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ORDINANCE NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER LYNETTE GIBSON MCELHANEY  
AND BARBARA J. PARKER, CITY ATTORNEY

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**AN ORDINANCE ENACTING THE FOLLOWING:**

1. A NEW OAKLAND MUNICIPAL CODE CHAPTER 8.11 PERTAINING TO ILLEGAL DUMPING AND LITTERING, DEFINING WHAT CONSTITUTES ILLEGAL DUMPING, AND SETTING ADMINISTRATIVE, CIVIL AND CRIMINAL PENALTIES
2. AMENDING AND RESTATING OAKLAND MUNICIPAL CODE CHAPTER 9.56 PERTAINING TO SEIZURE AND IMPOUNDMENT OF VEHICLES INVOLVED IN CERTAIN NUISANCE ACTIVITIES: PROSTITUTION, PANDERING, PIMPING, AND ILLEGAL DUMPING

**WHEREAS**, the City of Oakland is plagued with Illegally dumped waste on public and private property throughout the City;

**WHEREAS**, illegal dumping is a significant blight on the City and an environmental crime that negatively impacts the livability of neighborhoods, discourages economic development, and reduces property values;

**WHEREAS**, the City of Oakland's Public Works Agency reports that in fiscal year 2012-13 it completed 17,624 works orders pertaining to the removal of illegal dumping, an increase of thirty-four percent over the prior fiscal year.

**WHEREAS**, illegal dumping is a significant health and safety problem;

**WHEREAS**, much of the illegal dumping is comprised of mattresses, large furniture, appliances, construction materials, and electronic waste;

**WHEREAS**, pursuant to Franchise Agreement with Waste Management (as the Collector) and O.M.C. 8.28, and other state or federal laws, Oakland residents and businesses currently have insufficient options for disposal of waste except through the Collector or other hazardous materials or electronics disposal methods;

**WHEREAS**, Oakland residents and business should have more information on lawful options for disposal of waste and what disposal methods are not permitted under law or the Waste Management franchise agreement;

**WHEREAS**, in order to discourage illegal dumping, the City Council believes the City needs to enhance administrative, civil, and criminal penalties;

**WHEREAS**, the City needs to improve its ability to recover its costs and private parties' costs to remove illegally dumped waste;

**WHEREAS**, the seizure and impoundment of nuisance vehicles—those involved in illegal dumping, prostitution, pandering, and pimping—can be an important tool in abating such nuisances;

**WHEREAS**, the City Council wants to ensure that its nuisance vehicle seizure and impoundment procedures meet all state law requirements;

**WHEREAS**, by state law, the City Attorney is a full-time City prosecutor and can engage in prosecutions when funded to do so by the City Council; wherefore,

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Enactment of Oakland Municipal Code Chapter 8.11 – Illegal Dumping and Littering**

**Chapter 8.11 – Illegal Dumping and Littering**

**Article I – Findings and Purposes**

**8.11.100 - Findings and Purposes.**

The City Council finds as follows:

- A. The increase in illegal dumping on public and private property creates a condition of blight within the City that can result in the deterioration of property values, and enjoyment of life for persons using adjacent and surrounding properties as well as the entire community.
- B. Illegal dumping is disrespectful to Oakland, its citizens and businesses, negatively impacts the business climate in Oakland and promotes a perception that the laws protecting public and private property can be disregarded with impunity.
- C. Illegal dumping is inconsistent with the City's goals of maintaining property, preventing crime, and preserving aesthetic standards. incidents of illegal

dumping often spawn more illegal dumping, and create conditions that can lead to more incidents of serious or violent crimes.

- D. The remedies and penalties for illegal dumping are currently inadequate to compensate the public and victims of such acts and to discourage illegal dumping.
- E. The City Council's purpose and intent, by enacting this Chapter, is to protect public and private property from illegal dumping by increasing remedies for victims of such acts and penalties for those performing such acts in order to discourage such acts and to adequately compensate the public and private victims of illegal dumping.
- F. A further purpose of this Chapter is to permit the perpetrators of illegal dumping to perform community service in lieu of monetary or criminal penalties, when appropriate.
- G. Dumping of mattresses, large furniture, electronic items, large appliances, and hazardous waste present particular problems as they are difficult and costly to remove.
- H. All persons creating waste matter should be responsible to ensure that such waste matter is properly disposed of in the manner provided by law, including not giving waste matter for disposal to a person who is not authorized or who does not legally dispose of such waste matter.

## Article II – Definitions

### 8.11.200 – Definitions.

The following terms are defined for use in this Chapter.

- A. "Appliance" means a larger electronic or gas appliance such as a stove, refrigerator, microwave, water heater, or furnace.
- B. "Collector" means the entity that is the franchisee for solid waste collection in the City of Oakland.
- C. "Commercial Quantity" means an amount of Waste Matter generated in the course of a trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard.
- D. "Costs" means and includes, but is not limited to, court costs, attorneys' fees, costs of removal and disposal of illegally Dumped Waste Matter (including the equivalent cost of disposal if the City is not charged), costs of investigating the incident, and law enforcement costs, including, but not limited to time and

expenses of police, Code Enforcement, Public Works, City Attorney, and/or other City Departments, incurred by the City in identifying and apprehending persons who cause or commit Illegal Dumping in violation of this Chapter.

