

CITY OF OAKLAND

AGENDA REPORT

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PUBLIC SAFETY COMMITTEE
Oakland, California

Dear Chairperson Kernighan and Members of the Committee:

Subject: Joint Informational Report from the City Attorney's Office and the Oakland Police Department on the City's Civil Injunction Cases against the North Side Oakland Gang and the Norteños Gang

SUMMARY

The City Attorney's Office and the Oakland Police Department (OPD) submit this report in response to the Public Safety Committee's request for information.

FISCAL IMPACT

There is no fiscal impact associated with this informational report.

BACKGROUND

Early versions of gang injunctions – civil court orders restraining the activities of gang members in a specified area – were first used in Los Angeles in the mid 1980s. San Diego, Long Beach, San Jose, San Francisco and many other California cities have since used injunctions to fight gang crime.

In 1994, Oakland sought an injunction against the "B Street Boys" gang. The court declined to grant the order, citing questions about the constitutionality of gang injunctions. The California Supreme Court ruled in the 1997 case *People ex rel Gallo v Carlos Acuna* that gang activity constitutes a public nuisance and that gang injunctions are in fact constitutional. Dozens of injunctions are now in place across California. Los Angeles has 37 active injunctions involving 57 gangs. San Francisco has four injunctions involving five gangs.

Faced with unacceptable levels of gang-related crime and violence, residents in Oakland's Neighborhood Crime Prevention Councils on numerous occasions asked OPD to explore the use of civil gang injunctions. In 2009, OPD recommended civil gang injunctions to the City Attorney's Office as a viable tool to deter gang-related crime – including homicides, robberies and other crimes perpetrated on the community by gangs.

Based on investigative work and expertise of Oakland police officers, and concurrent with extensive outreach to and input from neighborhood groups, churches, business leaders, service organizations, high school students, civil rights advocates and other stakeholders citywide, the City Attorney's Office filed a public nuisance lawsuit under California Code of Civil Procedure section 731 and California Penal Code section 186.22 (STEP Act) against 15 members of the North Side Oakland gang – a criminal enterprise linked to an increasing number of shootings and murders in the years 2007 to 2009, including one high-profile triple homicide on May 16, 2009. The Superior Court granted the order proposed by the City on June 2, 2010.

On October 13, 2010, the City Attorney's Office filed a lawsuit for an order to protect the Fruitvale community from the Norteños – one of the most violent and sophisticated criminal organizations in the city.

Most of the 40 defendants named in the City's complaint against the Norteños have affirmatively claimed membership in the gang. Before the injunction was filed, the defendants had about 159 arrests and 106 adult convictions among them. Their adult convictions include: multiple cases of assault with a deadly weapon, multiple robberies, robbery resulting in great bodily injury, carjacking, shooting at an occupied home, dog fighting, fighting in public, numerous incidents of domestic violence including one resulting in traumatic injury, felony drunk driving, obstructing a peace officer by use of force, battery, carrying a concealed weapon, carrying a loaded firearm, felony possession of an assault weapon, possession of body armor, felony possession of a controlled substance while armed with a gun, felony manufacturing a weapon while in prison, discharging a firearm in a grossly negligent manner and many other gun crimes. Also: numerous vehicle thefts, drug sales, vandalism, residential and non-residential burglaries, grand theft, receiving stolen property and forgery. Most of these crimes occurred in/were committed against people who live and work in the neighborhood.

Since the City filed its complaint in October, at least 13 of the 40 defendants have been arrested or convicted for parole violations and new crimes including attempted murder, robbery and burglary.

"They are the biggest, most well organized, and the most violent. Of all the gangs, they care more about pure violence rather than maintaining a drug trade or other occupation." From the expert declaration of OPD Captain Allison.

PROGRAM DESCRIPTION

Oakland is using well-established law authorizing civil gang injunctions to protect communities suffering from gang-related violence and crime. However, Oakland's anti-gang lawsuits are fundamentally different from those in many other California cities. By targeting specific gang members and ensuring each defendant an opportunity to a court hearing, Oakland's anti-gang

Page 2 of 9

lawsuits do not give police the extraordinary powers associated with gang injunctions in other jurisdictions in the past. In fact, the narrowly tailored orders proposed by the City of Oakland are arguably not “gang injunctions” as defined by the law and as used in some other cities. They can be more accurately described as neighborhood protective orders – similar to restraining orders against specific individuals who have victimized people in that neighborhood.

