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Office of the City Attorney
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City Attorney

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June 7, 2005

Honorable CITY COUNCIL
Oakland, California

Subject: AN ORDINANCE AMENDING CHAPTER 9.56 OF THE OAKLAND MUNICIPAL CODE AUTHORIZING SEIZURE AND FORFEITURE OF VEHICLES USED TO SOLICIT PROSTITUTION OR ACQUIRE A CONTROLLED SUBSTANCE, TO INCLUDE AS ADDITIONAL GROUNDS FOR SEIZURE AND FORFEITURE THE CRIMES OF PANDERING AND PIMPING, AND TO REQUIRE A PROMPT POST-SEIZURE HEARING.

President De La Fuente and Members of the City Council:

I. Summary

The attached are additional amendments to regulations authorizing the Seizure and Forfeiture of Nuisance Vehicles intended to address concerns raised by the Court of Appeal in the case of O'Connell v. City of Stockton (April 22, 2005, C044400) ___Cal.App.4th___)

The proposed amendments include pandering and pimping among the offenses that subject a vehicle to forfeiture and also provide for an expeditious post seizure hearing to determine whether there is probable cause to seize a vehicle.

II. Fiscal Impact

Providing for post-seizure probable cause hearings would increase the administrative cost of seizing nuisance vehicles. Expanding the range of offenses to include pandering and pimping might result in an increase in the number of forfeitures and a corresponding increase in proceeds from the sale of forfeited nuisance vehicles.

III. Background

On April 22nd, the Third District Court of Appeal issued its opinion in O'Connell, a challenge to the City of Stockton's vehicle forfeiture ordinance. The Stockton ordinance is substantially similar to Oakland's nuisance vehicle abatement ordinance.

The court in O'Connell concluded that the lack of a sufficiently prompt probable cause hearing violated the constitutional right of due process.

Oakland is currently litigating the procedural due process issue on appeal before the 1st District Court of Appeal in Sohigian et al v. City of Oakland, where the trial court ruled that Oakland's ordinance **did not** violate procedural due process. Based on the O'Connell decision, the Alameda County Superior Court will likely be disinclined to uphold any vehicle forfeiture resulting from a Beat Feet operation until the 1st District Court of Appeal rules on the matter.

IV. Key Issues and Impacts

Taking into consideration the ruling in the O'Connell case, it is recommended that the existing ordinance be amended to provide for a prompt post-seizure hearing before continuing Beat Feet operations.

O'Connell also held that Stockton's program was preempted by state law. In a previous case challenging the Beat Feet ordinance, the First Appellate District held that Oakland's nuisance vehicle abatement ordinance was not preempted by state law. (Horton v. City of Oakland (2000) 82 Cal.App.4th 580.) Until such time as this matter has been finally determined (most likely by the California Supreme Court), Oakland is bound by the preemption ruling of the First Appellate District.

V. Action Requested by City Council

The City Attorney requests that the City Council approve the expansion of the existing nuisance vehicle seizure and forfeiture ordinance to include the offenses of pandering and pimping, and to provide for a prompt post-seizure probable cause hearing.

Respectfully submitted,



JOHN A. RUSSO
City Attorney

Attorney Assigned:
J. Patrick Tang

FILED
OFFICE OF THE CITY CLERK
OAKLAND
NOTICE AND DIGEST

2005 MAY 26 AM 7:20

BAZ

AN ORDINANCE AMENDING CHAPTER 9.56 OF THE OAKLAND MUNICIPAL CODE AUTHORIZING SEIZURE AND FORFEITURE OF VEHICLES USED TO SOLICIT PROSTITUTION OR ACQUIRE A CONTROLLED SUBSTANCE, TO INCLUDE AS ADDITIONAL GROUNDS FOR SEIZURE AND FORFEITURE THE CRIMES OF PANDERING AND PIMPING AND TO REQUIRE A PROMPT POST-SEIZURE HEARING.

The Ordinance amends Chapter 9.56 of the Oakland Municipal Code, which authorizes the seizure and forfeiture of vehicles used to solicit prostitution or to acquire a controlled substance. The Ordinance authorizes the seizure and forfeiture of these nuisance vehicles on the additional ground that the vehicles are used to commit the crimes of pandering and pimping. The Ordinance further requires that the City provide a hearing before a neutral hearing officer following the seizure of the vehicle to determine whether probable cause exists for seizing the vehicle. The Ordinance further approves and authorizes the City Administrator to adopt regulations for the administration of the Ordinance.