E. "Dumping Violator" means any person who negligently, willfully, or intentionally causes or permits Waste Matter to be Illegal Dumped, including, but not limited to, any person who gives or entrusts Waste Matter to another who Illegally Dumps such Waste Matter, and any vehicle owner whose vehicle is used to Illegally Dump.

F. "Electronic Waste" means computers, computer monitors, televisions, audio equipment and any other electronic equipment that is required to be specially disposed of pursuant to state or City law, including, but not limited to a "covered electronic device" as defined in Section 42463 of the California Public Resources Code.

G. "Foundation" means a ticking-covered structure used to support a mattress or sleep surface. The structure may include constructed frames, foam, box springs, or other materials, used alone or in combination.

F.

G.H. "Harmful Waste Matter" means a hazardous substance as defined in Section 374.8 of the California Penal Code; a hazardous waste as defined in Section 25117 of the California Health and Safety Code; waste that, pursuant to Division 30 (commencing with Section 40000) of the California Public Resources Code, cannot be disposed in a municipal solid waste landfill without special handling, processing, or treatment; or waste matter in excess of one cubic yard.

H.I. "Household Furniture" means larger furniture, such as a table, buffet, armoire, dresser, and similar size furniture.

I.J. "Illegal Dumping" means the willful, intentional, or negligent depositing, dropping, dumping, placing, or throwing of any waste matter onto public or private property that is not expressly designated for the purpose of disposal of Waste Matter. "Illegal Dumping" also includes any Waste Matter not disposed of pursuant to O.M.C. 8.28.070, or any successor legislation. "Illegal Dumping" does not include Litter as defined herein.

J.K. "Litter" means the discarding of small quantities of Waste Matter related to consumer goods and that are reasonably understood to be ordinarily carried on or about the body of a living person, including, but not limited to, beverage containers and closures, packaging, wrappers, wastepaper, newspaper, magazines, or other similar Waste Matter that escapes or is allowed to escape from a container, receptacle, or package.

K.L. "Litter Violator" means any person, who negligently, willfully, or intentionally causes or permits Waste Matter to be Littered, including, but not limited to, any person who gives or entrusts Waste Matter to another for disposal, but who Litters such Waste Matter.

M. "Mattress" means an adult-sized resilient material or combination of materials that is used alone or in combination with other products, and is intended for or promoted for sleeping, upon by adults or is of substantially the same size. "Mattress" includes a foundation and a renovated mattress or renovated foundation. "Mattress" does not include the following:

1. An unattached mattress pad or unattached mattress topper, including items with resilient filling, with or without ticking, intended to be used with or on top of a mattress.
2. A sleeping bag or pillow.
3. A car bed, crib, or bassinet mattress.
4. Juvenile products, including a carriage, basket, dressing table, stroller playpen, infant carrier lounge pad, or crib bumper, and the pads for those juvenile products.

L.N. "Person" includes a natural person, firm, copartnership, association, limited liability company, or corporation.

M.O. "Real Property Owner" means any person with a fee interest in a parcel of real property and any person who manages real property for commercial or residential rental.

N.P. "Trailer" means a "trailer" as defined in California Vehicle Code Section 630.

Q.Q. "Upholstered Furniture" means furniture that is covered by soft, padded textile, leather vinyl or similar covering, such as armchairs and sofas.

P.R. "Vehicle" means a vehicle as defined in California Vehicle Code Section 670, and a motor vehicle as defined in California Vehicle Code Section 415.

Q.S. "Vehicle Owner" means an "owner" as defined in California Vehicle Code Section 460, but excludes a motor vehicle dealer, bank, credit union, acceptance Corporation, or other licensed financial institution legally operating in this state or is another person who is not the registered owner and holds a security interest in the vehicle.

R.T. "Waste Matter" means any form of tangible matter including, but not limited to, any of the following:

1. All forms of garbage, refuse, rubbish, recyclable materials, and solid waste.
2. Dirt, soil, rock, decomposed rock, gravel, sand, or other aggregate material dumped or deposited as refuse.
3. Abandoned or discarded furniture; or commercial, industrial, or agricultural machinery, apparatus, structure, or other container; or a piece, portion, or part of these items.
4. All forms of liquid waste not otherwise defined in or deemed to fall within the purview of Section 25117 of the California Health and Safety Code, including, but not limited to, water-based or oil-based paints, chemical solutions, water contaminated with any substance rendering it unusable for irrigation or construction, oils, fuels, and other petroleum distillates or byproducts.
5. Any form of biological waste not otherwise designated by law as hazardous waste, including, but not limited to, body parts, carcasses, and any associated container, enclosure, or wrapping material used to dispose these matters.
6. A physical substance used as an ingredient in any process, now known or hereafter developed or devised, to manufacture a controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 of the California Health and Safety Code, or that is a byproduct or result of the manufacturing process of the controlled substance.