The goal of these protective orders is to take power away from gangs and give it back to the community. The orders accomplish this by placing certain restrictions on individual gang members in an area called a “Safety Zone.” The geography of the zone is determined by where named defendants have committed crimes or been contacted by OPD.

- Individual gang members are included based on their criminal records in the neighborhood.
- No minors are included.
- All defendants have due process, the right to a hearing in court and the right to opt-out if they are no longer in the gang.
- Enjoined gang members cannot:
 - Engage in criminal behavior including carrying guns, menacing or assaulting witnesses, selling drugs and trespassing.
 - Recruit young people.
 - Associate with each other in public or be on the street during late night hours (10 p.m. to 5 a.m.).
 - There are clear exceptions to the last two restrictions for work, school, religious activities, emergencies, political events, counseling and other social services. Exceptions include transportation to and from those activities.

Targeted gang injunctions are a narrow tool designed to disrupt an ongoing criminal enterprise and deter specific gang members from continuing to commit crimes in a specific neighborhood. They are consistent with President Obama’s call to get smart on crime, as opposed to just tough on crime, and present an alternative to the criminal justice system for individuals who have been caught in a cycle of crime and incarceration. Injunctions by themselves cannot end gang crime. However, they can play an effective role in a multi-faceted approach that includes both smart law enforcement and intervention programs such as those funded by Measure Y.

Specific questions from the Public Safety Committee are answered below.

What is the process for including people in an injunction?

OPD recommends individual defendants based on their adult criminal records and their demonstrable ties to the gang. This often includes the individuals’ own claims of gang membership. The City Attorney’s Office assesses evidence from OPD and makes the final call

on naming individual defendants.

All defendants in Oakland's gang cases are adults. Oakland will not include minors in any injunction.

In some other cities, especially in past decades, injunctions have given police broad power to apply the court's order to anyone they believe is a gang member. The American Civil Liberties Union, among others, has criticized these types of injunctions because they do not give accused gang members a meaningful opportunity to defend themselves in court.

Oakland's injunctions, however, ensure due process and court review by naming all accused gang members as individual defendants. Each individual is served with the City's complaint and has an opportunity to a day in court. The City must prove by a standard of "clear and convincing" evidence that defendants are in fact members of a criminal organization. Only a judge can include someone in the injunction following a public hearing. Defendants are not enjoined until they are served with the judge's order.

Can someone be removed from the injunction?

Oakland's injunctions include an Opt-Out process whereby enjoined gang members can be removed from the court's order. All defendants are given information about opting out when they are served with the order. Oakland's Opt-Out is based on the process negotiated by the ACLU and the San Francisco City Attorney for San Francisco's gang injunctions.

Under Oakland's Opt-Out process, defendants can request an informal hearing before a 3-member panel. The panels include representatives from the community, Neighborhood Services and OPD. Defendants are eligible to opt-out if they have no arrests or gang admissions for two years, and are either in school, working, taking care of an elder or otherwise engaged in non-criminal activity. If defendants meet these criteria and the panel agrees to an Opt-Out, the City Attorney's Office will dismiss them from the complaint.

Defendants also have the right to petition the court directly to be removed from the injunction.

The preliminary injunctions are temporary while the case remains in court. During that time, the court holds status hearings and the parties are entitled to seek any relief to which they may be entitled. The case culminates in a trial for a permanent injunction.

Is it fair to sue a gang member who cannot afford an attorney?

Gang injunction cases are equitable proceedings in which each defendant has a right to participate, with or without an attorney. As in any lawsuit filed by the City Attorney – for example, the ongoing lawsuits against slumlords and fraudulent immigration consultants –

defendants may hire an attorney, or may challenge the proceedings in pro per. The equitable nature of the proceedings affords the opportunity for each defendant to be heard in court and allows for parties such as the ACLU and the Lawyers' Committee for Civil Rights to participate as friends of the court. In fact, defendants are provided with the contact information for the Lawyers' Committee for Civil Rights when they are served with the complaint.