INTRODUCED BY COUNCILMEMBER _____


City Attorney

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING CHAPTER 9.56 OF THE OAKLAND MUNICIPAL CODE AUTHORIZING SEIZURE AND FORFEITURE OF VEHICLES USED TO SOLICIT PROSTITUTION OR ACQUIRE A CONTROLLED SUBSTANCE, TO INCLUDE AS ADDITIONAL GROUNDS FOR SEIZURE AND FORFEITURE THE CRIMES OF PANDERING AND PIMPING, AND TO REQUIRE A PROMPT POST-SEIZURE HEARING .

WHEREAS, in 1997, the City Council of the City of Oakland adopted an ordinance authorizing the seizure and forfeiture of vehicles that create a public nuisance by being used to solicit prostitution or to acquire controlled substances (Ordinance No. 11987 C.M.S. as amended; now designated as Chapter 9.56 of the Oakland Municipal Code); and

WHEREAS, since 1998 the Oakland Police Department has utilized the seizure and forfeiture provisions in areas where illegal prostitution and drug sales commonly occur; and

WHEREAS, the successful enforcement of this public nuisance ordinance reduces nuisance activities, protects the quality of life of Oakland residents and their right to enjoy their property, protects public health and safety and promotes the peace and quiet of Oakland neighborhoods; and

WHEREAS, the ordinance authorizes police to seize nuisance vehicles used in prostitution and drug activity addressed by this ordinance, but does not expressly require a prompt probable cause hearing following seizure of vehicles; and

WHEREAS, the California Court of Appeal, Third Appellate District, recently issued a decision stating that an ordinance providing for the seizure and forfeiture of nuisance vehicles must provide for a prompt probable cause hearing to satisfy procedural due process (*O'Connell v. City of Stockton* (April 22, 2005, C044400) ___ Cal.App.4th—); and

WHEREAS, the Council finds that pursuant to the O'Connell decision an administrative post-seizure hearing should be held promptly, to determine whether probable cause exists that the vehicle was used in violation of the ordinance; and

WHEREAS, the existing ordinance authorizes seizure and forfeiture of nuisance vehicles, but does not require considering whether the registered owner knew or should have known that the vehicle would be used for the prohibited nuisance activity; and

WHEREAS, the City Council finds that regulations promulgated in furtherance of this ordinance should allow any person with an interest in a seized vehicle to request a determination that forfeiture would be inappropriate under the circumstances of a particular case upon a showing of extreme hardship; and

WHEREAS, the existing ordinance does not include the crimes of pandering and pimping in declaring any motor vehicle a public nuisance subject to seizure and confiscation; and

WHEREAS, Article XI, section 7 of the California Constitution grants charter cities the authority to make and enforce within its limits ordinances and regulations pertaining to public safety, health and welfare; and

WHEREAS, the City Council considers that the scope of the existing ordinance authorizing seizure and forfeiture of nuisance vehicles should, in order to further reduce nuisance activity and protect the quality of life of Oakland residents and protect public health and safety, be expanded to include the additional offenses of pimping and pandering;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND
HEREBY ORDAINS AS FOLLOWS:**

9.56.010 Definitions.

For the purpose of this Chapter the following words and phrases shall mean and include:

“Nuisance Vehicle” means any vehicle used to agree to or engage in an act of prostitution, pandering or pimping, or to illegally acquire or attempt to illegally acquire any controlled substance; such a vehicle is a nuisance, subject to abatement, seizure and forfeiture.

“Pandering” means procuring another person for the purpose of prostitution, a crime pursuant to California Penal Code section 266i. When involving the use of a motor vehicle, the vehicle is subject to abatement, seizure and forfeiture.

“Pimping” means deriving support or maintenance from the earnings or proceeds of a prostitute, a crime pursuant to California Penal Code section 266h. When involving the use of a motor vehicle, the vehicle is subject to abatement, seizure and forfeiture.