### Article III – Illegal Dumping and Littering as Unlawful and Public Nuisance

#### 8.11.310 - Illegal Dumping and Littering Unlawful.

- A. It is unlawful and a violation of this Code and this Chapter for any person to Illegally Dump or not dispose of Waste Matter, or cause Waste Matter not to be disposed of as otherwise provided by this Code or State or Federal law.
- B. It is unlawful to hire a person to dispose of Waste Matter who is not legally authorized to dispose of Waste Matter in the City.
- C. It is unlawful and a violation of this Code for any person owning or otherwise in possession or control of any real property within the City to permit or allow Waste Matter from such property to be Illegally Dumped.
- D. A violation of this Chapter shall be subject to enforcement through criminal prosecution, civil action, administrative citation, and civil penalties, as provided for herein.

### **8.11.320 - Illegal Dumping and Littering as Public Nuisances.**

The City Council hereby declares and finds that Illegal Dumping and Littering are public nuisances subject to abatement, remedies, and penalties according to the provisions and procedures contained in this Code and this Chapter.

### **8.11.330 - Criminal Penalties Available for Illegal Dumping.**

- A. Illegal Dumping is a Misdemeanor. Illegal Dumping on any public or private property is a misdemeanor violation of this Code and this Chapter, in addition to any state law Penal Code violations and any administrative or civil penalties.
- B. Littering is an Infraction. Littering on any public or private property of another is an infraction violation of this Code and this Chapter, in addition to any state law Penal Code violations and any administrative or civil penalties.

## **Article IV - Administrative, Civil, and Criminal Liabilities and Penalties**

### **8.11.400 - Purpose of Article IV.**

This article sets out the administrative, civil, and criminal liabilities and penalties available under the Oakland Municipal Code for Illegal Dumping on City or other public property and private property.

### **8.11.410 - Power of Arrest and Citation.**

Pursuant to O.M.C Subsection 1.24.020 B., the City Administrator shall have the power to designate, by written order, that particular officers or employees shall have the authority to arrest or cite persons in violation of this Chapter.

### **8.11.420 - Administrative Actions.**

- A. The City may assess administrative citations or civil penalties pursuant to O.M.C. Chapter 1.08 (Civil penalties) or Chapter 1.12 (Administrative citations) against a Dumping Violator or Litter Violator.
- B. Administrative Citations. In instances of Illegal Dumping where the amount of Waste Matter is reasonably believed not to be a Commercial Quantity or to contain Harmful Waste Matter, the Dumping Violator may be assessed an administrative citation in accordance with O.M.C. Chapter 1.12.
  - 1. If the City issues more than three administrative citations issued to one person within a three-year period of the first citation each such citation in excess of three is considered a major violation and shall be assessed as a civil penalty pursuant to O.M.C. Chapter 1.08.

### C. Civil Penalties.

1. The following are considered major violations and shall be assessed a civil penalty: pursuant to O.M.C. Chapter 1.08: where the Illegal Dumping constitutes a Commercial Quantity, contains Harmful Waste Matter, is a Mattress, Upholstered Furniture, Appliance, Furniture, or Electronic Waste, or the Dumping Violator has committed more than three acts of Illegal Dumping within a three-year period.
2. Determining the Amount of Civil Penalty. In determining the amount of a civil penalty, all relevant circumstances shall be considered, including but not limited to: costs to the City relating to clean-up caused by the Dumping Violator, special costs to the City in the form of the payment of any reward, the quantity of Waste Matter, whether the Waste Matter contains Harmful Waste Matter, the history of previous violations by the Dumping Violator, the assets, liabilities and net worth of the person, and any corrective action taken by Dumping Violator.
3. Determining Separate Violations. The following are considered separate instances of Illegal Dumping each of which is subject to an individual assessment of a civil penalty:
  - a. Each individual Mattress, piece of Upholstered Furniture, Furniture, Appliance, or Electronic Waste. For purposes of assessment of penalties, a Mattress and Foundation constitute two separate instances of Illegal Dumping even if they are from a set.
  - b. A Commercial Quantity of Waste Matter that also contains Harmful Waste Matter, a Mattress, Upholstered Furniture, Furniture, Appliance or Electronic Waste may be cited both as a Commercial Quantity and separately as Harmful Waste, Mattress, Upholstered Furniture, Furniture, Appliance, or Electronic Waste.
  - c. Each individual act of Illegal Dumping at the same location.
  - d. An amount of Illegal Dumping that exceeds three (3) cubic yards or requires more than one pick-up truck load to remove may be cited for each amount of three (3) cubic yards or truck loads required to remove the Waste Matter.
4. Time Calculation for Assessment of Penalties.
  - a. Penalty or Citation Days. For purposes of calculating the number of days for assessment of a Civil Penalty or Administrative Citation, the days start to run when the Illegal Dumping is first discovered by a witness, subject to the evidentiary presumption below, and end when the cleanup is complete.