In the City's case against North Side Oakland, attorneys from the ACLU, the Lawyers' Committee for Civil Rights and the Alameda County Public Defender's Office appeared in court to oppose the injunction. One of the 15 defendants also hired counsel to oppose the order. In the Norteños case, five attorneys have appeared on behalf of the defendants.

If an enjoined gang member is arrested for violating the terms of the injunction and charged with criminal contempt of court, he will have the right to a Public Defender. Under state law, violations of the court's order are punishable by up to six months in jail and up to a \$1,000 fine.

KEY ISSUES AND OUTCOMES

Potential for success/Results of the North Oakland injunction

On June 2, 2010, the Superior Court ordered an injunction against 15 members of the North Side Oakland gang. Individuals are only subject to the restrictions of the injunction after they are served with the court's order. To date, 13 of the 15 men named in the North Side Oakland injunction have been found and served.

While some areas of crime are up slightly in North Oakland, drug activity – the main criminal activity of the North Side Oakland gang – was down almost 70 percent in the six months after the injunction was put in place, compared to the same six months of the previous year. Neighbors and police officers say that major drug spots are no longer in business.

Before the injunction, the 15 defendants had about 67 arrests and 53 convictions among them. Adult convictions for crimes in the North Oakland Safety Zone included: Armed robbery, carjacking, drug sales, car theft, felony drunk driving, reckless flight from police, carrying guns, grand theft, felony burglary, felony possession of narcotics, vandalism, threatening a witness, domestic battery, possession of an assault weapon and many other gun crimes.

Since the injunction, only one defendant has been arrested in the Safety Zone – for violating a probation stay-away order on August 6, 2010. There have been no reported violations of the injunction.

Three of the 15 defendants have been arrested outside of the zone: Defendant Donta Easley was arrested for a parole violation at his home in East Oakland on August 5, 2010, defendant Eric Tullis was arrested after fleeing from police with a stolen handgun in Hayward on November 30,

2010, and defendant Yancie Young was arrested after fleeing from police with a stolen handgun in a different part of North Oakland on September 7, 2010. Another defendant has an arrest warrant for a burglary committed outside the Safety Zone.

The primary goal of targeted gang injunctions is to deter the criminal activity of specific individuals in a specific targeted zone. One key assessment must be whether these individuals are re-arrested in the zone.

It is too early to determine how restraining orders in place against 13 individuals in North Oakland will impact larger crime trends, which are greatly influenced by outside factors such as the number of officers in the Police Department. Thus far, however, the North Oakland injunction appears to have sufficiently disrupted the criminal activities of named defendants in the Safety Zone. This is the primary goal of Oakland's targeted injunctions.

Studies on the effectiveness of injunctions are limited, but do show some potential benefit. *The Effects of Civil Gang Injunctions on Reported Violent Crime* concludes that, "in the first year after injunctions are imposed, they lead the level of violent crime to decrease by 5-10 percent." Injunctions "may open the window of opportunity for change" in a neighborhood, according to the 2005 study "*It's Getting Crazy Out There*": *Can a Civil Gang Injunction Change a Community?*

Shootings involving named defendants

Prior to the injunction taking effect, several of the 15 North Side Oakland defendants were involved in shootings. Two young Oakland women – both uninvolved bystanders – were killed in separate incidents by bullets fired at these defendants.

One of those cases involved defendant Eric Tullis, a convicted drug dealer named in the North Side Oakland case. At about midnight on October 15, 2010, Tullis and two other men were on the 5200 block of West Street in the North Oakland Safety Zone. Police had not been able to find Tullis to serve him with the judge's order, so he was not yet subject to the curfew restriction. Someone fired from inside a car at Tullis and the other men – all three were hit, and one later died. Also hit was a 29-year-old bystander and Oakland resident named Carolyn Howard. Howard died at the scene.

The purpose of the injunction is preventative – had Tullis been served and enjoined by the judge's order, he might not have been on the street at midnight and would not have drawn fire. Tullis was served with the order after he was arrested in Hayward in November, 2010.