“Prosecuting Agency” means the District Attorney or the City Attorney.

“Prostitution” means the solicitation of, agreement to engage in, or engaging in any act of prostitution, as defined in California Penal Code section 647(b). When involving the use of a motor vehicle, the vehicle may be subject to abatement, seizure and forfeiture.

9.56.020 Nuisance vehicles.

Any vehicle used to agree to or engage in an act of prostitution, or procure another person for the purpose of prostitution (pandering), or derive financial support or maintenance from the earnings or proceeds of prostitution (pimping) or illegally acquire or attempt to illegally acquire any controlled substance, is declared a nuisance, and the vehicle shall be enjoined and abated as provided in this Chapter. Any person or his or her servant, agent, or employee who owns, leases, conducts, or maintains any vehicle (hereinafter referred to as “the property”), used for any of the purposes or acts set forth in this section is guilty of a nuisance.

9.56.030 Declaration by court.

Upon proof that the property was used for any of the purposes set forth in Section 9.56.020, the court shall declare the property a nuisance and order that the property be forfeited, sold, and the proceeds distributed as set forth in Section 9.56.090.

9.56.040 Right, title and interest in property.

All right, title, and interest in any property described in Section 9.56.020 shall vest in the city upon commission of the act giving rise to the nuisance under this chapter.

9.56.050 Procedure for Seizure of Vehicle.

- A. Vehicles subject to forfeiture under this chapter may be seized by any peace officer upon process issued by any court having jurisdiction over the property. Seizure without a court order may be made if any of the following situations exist:
 - 1. The seizure is incident to an arrest or a search under a search warrant;
 - 2. There is probable cause to believe that the property was used in violation of this chapter.
- B. A peace officer seizing a vehicle under this chapter shall complete a receipt in accordance with Section 1412 of the Penal Code and deliver it to the person out of whose possession such vehicle was seized.

- C. An investigation shall be made by the public agency making the seizure as to any potential claimant to a vehicle whose right, title, interest, or lien is of record in the Department of Motor Vehicles of this or any other state or appropriate federal agency. If the public agency finds that any person, other than the registered owner, is the legal owner, and the ownership did not arise subsequent to the date and time of arrest or seizure of the vehicle or notification of the forfeiture proceedings, it shall within three (3) business days of the vehicle's seizure, send a notice of seizure and notice of a hearing under section 9.56.060 to the legal owner at his or her address appearing on the records of the Department of Motor Vehicles of this or any other state or any appropriate federal agency.
- D. A vehicle seized pursuant to this chapter, where appropriate, may be held as evidence in any proceeding brought by the Prosecuting Agency.

9.56.060 Post-seizure hearing.

Upon receipt of a request for hearing within the time periods stated below, the public agency seizing the vehicle shall provide any potential claimant a post-seizure hearing to determine the existence of probable cause to support the seizure. The post-seizure hearing shall be conducted within three (3) business days of the request, or later if the claimant so requests. The public agency will retain the services of an independent hearing officer to conduct the hearing. Failure of either the registered or legal owner, or his or her agent, to request and attend a scheduled hearing within the appropriate time frame shall constitute a waiver of the hearing and shall satisfy due process requirements. The right to a post-seizure hearing provided in this section shall expire should no interest claim be filed pursuant to the time frame provided in section 9.56.080.

(a) The notice of seizure shall include the following:

- (i) the name, address and telephone number of the agency providing the notice;
- (ii) the authority and reason for the seizure;
- (iii) a statement that in order to receive a post-seizure hearing, the owners, or their agents, shall request the hearing in person, in writing, or by telephone so that the Prosecuting Agency receives it within ten (10) calendar days of the date of the notice;
- (iv) the time in which a claim of interest in the vehicle seized or subject to forfeiture is required to be filed.

(b) The scope of the hearing shall be: whether probable cause exists that this Chapter was violated. If the hearing officer finds that probable cause exists, the property shall remain in possession of the City of Oakland until final disposition of the property. If the hearing officer finds that probable cause does not exist, the hearing officer may recommend release of the property pending trial under conditions that preserve the City's interest in the property. The hearing officer may consider the

existence of any affirmative defense to the forfeiture if the claimant has filed a claim in accordance with section 9.56.080. The hearing officer shall also consider whether it would be inappropriate for the property to remain in possession of the City under the circumstances of a particular case based upon a showing of extreme hardship.