- b. Burden of Producing Evidence as to When Illegal Dumping Occurred. If the City does not have direct evidence as to when the Illegal Dumping occurred, in assessing administrative fines or penalties, the act of Illegal Dumping shall be presumed to have occurred five (5) days prior to its discovery and the burden of producing evidence as to when it occurred shall be on the Dumping Violator. The presumption may be rebutted by contrary evidence.
5. Each act of Illegal Dumping is subject to an administrative citation or civil penalty in accordance with the provisions of this Chapter. Illegal Dumping on the same location, at different times are each considered a separate violation. Each act of Illegal Dumping on a separate area of a single location is a separate violation even if each occurs on the same general time and day. Each person who participates in an act of Illegal Dumping is subject to a separate administrative citation or civil penalty.
6. The City may notice a Dumping Violator to remove Illegal Dumped Waste Matter from City or private property (with the property owner's prior approval). If a Dumping Violator is noticed to remove Illegally Dumped material and fails to remove the same within 24 hours after notice by the City or the property owner, such failure to timely remove the Illegally Dumped material constitutes a separate violation and is a major violation subject to civil penalties.
7. In addition to assessing administrative citations or civil penalties, a Dumping Violator also shall be assessed costs relating to the Illegal Dumping. Each person who participates in an act of Illegal Dumping is jointly and severally liable with all other persons who participated in that act of Illegal Dumping for the costs of that act of Illegal Dumping.

#### **8.11.430 - Civil Actions Against Dumping Violators.**

- A. Any person or entity, public or private, on whose property Waste Matter has been Illegally Dumped, may bring a civil action against a Dumping Violator. In addition, a duly established Business Improvement District, merchants' association, or business, community, or neighborhood association or organization that cleans up Illegal Dumping on behalf of its members may bring an action against a Dumping Violator to recover its costs of removal.
- B. Costs and Damages Recoverable. The following damages may be assessed against a Dumping Violator:
  1. The cost of abatement;
  2. Any cost for loss of use of the property on which the Illegal Dumping has been placed;

3. Costs of investigation, including the cost of any code enforcement or police resources used to investigate each incident, as are set out in the master fee schedule;
  4. Attorney fees and costs involved in the investigation;
  5. Cost of suit;
  6. Treble damages if the Dumping Violator has been found to have committed multiple acts of Illegal Dumping within a three-year period; and
  7. Punitive damages if appropriate under applicable state law and under state law standards.
- C. Joint and Several Liability. Each person who participates in an act of Illegal Dumping is jointly and severally liable with any other person who participates for all costs, damages, penalties, and attorneys' fees related to that act of Illegal Dumping.

**8.11.440 - Authority of City Attorney to Bring Actions.**

- A. The City Attorney may bring an action to recover costs incurred by the City through the following methods:
1. Civil Action. The City Attorney may bring and maintain a civil action in the name of the City to obtain a money judgment against the defendant for any amount not ordered or collected by a criminal court, including, but not limited to, all Costs, attorney's fees, in addition to civil penalties incurred in connection with the civil prosecution of any claim for damages or reimbursement.
- B. The City Attorney also may seek to recover the City's Costs incurred relative to the Illegal Dumping, or such other costs as the City may have. The City Attorney may do so in any of the following ways:
1. Bring an action on the City's behalf to recover such costs;
  2. Join an action brought by a private party to recover damages and Costs relating to Illegal Dumping;
  3. Authorize a private party or other public entity on whose property the Illegal Dumping occurred to bring the action on the City's behalf;
  4. In the event the City Attorney brings an action to cover the City's costs of Illegal Dumping, at the City Attorney's sole election, and with the permission of the private party or other public entity on whose property the Illegal

Dumping occurred, the City Attorney may pursue the private party or other public entity's claims against the Dumping Violator for damages and costs.

- C. The City Attorney also may bring actions for injunctive or equitable relief against Dumping Violators.
- D. The City Attorney may prosecute Illegal Dumping Violators for misdemeanor or infractions pursuant to this Chapter, so long as the City Council has provided funding for such prosecutions.. Such prosecutorial authority is not intended to diminish and shall not alter or impact the authority of the Alameda County District Attorney also to bring prosecutions under this Chapter or under applicable state law.

#### **8.11.450 - Attorney's Fees For Illegal Dumping Actions.**

In any administrative, civil, or special proceeding to abate Illegal Dumping, the City may, at the initiation of the proceeding, seek an award of attorney's fees. If the City seeks an award of attorney's fees, the award shall be made to the prevailing party. Provided however, that no award may be made to a prevailing party that exceeds the amount of reasonable attorney's fees incurred by the City in the action or proceeding.

### **Article V – Special Liabilities and Responsibilities**

#### **8.11.510 - Mattress and Upholstered Furniture Identification.**

- A. Any business that provides or rents or provides as part of accommodations rental or licensing beds Household Furniture, or Upholstered Furniture is required to place a permanent, legible mark in an inconspicuous location clearly identifying the owner of the Mattresses, Household Furniture, or Upholstered Furniture. This includes, but it not limited to hotels, motels, rooming houses, rental property owners who rent or provide furnishings with unit rentals.
- B. Failure to comply with this Section is citable as an administrative penalty for each piece not marked for identification, for a first inspection and citable as a civil penalty for each piece for a subsequent inspection of the same property.

