the physical abatement of the nuisance.

13.90.110 Treble damages.

In addition to the penalties herein provided, upon entry of a second or subsequent judgment within a two-year period finding that an owner of property is responsible for violation of this chapter, the court may order the owner to pay treble the costs of abatement.

13.90.120 Nonexclusive remedies.

The remedies provided in this chapter are nonexclusive and they shall not exclude the county's use of any other remedy provided by law for the protection of the health, safety, and welfare of the people of the county of Los Angeles.

[1390010DPCC]

SECTION 2. This ordinance shall be published in The Metropolitan News a newspaper printed and published in the County of Los Angeles.

Yvonne B. Burke
Chair

ATTEST:

Sachi A. Hamai
Sachi A. Hamai
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles

I hereby certify that at its meeting of May 13, 2008 the foregoing ordinance was adopted by the Board of Supervisors of said County of Los Angeles by the following vote, to wit:

	Ayes		Noes
Supervisors	Zev Yaroslavsky	Supervisors	None
	Don Knabe		
	Yvonne B. Burke		

Effective Date: June 12, 2008

~~Operative Date:~~

Sachi A. Hamai
Sachi A. Hamai
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles

I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By
Deputy

APPROVED AS TO FORM:
RAYMOND G. FORTNER, JR.
County Counsel

By Leela Kapur
Leela Kapur
Chief Deputy County Counsel

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