5. A vehicle seized pursuant to this section, where appropriate, may be held as evidence in any proceeding brought by the Prosecuting Agency.

9.56.070 Forfeiture.

- A. Except as provided in subsection G of this section, if the Prosecuting Agency determines that the factual circumstances do warrant that the vehicle described in Section 9.56.020 is subject to forfeiture, the Prosecuting Agency shall file a petition for forfeiture with the Superior Court of Alameda County.
- B. A petition for forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture.
- C. The Prosecuting Agency shall cause a notice of the seizure and of the intended forfeiture proceedings, as well as a notice stating that any interested party may file a verified claim with the Superior Court of Alameda County, to be served by personal delivery or by registered mail upon any person who has an interest in the seized vehicle. Whenever a notice is delivered pursuant to this section, it shall be accompanied by a claim form as described in Section 9.56.080, directions for the filing and service of a claim and notice of the availability of a hearing under section 9.56.050.
- D. An investigation shall be made by the Oakland Police Department as to any claimant to a vehicle whose right, title, interest, or lien is of record in the Department of Motor Vehicles or appropriate federal agency. If the Oakland Police Department finds that any person, other than the registered owner, is the legal owner thereof, and such ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, it shall forthwith send a notice to the legal owner at his or her address appearing on the records of the Department of Motor Vehicles or appropriate federal agency.
- E. All notices shall set forth the time within which a claim of interest in the property seized or subject to forfeiture is required to be filed pursuant to Section 9.56.080.

- F. With respect to vehicles described in Section 9.56.020 for which forfeiture is sought and as to which forfeiture is contested, the city of Oakland must prove by a preponderance of the evidence that the vehicle was used as set forth in Section 9.56.020. Trial shall be before the court or jury. The presiding judge of the Superior Court shall assign the action brought pursuant to this chapter for trial.

- G. The Prosecuting Agency may, pursuant to this subsection, order the forfeiture of vehicles seized under this chapter. The Prosecuting Agency shall provide notice of the proceedings under this subsection, including:
 - 1. A description of the vehicle;
 - 2. The date and place of seizure;
 - 3. The violation of law alleged with respect to forfeiture of the property;
 - 4. The instructions for filing and serving a claim with the Prosecuting Agency pursuant to Section 9.56.080 and time limits for filing a claim.
 - 5. Notice of the availability of a hearing pursuant to section 9.56.080.

- H. If no claims are timely filed, the Prosecuting Agency shall prepare a written declaration of forfeiture of the vehicle to the city and dispose of the property in accordance with Section 9.56.090. A written declaration of forfeiture signed by the Prosecuting Agency under this section shall be deemed to provide good and sufficient title to the forfeited property. The Prosecuting Agency ordering forfeiture pursuant to this section shall provide a copy of the declaration of forfeiture to any person who received notice of the forfeiture proceedings.

- I. If a claim is timely filed, then the Prosecuting Agency shall file a petition for forfeiture pursuant to this section within thirty days of the receipt of the claim.

- J. Regulations for the administration of this Chapter shall be promulgated by the City Administrator or her designee within 60 days of passage of this ordinance and must be consistent with the requirements of this ordinance.

9.56.080 Interest claim.

- A. Any person claiming an interest in the vehicle seized pursuant to this chapter must, at any time within ten days from the date of the notice of seizure, file with the Superior Court of Alameda County a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Prosecuting Agency within ten days of the filing of the claim.

- B.
 - 1. If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than thirty (30) days therefrom.
 - 2. The hearing shall be before the court or jury
 - 3. The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter.

