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CITY ATTORNEY'S OFFICE

APPROVED BY PUBLIC SAFETY COMMITTEE JULY 28, 2015
CITY ATTORNEY RECOMMENDS EDITS IN UNDERLINE/STRIKE-THROUGH

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY 100 BLACK MEN OF THE BAY AREA, INC.

AN ORDINANCE ADDING CHAPTER 9.08.270 TO CHAPTER 9 OF THE OAKLAND MUNICIPAL CODE ESTABLISHING THE RIGHT TO PHOTOGRAPH, VIDEO AND/OR AUDIO RECORD POLICE AND/OR PEACE OFFICER(S)

WHEREAS, despite California's well-established right to take photographs and make audio and video recordings of police officers, members of the public have nonetheless been arrested and detained for lawfully photographing and recording the police; and

WHEREAS, the core protections of our Federal and State Constitution are violated when individuals are arrested and/or detained for legally pursuing constitutionally protected activity; and

WHEREAS, the City Council has been informed that when Oscar Grant was fatally shot and killed by BART Police, BART Police attempted to seize video and audio recording devices in violation of State law; and

WHEREAS, this confused the public as to their right to photograph, videotape and audio record police and/or peace officers; and

WHEREAS, such violations threaten our liberties and make our communities less safe; and

WHEREAS, recognizing the existing constitutional right to photograph and record the police helps to safeguard our collective freedoms and takes an important step towards ensuring that individuals are not punished for the mere exercise of their constitutional rights; and

WHEREAS, by enacting an ordinance establishing the right to photograph, video and/or audio record police and/or peace officer(s), the City of Oakland will recognize

a bystander's right to photograph, videotape or audio record police and/or peace officer(s).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. That the City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

SECTION 2. Chapter 9.08.270, added to Title 9 -- Public Peace, Welfare, Morals and Welfare of the Oakland Municipal Code, shall read as follows:

9.08.270 ESTABLISHING THE RIGHT TO PHOTOGRAPH, AUDIO RECORD AND/OR VIDEOTAPE POLICE/PEACE OFFICERS

- A. The fact that a person takes a photograph or makes an audio or video recording of a police officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation.
- B. ~~Nor does it~~ Further, the fact that a person takes a photograph or makes an audio or video recording of a police officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, reasonable suspicion to detain the person or probable cause to arrest the person.
- C. This Chapter 9.08.270 shall not be subject to the General Penalties proscribed in Oakland Municipal Code Chapter 1.28. nor any other penalty provision of the Oakland Municipal Code.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 4. Effective Date. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes on final adoption as provided by Section 216 of the City Charter; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT
GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

Date of Attestation: _____

NOTICE AND DIGEST

AN ORDINANCE ADDING CHAPTER 9.08.270 TO CHAPTER 9 OF THE OAKLAND MUNICIPAL CODE ESTABLISHING THE RIGHT TO PHOTOGRAPH, VIDEO AND/OR AUDIO RECORD POLICE AND/OR PEACE OFFICER(S)

This ordinance adds Chapter 9.08.270 to the Oakland Municipal Code, which provides:

- A. The fact that a person takes a photograph or makes an audio or video recording of a police officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation.

- B. Further, the fact that a person takes a photograph or makes an audio or video recording of a police officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, reasonable suspicion to detain the person or probable cause to arrest the person.

- C. This Chapter 9.08.270 shall not be subject to the General Penalties proscribed in Oakland Municipal Code Chapter 1.28.nor any other penalty provision of the Oakland Municipal Code.