#### **8.11.520 - Liability of Parent or Guardian of a Minor.**

Any parent or legal guardian of a minor Dumping Violator is personally liable for any and all costs incurred by the City or any person or business in connection with the Illegal Dumping caused by conduct of said minor, and for all attorney's fees, court costs, and other costs and any administrative citations or civil penalties incurred in connection with the civil or administrative prosecution of any claim for damages to the maximum extent permitted by California Civil Code Section 1714.1 or other applicable laws.

**8.11.530 - Liability of Owner or Operator of Vehicle or Trailer Used in Illegal Dumping.**

To the extent permitted by law, an owner or operator of a Motor Vehicle or Trailer is liable and responsible for Illegal Dumping for all costs, penalties and fines relating to the Illegal Dumping when the owner's vehicle is used with the express or implied permission of the owner or operator, irrespective of whether the owner or operator knew or should have known of the intended use of the vehicle.

**8.11.540 – Responsibility of Waste Matter Creator or Generator for Illegally Dumped Material.**

All persons creating or generating Waste Matter are responsible for seeing that it is disposed of in the manner provided by law. Persons disposing of Waste Matter must ensure that it is not Illegally Dumped. This responsibility includes not giving Waste Matter to a person for disposal who is not authorized to legally dispose of Waste Matter. A person whose Waste Matter is Illegally Dumped is jointly responsible for the Illegal Dumping along with the party who actually Illegally Dumped.

**8.11.550 - Responsibility of Lessor for Property of Lessee Illegally Dumped Following Vacation of Unit.**

A real property owner who rents commercial or residential property is responsible for the property of a tenant that was removed from the tenant's unit and Illegally Dumped after the tenant vacates, whether voluntarily or involuntarily pursuant to this section. If the tenant's property is removed from the tenant's unit by the real property owner or an eviction or other process, the property owner must see the property is either retained for the tenant or properly disposed of in accordance with law. To this end, the property owner must cooperate with the tenant in working with the Collector to dispose of the tenant's property, which can be done at the tenant's expense for any of the Collector's fees or costs. If the tenant's property is illegally dumped by the tenant on public or private property in front of the tenant's former unit or the adjacent properties, the real property owner is responsible to have the tenant's property properly disposed of. If the tenant's property is illegally dumped at a different location, the real property owner must provide the tenant's forwarding information if it is within the real property owner's knowledge.

**Article VI - Community Service**

**8.11.610 - Community Service in Lieu of Fine.**

- A. A Dumping Violator cited with an administrative citation or civil penalty pursuant to this Chapter may request to perform community service in lieu of payment of the civil penalty or administrative citation. A Dumping Violator may not use Community Service to offset actual costs of the City's addressing the Illegal

Dumping incident. Community service must be performed in a program approved by the City Administrator.

1. A Dumping Violator cited with an administrative citation or civil penalty who requests permission to perform community service in lieu of payment of citation or penalty, as provided in this subsection A., must make the request in writing and file it with the City no later than 15 calendar days, excluding weekends and holidays, after service of the citation. All requests made pursuant to subsection A. must include the address of the responsible person(s) for the purpose of correspondence by the issuing department. A request to perform community service does not extend or toll the time the Illegal Dumper must appeal any charge or penalty.
2. The City shall notify the Dumping Violator by first class mail, postage prepaid, whether the request to perform community service has been approved, and if approved, shall identify the program(s) that the responsible person must complete, and the date by which such program shall be completed.
3. Eligibility for community service shall be based on factors including:
  - a. The number of incidents of illegal Dumping the Dumping Violator has engaged in;
  - b. Whether the Dumping Violator previously participated in community service;
  - c. The cost of the Illegal Dumping damage; and
  - d. The Dumping Violator's ability to pay penalties.
4. Granting or denying request for community service.
  - a. The decision to grant or deny a community service request shall be in the sole discretion of the City Administrator;
  - b. In the event the request to perform community service is denied the administrative citation or civil penalty otherwise payable must be made by the date specified in the notice denying the request;
  - c. Even if the Dumping Violator performs community service the City may still pursue other recovery of fines or Costs, taking into consideration Dumping Violator's participation in one of the programs.
5. Community service may include, but not be limited to, picking up Litter or Waste Matter from public. The amount of community service shall be in proportion to the amount of administrative citation or civil penalty.