9.56.090 Sale of vehicles.

In all cases where vehicles seized pursuant to this chapter are forfeited to the city, the vehicles shall be sold, or at the city's option a settlement based on the monetary value of the vehicle may be arranged in lieu of forfeiture of the vehicle. The proceeds of any sale or settlement shall be distributed and appropriated as follows:

- A. To the bona fide or innocent purchaser, conditional sales vendor, mortgagee or lien holder of the property, if any, up to the amount of his or her interest in the property, when the court or Prosecuting Agency declaring the forfeiture orders a distribution to that person.
- B. To the Prosecuting Agency for all expenditures made or incurred by it in connection with the publication of the notices set forth in Section 9.56.070, and the sale of the vehicle, including expenditures for any necessary repairs, storage, or transportation of any vehicle seized under this chapter.
- C. The remaining funds shall be distributed as follows:
 - 1. Fifty (50) percent to the local law enforcement entities that participated in the seizure distributed so as to reflect the proportionate contribution of each agency.
 - 2. Fifty (50) percent to the Prosecuting Agency.
- D. All the funds distributed to the local law enforcement entities or Prosecuting Agency pursuant to subsection C of this section shall not supplant any funds that would, in the absence of this subdivision, be made available to support the law enforcement and prosecutorial efforts of these agencies.

For the purposes of this section, "local governmental entity" means any city, county, or city and county in this state.

9.56.100 Severability Clause.

If any section, subsection, sentence, clause, phrase or word in this ordinance is declared unconstitutional or invalid by any court, said ruling shall not invalidate any other portion of this ordinance. The City Council finds and determines that it would have adopted this ordinance without said section, subsection, sentence, clause, phrase or word.

IN COUNCIL, OAKLAND, CALIFORNIA, JUNE _____, 2005

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California

FILED
~~REDLINE VERSION~~ CLERK

2005 MAY 26 AM 7:20
APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____

City Attorney

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING CHAPTER 9.56 OF THE OAKLAND MUNICIPAL CODE AUTHORIZING SEIZURE AND FORFEITURE OF VEHICLES USED TO SOLICIT PROSTITUTION OR ACQUIRE A CONTROLLED SUBSTANCE, TO INCLUDE AS ADDITIONAL GROUNDS FOR SEIZURE AND FORFEITURE THE CRIMES OF PANDERING AND PIMPING, AND TO REQUIRE A PROMPT POST-SEIZURE HEARING .

WHEREAS, in 1997, the City Council of the City of Oakland adopted an ordinance authorizing the seizure and forfeiture of vehicles that create a public nuisance by being used to solicit prostitution or to acquire controlled substances (Ordinance No. 11987 C.M.S. as amended; now designated as Chapter 9.56 of the Oakland Municipal Code); and

WHEREAS, since 1998 the Oakland Police Department has utilized the seizure and forfeiture provisions in areas where illegal prostitution and drug sales commonly occur; and

WHEREAS, the successful enforcement of this public nuisance ordinance reduces nuisance activities, protects the quality of life of Oakland residents and their right to enjoy their property, protects public health and safety and promotes the peace and quiet of Oakland neighborhoods; and

WHEREAS, the ordinance authorizes police to seize nuisance vehicles used in prostitution and drug activity addressed by this ordinance, but does not expressly require a prompt probable cause hearing following seizure of vehicles; and

WHEREAS, the California Court of Appeal, Third Appellate District, recently issued a decision stating that an ordinance providing for the seizure and forfeiture of nuisance vehicles must provide for a prompt probable cause hearing to satisfy procedural due process (*O'Connell v. City of Stockton* (April 22, 2005, C044400) ___ Cal.App.4th—); and

WHEREAS, the Council finds that pursuant to the O'Connell decision an administrative post-seizure hearing should be held promptly, to determine whether probable cause exists that the vehicle was used in violation of the ordinance; and

WHEREAS, the existing ordinance authorizes seizure and forfeiture of nuisance vehicles, but does not require considering whether the registered owner knew or should have known that the vehicle would be used for the prohibited nuisance activity; and

WHEREAS, the City Council finds that regulations promulgated in furtherance of this ordinance should allow any person with an interest in a seized vehicle to request a determination that forfeiture would be inappropriate under the circumstances of a particular case upon a showing of extreme hardship; and

WHEREAS, the existing ordinance does not include the crimes of pandering and pimping in declaring any motor vehicle a public nuisance subject to seizure and confiscation; and

WHEREAS, Article XI, section 7 of the California Constitution grants charter cities the authority to make and enforce within its limits ordinances and regulations pertaining to public safety, health and welfare; and

WHEREAS, the City Council considers that the scope of the existing ordinance authorizing seizure and forfeiture of nuisance vehicles should, in order to further reduce nuisance activity and protect the quality of life of Oakland residents and protect public health and safety, be expanded to include the additional offenses of pimping and pandering;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND
HEREBY ORDAINS AS FOLLOWS:**

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"Pandering" means procuring another person for the purpose of prostitution, a crime pursuant to California Penal Code section 266i. When involving the use of a motor vehicle, the vehicle is subject to abatement, seizure and forfeiture.