Multiple defendants in the Norteños case were involved in shootings prior to the City's lawsuit. At least four have been linked to shootings since the lawsuit was filed in October, 2010.

Defendant Vincent Delguidice was arrested for attempted murder on January 20. Police arrested Delguidice as the driver in a drive-by shooting in East Oakland. Defendant Steven Avaloz was arrested December 3, 2010 for robbery and assault with a deadly weapon for his part in the hold-up of a store in which a bullet was fired into the ceiling. Two other defendants were contacted at the scene of a shooting at a park in the Safety Zone on January 14 in which another Norteño gang member was wounded.

In 2010 alone, Norteños gang members were involved in at least 38 shootings citywide, either as targets or shooters, including at least 13 shootings in the Fruitvale Safety Zone (OPD data).

FINANCIAL IMPACT

What resources has OPD dedicated to injunctions?

Most of the OPD investigative work attributed to the injunction cases is work that officers already conduct as part of their law enforcement mission of protecting the Oakland community. It is impossible to state how many of those hours were spent on work specific only to the injunctions. OPD personnel also do not account for the individual hours they spend on each project or assignment, so counts only represent a rough estimate. A rough estimate of the number of hours spent by Oakland police personnel on work related to the North Oakland gang injunction equals a dollar amount of approximately \$133,089; for the Norteños case, the rough estimate is \$73,184.

OPD has incurred no additional expenses or costs outside of staff time.

What resources has the City Attorney's Office dedicated to injunctions?

The City Attorney's Office has handled most of the work in-house. The work required to provide notification, serve each defendant and litigate these cases has necessitated the assistance of outside counsel. The firms of Ruiz & Sperow and Meyers Nave have agreed to handle the litigation. The firms have agreed to cap their fees at \$65,000 and \$50,000, respectively. To date, the City has spent \$54,365.80 on outside counsel in the North Side Oakland case and \$39,999.96 on outside counsel in the Norteños case. The money comes from the City Attorney's existing litigation budget.

In-house attorney and paralegal staff time spent on these cases equals \$172,040.85 for the North Side Oakland case, and \$172,514.38 for the Norteños case. Other costs associated with the North Side Oakland case: \$9,977.13. Other costs associated with the Norteños case: \$806.93.

Outside of staff time, the City has spent a total of \$64,342.93 on the North Side Oakland case, and \$40,806.89 on the Norteños case.

When considering the City's costs involved with gang injunctions, it is important to remember that injunctions are preventative measures. The time spent on the injunction must be weighed against the potential costs saved by crime prevention. For example, the cost of responding to a single homicide – including a reporting officer, log officer, perimeter officer, supervising sergeant and technician, as well as crime lab and ballistics costs, officers performing crowd and traffic control and investigators from the Criminal Investigation Division – can far outweigh the staff cost spent on injunctions to date.

FUTURE COST PROJECTIONS

Outside counsel fees are capped for each injunction case. OPD officers will implement the injunctions as part of their regular patrol and problem-solving duties.

CONCLUSION

Injunction proceedings shine a public light on the activities of individual gang members, and send a clear message that the community will not allow their criminal behavior and operations. Ideally, targeted gang injunctions in Oakland will be one cost effective tool to open a window of opportunity for change, empower the community and reduce the number of bullets fired on our streets. Injunctions also may compel some repeat offenders to change – and perhaps save – their own lives.

SUSTAINABLE OPPORTUNITIES

Economic: Providing additional law enforcement tools and resources at the local level to improve public safety and eradicate criminal street gangs will help create a better environment for economic growth and development.

Environmental: There are no environmental impacts.

Social Equity: Eradicating street gangs furthers social justice and equality by providing a safer environment for all Oakland residents.

DISABILITY AND SENIOR CITIZEN ACCESS

Making Oakland's streets, sidewalks and public places safe allows people with disabilities and senior citizens to have real access to public transportation and facilities.

RECOMMENDATION

We recommend that the Public Safety Committee accept this report.