6. The obligation to pay the administrative citation or civil penalty otherwise required shall be suspended during the time period provided for completion of the approved program as set forth in the written notification approving the request sent by the issuing department under Subsection A.2., above.
  7. The Dumping Violator must provide proof of completion of the approved program by submitting to the issuing department within five calendar days following the date by which the program was to be completed, a certificate of completion issued by the program provider. Failure to present such proof within the required time period shall result in the reinstatement of the administrative penalty otherwise due as stated in the administrative citation without further notification by the issuing department. Payment of the amount due shall be made within seven calendar days of the date by which the program was to be completed as specified in the notice provided under Subsection A.2., above.
- B. In addition to any other remedy provided by law, if the Illegal Dumper fails to comply with the administrative citation or civil penalty, the City may use any other legal remedy available to gain compliance with the administrative citation or civil penalty.
  - C. Any notices of violations issued for circumstances for which community service is appropriate shall include language regarding the availability of community service

## Article VII – Reward Fund

### 8.11.710 - Establishment of Illegal Dumping Reward Fund.

- A. The City Council may by resolution establish an Illegal Dumping reward fund. The fund is to provide for rewards for the identification and apprehension of Dumping Violators.
- B. The City Council may fund the Illegal Dumping reward fund from general purpose funds and/or funds recovered from administrative citations, civil penalties, or treble or punitive damages recovered from Dumping Violators, or other sources.

## Article VIII - Administrative Appeals

### 8.11.810 - Administrative Appeals.

- A. An administrative assessment of fines or costs may be appealed administratively.
- B. A party aggrieved by a final administrative decision of the City may seek judicial review of the administrative decision pursuant to California Code of Civil

Procedure Sections 1094.5 and 1094.6 within the time frame pursuant to those code sections.

## Article IX – Miscellaneous Sections

### 8.11.910 - Remedies Not Exclusive.

- A. **Selecting the Remedy.** Selecting the appropriate remedy to be sought shall be consistent with the purpose and intent of this Chapter. This includes, but is not limited to, alternative options, such as cleaning dumped trash, community service, counseling, and/or other forms of remedial education.
- B. **Remedies Not Exclusive.** Remedies provided for the enforcement of this Chapter are in addition to and do not supersede or limit any and all other remedies provided by law. The remedies provided in this Chapter are cumulative and not exclusive. The City, a property owner victim, or anyone else authorized by this Chapter to use a remedy, may use one or more remedies in this Chapter or as available under other laws separately or together where appropriate.

### 8.11.920 - Amendments to State Laws Adopted Herein.

In the event that any California statute adopted or referred to in this Chapter is amended or succeeded by another enactment of the California Legislature, it shall be deemed such amendments shall be automatically deemed adopted as part of this Chapter of the **Oakland Municipal Code** as if fully set forth herein unless the City Council amends this Chapter to do otherwise.

### 8.11.930- City Administrator Regulations.

The City Administrator is authorized to establish any regulations to aid in administration or enforcement of this Chapter, but the lack of such regulations shall not delay or otherwise impede application or enforcement of any provision of this Chapter.

## **SECTION 2. Amending and Restating O.M.C. Chapter 9.56 Pertaining to Nuisance Vehicles**

### **Chapter 9.56 – Nuisance Vehicles**

#### **Article I - Purpose and Introductory Sections**

##### **9.56.110 - Purpose.**

The purpose of this Chapter is to enact the provisions of California Vehicle Code Section 22659.5 that authorizes cities to adopt legislation for the seizure and impoundment of vehicles involved in prostitution, pandering, pimping and/or illegal dumping.

### 9.56.120 - Definitions.

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

- A. "Illegal Dumping" means to dump or to cause to be dumped waste matter in violation of California Penal Code Section 374.3.
- B. "Nuisance Vehicle" means any vehicle used to agree to or engage in an act of prostitution, pandering, or pimping or to illegally dump; such vehicle is a nuisance. A and
- C. "Pandering" means procuring another person for the purpose of prostitution, a crime pursuant to California Penal Code Section 266i.
- D. "Pimping" means deriving support or maintenance from the earning or proceeds of a prostitute, a crime pursuant to California Penal Code Section 266h.
- E. "Prosecuting Agency" means the District Attorney or the City Attorney.
- F. "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).
- G. "Vehicle" means a motor vehicle as defined in California Vehicle Code Section 415.

### 9.56.130 - Public Nuisance Vehicles.

Any vehicle is declared a public nuisance and is subject to seizure and impoundment of up to thirty (30) days if all of the following are met:

- A. The Vehicle is used in the commission of or attempted commission of Prostitution, Pandering, or Pimping, or Illegal Dumping.
- B. The owner or operator of the vehicle has had a prior conviction for the same offense or any combination of offenses that this Chapter applies to within the three years prior to an arrest for a violation of one of offenses.
- C. The driver has been subject to a valid arrest for a violation of the California Penal Code Sections set out in subsection A above.



## Article II - Procedures After Impoundment

### 9.56.210 - Notice to Owner.

- A. Within two working days after impoundment, the City shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. The notice also shall include notice of the opportunity for a poststorage hearing to determine the validity of the storage or to determine mitigating circumstances establishing that the vehicle should be released. The City shall be prohibited from charging for more than five days' storage if it fails to notify the legal owner within two working days after the impoundment when the legal owner redeems the impounded vehicle. The City shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a legal owner and a registered owner to request a hearing.
- B. The notice to the legal owner shall include all of the following information:
  - 1. The name, address, and telephone number of the agency providing the notice.
  - 2. The location of the place of storage and description of the vehicle, that shall include, if available, the model or make, the manufacturer, the license plate number, and the mileage.
  - 3. The authority and purpose for the removal of the vehicle.
  - 4. A statement that, in order to receive a poststorage hearing, the owners, or their agents, shall request the hearing in person, writing, or by telephone within 10 days of the date appearing on the notice.