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Deleted: 9.56.020 Declaration by court. ¶
Upon proof that the property was used for any of the purposes set forth in Section 9.56.010, the court shall declare the property a nuisance and order that the property be forfeited, sold, and the proceeds distributed as set forth in Section 9.56.090. (Ord. 12093 (part), 1998: Ord. 12015 (part), 1997: Ord. 11987 (part), 1997: prior code § 3-23.02)¶

"Pimping" means deriving support or maintenance from the earnings or proceeds of a prostitute, a crime pursuant to California Penal Code section 266h. When involving the use of a motor vehicle, the vehicle is subject to abatement, seizure and forfeiture.

"Prosecuting Agency" means the District Attorney or the City Attorney.

"Prostitution" means the solicitation of, agreement to engage in, or engaging in any act of prostitution, as defined in California Penal Code section 647(b). When involving the use of a motor vehicle, the vehicle may be subject to abatement, seizure and forfeiture.

9.56.020 Nuisance vehicles.

Any vehicle used to agree to or engage in an act of prostitution, or procure another person for the purpose of prostitution (pandering), or derive financial support or maintenance from the earnings or proceeds of prostitution (pimping) or illegally acquire or attempt to illegally acquire any controlled substance, is declared a nuisance, and the vehicle shall be enjoined and abated as provided in this Chapter. Any person or his or her servant, agent, or employee who owns, leases, conducts, or maintains any vehicle (hereinafter referred to as "the property"), used for any of the purposes or acts set forth in this section is guilty of a nuisance.

9.56.030 Declaration by court.

Upon proof that the property was used for any of the purposes set forth in Section 9.56.020, the court shall declare the property a nuisance and order that the property be forfeited, sold, and the proceeds distributed as set forth in Section 9.56.090.

9.56.040 Right, title and interest in property.

All right, title, and interest in any property described in Section 9.56.020 shall vest in the city upon commission of the act giving rise to the nuisance under this chapter.

9.56.050 Procedure for Seizure of Vehicle.

A. Vehicles subject to forfeiture under this chapter may be seized by any peace officer upon process issued by any court having jurisdiction over the property. Seizure without a court order may be made if any of the following situations exist:

1. The seizure is incident to an arrest or a search under a search warrant;
2. There is probable cause to believe that the property was used in violation of this chapter.

Deleted: 9.56.030 Right, title and interest in property. ¶
All right, title, and interest in any property described in Section 9.56.010 shall vest in the city upon commission of the act giving rise to the nuisance under this chapter. (Ord. 12093 (part), 1998: Ord. 12015 (part), 1997: Ord. 11987 (part), 1997: prior code § 3-23.03)¶

Deleted: 9.56.040 Process. ¶
Vehicles subject to forfeiture under this chapter may be seized by any peace officer upon process issued by any court having jurisdiction over the property. Seizure without process may be made if any of the following situations exist:¶
A. The seizure is incident to an arrest or a search under a search warrant;¶
B. There is probable cause to believe that the property was used in violation of this chapter. (Ord. 12093 (part), 1998: Ord. 12015 (part), 1997: Ord. 11987 (part), 1997: prior code § 3-23.04)¶

Deleted: 9.56.050 Receipts. ¶
Receipts for vehicles seized pursuant to this chapter shall be delivered to any person out of whose possession such vehicle was seized, in accordance with Section 1412 of the Penal Code. (Ord. 12093 (part), 1998: Ord. 12015 (part), 1997: Ord. 11987 (part), 1997: prior code § 3-23.05)¶

Deleted: 9.56.060 Evidence. ¶
Property seized pursuant to Section 9.56.040, where appropriate, may be held for evidence. The District Attorney or City Attorney shall institute and maintain the proceedings. (Ord. 12093 (part), 1998: Ord. 12015 (part), 1997: Ord. 11987 (part), 1997: prior code § 3-23.06)¶