Respectfully submitted,



JOHN A. RUSSO
City Attorney

Attorneys Assigned:
Rocio Fierro
Amber Macaulay

Attachments:
North Oakland Safety Zone Map
Fruitvale Safety Zone Map



ANTHONY W. BATTS
Chief of Police

Personnel Assigned:
Captain Darren Allison - Area One
Captain Ben Fairow – Area Two

Reviewed by: Ms. Cynthia Perkins
OPD Legislative Analyst

NSO

NORTH SIDE OAKLAND SAFETY ZONE

BERKELEY



EMERYVILLE

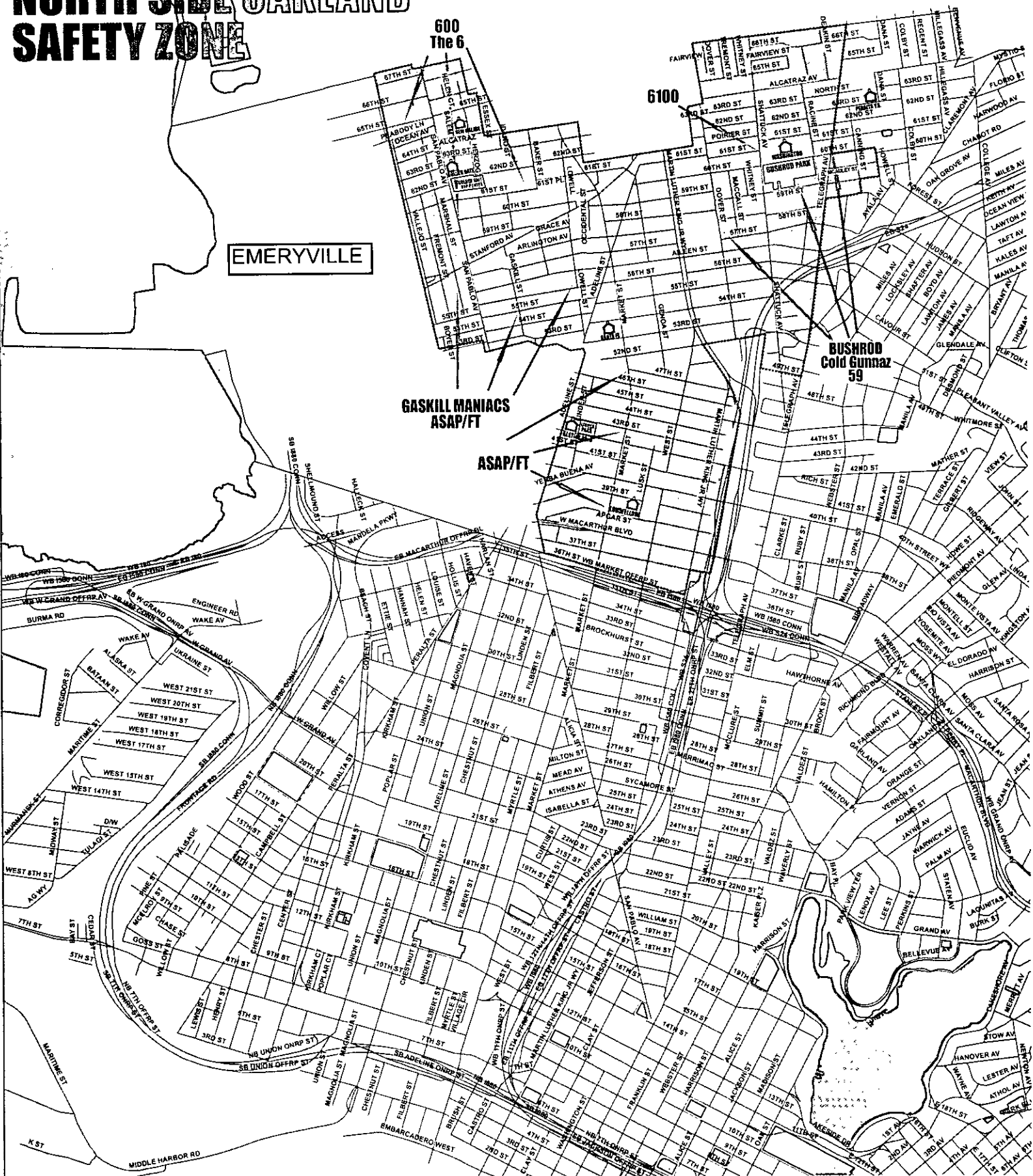
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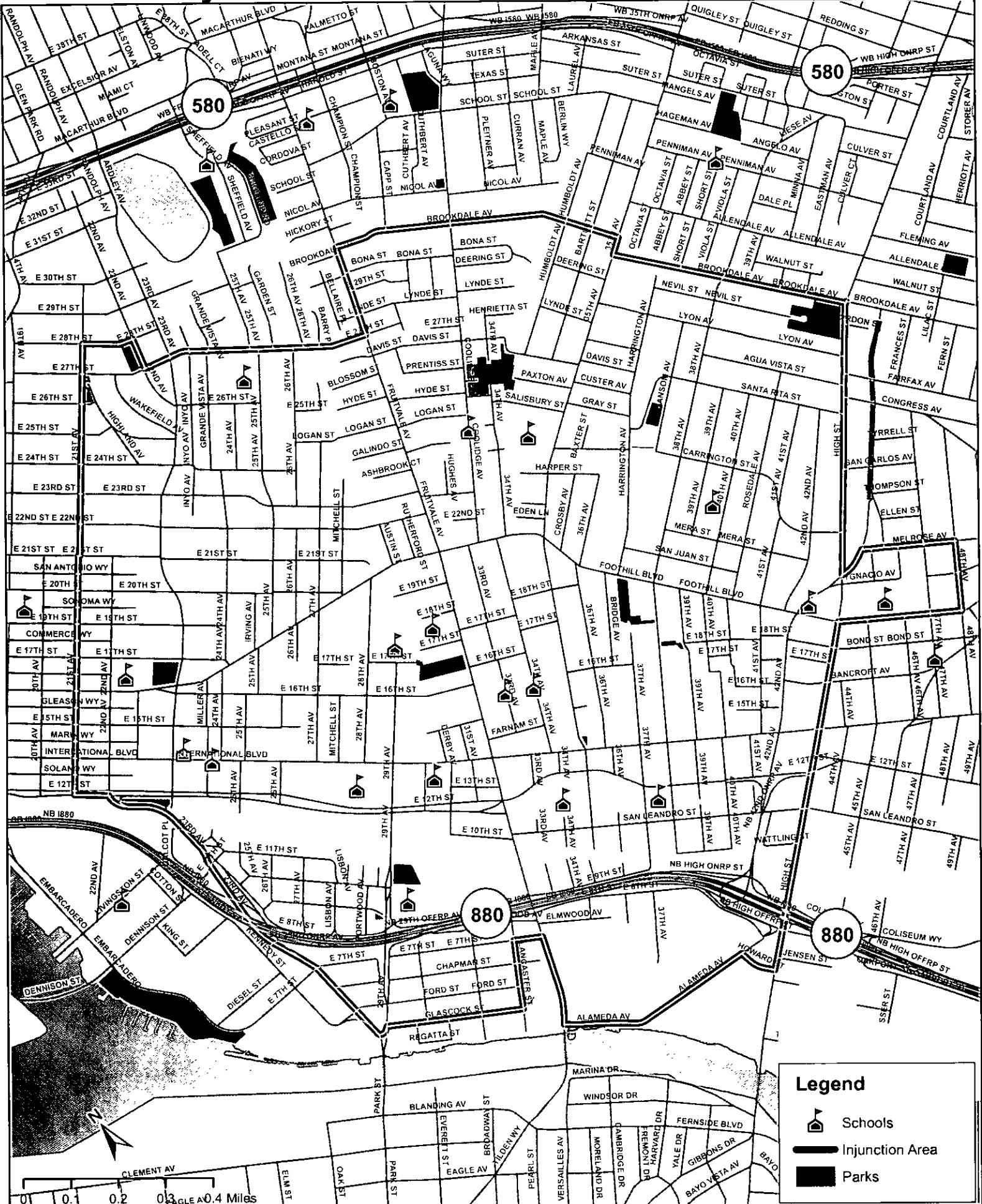
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Area 2 Safety Zone



Legend

-  Schools
-  Injunction Area
-  Parks

0 0.1 0.2 0.3 0.4 Miles