### 9.56.220 - Poststorage Hearing.

- A. The poststorage hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The City Administrator shall authorize and employee or hearing officer to conduct the hearing if that employee or hearing officer is not the same person who directed the seizure of the vehicle.
- B. Failure of the legal and the registered owners, or their agents, to request or to attend a scheduled hearing shall satisfy the poststorage hearing requirement.

**9.56.230 - Costs of Towing and Storage.**

- A. The City shall be responsible for the costs incurred for towing and storage if it is determined in the poststorage hearing that reasonable grounds for the storage are not established.
- B. Any period during which a vehicle is subjected to storage under this Chapter shall be included as part of the period of impoundment.

**9.56.240 - Early Release of Vehicle.**

- A. The City shall release the vehicle to the registered owner or his or her agent prior to the end of the impoundment period under any of the following circumstances:
  - 1. The driver of the impounded vehicle was arrested without probable cause.
  - 2. The vehicle is a stolen vehicle.
  - 3. The vehicle is subject to bailment and was driven by an unlicensed employee of a business establishment, including a parking service or repair garage.
  - 4. The driver of the vehicle is not the sole registered owner of the vehicle and the vehicle is being released to another registered owner of the vehicle who agrees not to allow the driver to use the vehicle until after the end of the impoundment period.
  - 5. The registered owner of the vehicle was neither the driver nor a passenger of the vehicle at the time of the alleged violation, or was unaware that the driver was using the vehicle to engage in activities subject to Section 266h or 266i of, or subdivision (b) of Section 647 of, the California Penal Code.
  - 6. A spouse, registered domestic partner, or other affected third party objects to the impoundment of the vehicle on the grounds that it would create a hardship if the subject vehicle is the sole vehicle in a household. The hearing officer shall release the vehicle where the hardship to a spouse, registered domestic partner, or other affected third party created by the impoundment of the subject vehicle, or the length of the impoundment, outweigh the seriousness and the severity of the act in which the vehicle was used.
- B. Notwithstanding any provision of law, if a motor vehicle is released prior to the conclusion of the impoundment period because the driver was arrested without probable cause, neither the arrested person nor the registered owner of the motor vehicle shall be responsible for the towing and storage charges.
- C. Except as provided in subsection A above, the registered owner or his or her agent shall be responsible for all towing and storage charges related to the impoundment.

D. A vehicle removed and seized under an ordinance adopted pursuant to this section shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of the impoundment period if both of the following conditions are met:

1. The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or is another person who is not the registered owner and holds a security interest in the vehicle.
2. The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure and impoundment of the vehicle.

**9.56.250 - Storage and Sale Processing Fees.**

- A. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of the impoundment period. Neither the City nor any person having possession of the vehicle shall collect from the legal owner as described in this subsection A, or the legal owner's agent, any administrative charges imposed pursuant to Section 22850.5 of the California Vehicle Code, unless the legal owner voluntarily requested a poststorage hearing.
- B. A person operating or in charge of a storage facility where vehicles are stored pursuant to this section shall accept a valid bank credit card or cash for payment of towing, storage, and related fees by a legal or registered owner or the owner's agent claiming the vehicle. A credit card or debit card shall be in the name of the person presenting the card. For purposes of this section, "credit card" is as defined in subdivision (a) of Section 1747.02 of the California Civil Code. Credit card does not include a credit card issued by a retail seller.
- C. A person operating or in charge of a storage facility described in subsection B above who violates subsection B shall be civilly liable to the owner of the vehicle or the person who tendered the fees for four times the amount of the towing, storage, and related fees not to exceed five hundred dollars (\$500).
- D. A person operating or in charge of the storage facility described in paragraph (2) shall have sufficient funds on the premises of the primary storage facility during normal business hours to accommodate, and make change for, a reasonable monetary transaction.
- E. Credit charges for towing and storage services shall comply with Section 1748.1 of the California Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies on rates.

- F. A failure by a storage facility to comply with any applicable conditions set forth in this subdivision shall not affect the right of the legal owner or the legal owner's agent to retrieve the vehicle if all conditions required of the legal owner or legal owner's agent under this subdivision are satisfied.

**9.56.260 - Additional Release Requirements and Procedures.**

- A. The legal owner or the legal owner's agent shall present to the City person in possession of the vehicle, or any person acting on behalf of those agencies, a copy of the assignment, as defined in subdivision (b) of Section 7500.1 of the California Business and Professions Code, a release from the City, if required by the City Administrator decides to require and develops a form for release the release of impounded vehicles, a government-issued photographic identification card, and any one of the following as determined by the legal owner or the legal owner's agent: a certificate of repossession for the vehicle, a security agreement for the vehicle, or title, whether or not paperless or electronic, showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The City shall not require any documents to be notarized. The City, impounding agency, or any person acting on behalf of those agencies may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the California Business and Professions Code, or to demonstrate, to the satisfaction of the law enforcement agency, impounding agency, or any person acting on behalf of those agencies that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the California Business and Professions Code.
- B. Administrative costs authorized under subdivision (a) of Section 22850.5 of the California Vehicle Code shall not be charged to the legal owner of the type specified in paragraph 8.56.240 D.1. who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing.
  - 1. A legal owner or a legal owner's agent is not required to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. Neither the City, nor the, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall require any documents other than those specified in this subsection B.
  - 2. The legal owner or the legal owner's agent shall be given a copy of any documents he or she is required to sign, except for a vehicle evidentiary hold log book.