- B. A peace officer seizing a vehicle under this chapter shall complete a receipt in accordance with Section 1412 of the Penal Code and deliver it to the person out of whose possession such vehicle was seized.
- C. An investigation shall be made by the public agency making the seizure as to any potential claimant to a vehicle whose right, title, interest, or lien is of record in the Department of Motor Vehicles of this or any other state or appropriate federal agency. If the public agency finds that any person, other than the registered owner, is the legal owner, and the ownership did not arise subsequent to the date and time of arrest or seizure of the vehicle or notification of the forfeiture proceedings, it shall within three (3) business days of the vehicle's seizure, send a notice of seizure and notice of a hearing under section 9.56.060 to the legal owner at his or her address appearing on the records of the Department of Motor Vehicles of this or any other state or any appropriate federal agency.
- D. A vehicle seized pursuant to this chapter, where appropriate, may be held as evidence in any proceeding brought by the Prosecuting Agency.

9.56.060 Post-seizure hearing.

Upon receipt of a request for hearing within the time periods stated below, the public agency seizing the vehicle shall provide any potential claimant a post-seizure hearing to determine the existence of probable cause to support the seizure. The post-seizure hearing shall be conducted within three (3) business days of the request, or later if the claimant so requests. The public agency will retain the services of an independent hearing officer to conduct the hearing. Failure of either the registered or legal owner, or his or her agent, to request and attend a scheduled hearing within the appropriate time frame shall constitute a waiver of the hearing and shall satisfy due process requirements. The right to a post-seizure hearing provided in this section shall expire should no interest claim be filed pursuant to the time frame provided in section 9.56.080.

- (a) The notice of seizure shall include the following:
 - (i) the name, address and telephone number of the agency providing the notice;
 - (ii) the authority and reason for the seizure;
 - (iii) a statement that in order to receive a post-seizure hearing, the owners, or their agents, shall request the hearing in person, in writing, or by telephone so that the Prosecuting Agency receives it within ten (10) calendar days of the date of the notice;
 - (iv) the time in which a claim of interest in the vehicle seized or subject to forfeiture is required to be filed.
- (b) The scope of the hearing shall be: whether probable cause exists that this

Chapter was violated. If the hearing officer finds that probable cause exists, the property shall remain in possession of the City of Oakland until final disposition of the property. If the hearing officer finds that probable cause does not exist, the hearing officer may recommend release of the property pending trial under conditions that preserve the City's interest in the property. The hearing officer may consider the existence of any affirmative defense to the forfeiture if the claimant has filed a claim in accordance with section 9.56.080. The hearing officer shall also consider whether it would be inappropriate for the property to remain in possession of the City under the circumstances of a particular case based upon a showing of extreme hardship.

5. A vehicle seized pursuant to this section, where appropriate, may be held as evidence in any proceeding brought by the Prosecuting Agency.

9.56.070 Forfeiture.

A. Except as provided in subsection G of this section, if the Prosecuting Agency determines that the factual circumstances do warrant that the vehicle described in Section 9.56.020 is subject to forfeiture, the Prosecuting Agency shall file a petition for forfeiture with the Superior Court of Alameda County.

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B. A petition for forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture.

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C. The Prosecuting Agency shall cause a notice of the seizure and of the intended forfeiture proceedings, as well as a notice stating that any interested party may file a verified claim with the Superior Court of Alameda County, to be served by personal delivery or by registered mail upon any person who has an interest in the seized vehicle. Whenever a notice is delivered pursuant to this section, it shall be accompanied by a claim form as described in Section 9.56.080, directions for the filing and service of a claim, and notice of the availability of a hearing under section 9.56.050.

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D. An investigation shall be made by the Oakland Police Department as to any claimant to a vehicle whose right, title, interest, or lien is of record in the Department of Motor Vehicles or appropriate federal agency. If the Oakland Police Department finds that any person, other than the registered owner, is the legal owner thereof, and such ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, it shall forthwith send a notice to the legal owner at his or her address appearing on the records of the Department of Motor Vehicles or appropriate federal agency.

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E. All notices shall set forth the time within which a claim of interest in the property seized or subject to forfeiture is required to be filed pursuant to Section 9.56.080.

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F. With respect to vehicles described in Section 9.56.020 for which forfeiture is sought and as to which forfeiture is contested, the city of Oakland must prove by a preponderance of the evidence that the vehicle was used as set forth in Section 9.56.020. Trial shall be before the court or jury. The presiding judge of the Superior Court shall assign the action brought pursuant to this chapter for trial.

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G. The Prosecuting Agency may, pursuant to this subsection, order the forfeiture of vehicles seized under this chapter. The Prosecuting Agency shall provide notice of the proceedings under this subsection, including:

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1. A description of the vehicle;
2. The date and place of seizure;
3. The violation of law alleged with respect to forfeiture of the property;
4. The instructions for filing and serving a claim with the Prosecuting Agency pursuant to Section 9.56.080 and time limits for filing a claim.
5. Notice of the availability of a hearing pursuant to section 9.56.080.

H. If no claims are timely filed, the Prosecuting Agency shall prepare a written declaration of forfeiture of the vehicle to the city and dispose of the property in accordance with Section 9.56.090. A written declaration of forfeiture signed by the Prosecuting Agency under this section shall be deemed to provide good and sufficient title to the forfeited property. The Prosecuting Agency ordering forfeiture pursuant to this section shall provide a copy of the declaration of forfeiture to any person who received notice of the forfeiture proceedings.

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I. If a claim is timely filed, then the Prosecuting Agency shall file a petition for forfeiture pursuant to this section within thirty days of the receipt of the claim.

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J. Regulations for the administration of this Chapter shall be promulgated by the City Administrator or her designee within 60 days of passage of this ordinance and must be consistent with the requirements of this ordinance.

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9.56.080 Interest claim.

A. Any person claiming an interest in the vehicle seized pursuant to this chapter must, at any time within ten days from the date of the notice of

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seizure, file with the Superior Court of Alameda County a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Prosecuting Agency within ten days of the filing of the claim.

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B. 1. If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than thirty (30) days therefrom.

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2. The hearing shall be before the court or jury.

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3. The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter.

Deleted: (Ord. 12093 (part), 1998; Ord. 12015 (part), 1997; Ord. 11987 (part), 1997; prior code § 3-23.08)

9.56.090 Sale of vehicles.

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In all cases where vehicles seized pursuant to this chapter are forfeited to the city, the vehicles shall be sold, or at the city's option a settlement based on the monetary value of the vehicle may be arranged in lieu of forfeiture of the vehicle. The proceeds of any sale or settlement shall be distributed and appropriated as follows:

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A. To the bona fide or innocent purchaser, conditional sales vendor, mortgagee or lien holder of the property, if any, up to the amount of his or her interest in the property, when the court or Prosecuting Agency declaring the forfeiture orders a distribution to that person.

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B. To the Prosecuting Agency for all expenditures made or incurred by it in connection with the publication of the notices set forth in Section 9.56.070, and the sale of the vehicle, including expenditures for any necessary repairs, storage, or transportation of any vehicle seized under this chapter.

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C. The remaining funds shall be distributed as follows:

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1. Fifty (50) percent to the local law enforcement entities that participated in the seizure distributed so as to reflect the proportionate contribution of each agency.

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2. Fifty (50) percent to the Prosecuting Agency.

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D. All the funds distributed to the local law enforcement entities or Prosecuting Agency pursuant to subsection C of this section shall not supplant any funds that would, in the absence of this subdivision, be made

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available to support the law enforcement and prosecutorial efforts of these agencies.

For the purposes of this section, "local governmental entity" means any city, county, or city and county in this state,

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Deleted: (Ord. 12093 (part), 1998: Ord. 12015 (part), 1997: Ord. 11987 (part), 1997: prior code § 3-23.09)

9.56.100 Severability Clause.

If any section, subsection, sentence, clause, phrase or word in this ordinance is declared unconstitutional or invalid by any court, said ruling shall not invalidate any other portion of this ordinance. The City Council finds and determines that it would have adopted this ordinance without said section, subsection, sentence, clause, phrase or word.

IN COUNCIL, OAKLAND, CALIFORNIA, JUNE _____, 2005

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California