3. The City, impounding agency, or any person acting on behalf of those agencies, or any person in possession of the vehicle, may photocopy and retain the copies of any documents presented by the legal owner or legal owner's agent.
  4. The legal owner shall indemnify and hold harmless a storage facility from any claims arising out of the release of the vehicle to the legal owner or the legal owner's agent and from any damage to the vehicle after its release, including the reasonable costs associated with defending any such claims.
- C. A legal owner, who meets the requirements for release of a vehicle pursuant to 8.56.240 D.1, or the legal owner's agent, shall not be required to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent.
  - D. A legal owner, who meets the requirements for release of a vehicle pursuant to 8.56.240 D.1, or the legal owner's agent shall not release the vehicle to the registered owner of the vehicle or an agent of the registered owner, unless the registered owner is a rental car agency, until after the termination of the impoundment period. Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the seizure and impoundment.

**9.56.270 - Release of Rental Car.**

- A. A vehicle removed and seized pursuant to an ordinance adopted pursuant to this section shall be released to a rental car agency prior to the end of the impoundment period if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure and impoundment of the vehicle.
- B. The owner of a rental vehicle that was seized under an ordinance adopted pursuant to this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency shall not rent another vehicle to the driver of the vehicle that was seized until the impoundment period has expired.
- C. The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the seizure and impoundment.

**Article III - Miscellaneous**

**9.56.310 - Amendments to State Laws Adopted Herein.**

In the event that any California statute adopted or referred to in this Chapter is amended or succeeded by another enactment of the California Legislature, it shall be deemed such amendments shall be automatically deemed adopted as part of this

Chapter of the Oakland Municipal Code as if fully set forth herein unless the City Council amends this Chapter to do otherwise.

**9.56.320 - State Law Requirements.**

During the enforcement of any section or subsection of this Chapter, the City will follow the relevant vehicle code's requirements for notice, post-storage hearings, vehicle release, storage facilities, and rental cars.

**9.56.330 - Promulgation of Administrative Instructions and Protocols.**

The City Administrator or her/his designee may promulgate vehicle impoundment administrative procedures or regulations to ensure the implementation of this Chapter complies with state law and with the City Council's policy directives. But the lack of such regulations shall not delay or otherwise impede the application or enforcement of this Chapter.

**9.56.340 - City Administrator to Assign.**

The City Administrator or her/his designee shall designate the departments or agencies within the City authorized to implement this Chapter.

**SECTION 3. Information to Oakland Residents and Business Regarding Waste Disposal Options.**

The City Administrator is directed to develop and execute a program to better inform Oakland residents and business of their options for waste disposal and what is not permitted under currently law and the franchise agreement with the Collector.

**SECTION 4. 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 5. Effective Date.**

Pursuant to the City Charter, this ordinance shall become effective within seven (7) days after adoption, or effective immediately if it receives the affirmative votes of at least six (6) councilmembers on final adoption. Except that implementation of Article VI Community Service and Article VII Reward Fund may be delayed by the City Administrator until the City Administrator determines that these Articles have sufficient funding, staffing, and procedures to be implemented.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2013

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF AND  
PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

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

1169173.4

Rfl

13 SEP 26 PM 3:56

**AN ORDINANCE ENACTING THE FOLLOWING:**

1. **A NEW OAKLAND MUNICIPAL CODE CHAPTER 8.11 PERTAINING TO ILLEGAL DUMPING AND LITTERING, DEFINING WHAT CONSTITUTES ILLEGAL DUMPING, AND SETTING ADMINISTRATIVE, CIVIL AND CRIMINAL PENALTIES**
2. **AMENDING AND RESTATING OAKLAND MUNICIPAL CODE CHAPTER 9.56 PERTAINING TO SEIZURE AND IMPOUNDMENT OF VEHICLES INVOLVED IN CERTAIN NUISANCE ACTIVITIES: PROSTITUTION, PANDERING, PIMPING, AND ILLEGAL DUMPING**

This Ordinance has two parts. The first part would add a new Chapter to the Oakland Municipal Code to address illegal dumping. This new Chapter 8.11 would add new remedies against persons illegally dumping waste matter, define what constitutes illegal dumping, and set out how penalties for illegal dumping may be assessed. It sets out additional categories of persons who may be responsible for illegal dumping penalties.

The second adds additional state law requirements to existing O.M.C. Chapter 9.56 pertaining to seizure of vehicles involved in certain nuisance activities pertaining to illegal dumping and prostitution activities.