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OAKLAND

CITY OF OAKLAND
AGENDA REPORT

2008 DEC -4 AM 10:00

To: Office of the City Administrator
Attn: Dan Lindheim
From: Oakland Police Department and Office of the City Attorney
Date: December 16, 2008

Re: A Report and Proposed Ordinances Amending Various Provisions of The Oakland Municipal Code (OMC) To Prohibit Nuisance and Other Illegal Activities In The City In Order To Improve The Quality of Life Of Oakland Residents:

- (1) Ordinance Adding Chapter 9.10 To The OMC To Prohibit Aggressive Solicitation;**
- (2) Ordinance Repealing OMC Section 5.18.030 Which Prohibits Solicitation Of Contributions For Oneself in Public;**
- (3) Ordinance Adding OMC Section 9.08.175 Prohibiting Trespassing;**
- (4) Ordinance Adding OMC Section 9.08.020 Prohibiting Urinating and Defecating In Public;**
- (5) Ordinance Adding OMC Chapter 9.58 Prohibiting Loitering In Public For The Purpose Of Engaging In Illegal Drug Activity;**
- (6) Ordinance Amending OMC Sections 9.08.160 (Sitting or Lying In the Street or Sidewalk), 9.08.170 (Blocking Pedestrian Travel), 9.08.180 (Possessing An Open Container of Alcohol In Public View) and 9.08.260 (Loitering For The Purpose Of Prostitution) Authorizing the Prosecution of Violations as Either Infractions or Misdemeanors;**
- (7) Ordinance Repealing OMC section 9.08.100 Prohibiting Public Drunkenness; and**
- (8) Ordinance Adding OMC Section 1.28.015 to Codify The Grant of Discretion To The Prosecuting Attorney To Charge Certain Misdemeanor Violations As Infractions**

SUMMARY

Chief of Police Wayne Tucker and City Attorney John Russo submit this report and the accompanying ordinances to the City Council and recommend adoption of these ordinances. The ordinances repeal certain outdated code sections, add new provisions prohibiting disorderly, unsanitary, harmful and criminal conduct. Other ordinances amend certain code sections to grant

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discretion to the prosecutor to reduce certain misdemeanor offenses and charge these violations as infractions. These ordinances will strengthen the City's Community Policing Program, support the City's Measure Y goals, improve the operations of the City's Special Prosecution Team, and are integral to the City's Crime Fighting Strategic Plan.

FISCAL IMPACT

Expanding the number of Municipal Code sections for which police officers can cite or arrest, should increase City revenues, as criminal fines increase. The majority of fines for Municipal Code violations are paid back to the City. However, fines collected for state law violations are split with the County. Additionally, by repealing outdated sections of the Municipal Code, potential liabilities for wrongful arrests or civil rights violations will be eliminated. The City may also experience an increase in tax revenues if the implementation of these ordinances improves the quality of life, health and safety in the City, which may result in an increase in property values and business revenues.

There is no anticipated increase in Police Department expenses, as these ordinances will be enforced under existing staffing levels. It is anticipated that the violations will be handled in court by the Special Prosecutors of the City Attorney's Office, who are fully funded.

BACKGROUND

On June 17, 2008, the City Council passed Resolution No. 814021 C.M.S. authorizing and funding the Misdemeanor and Infraction Prosecution Program. The program allows the City to become a participant in the criminal justice system, work with the District Attorney and the Alameda County Superior Court to criminally charge and prosecute quality of life offenses, and impose "community service" conditions. That work will remain and become even more critical if Oakland is to be successful in reducing crime in the City. Upon funding of the program, the City Attorney's Office hired three criminal prosecutors (Special Prosecutors) to work in conjunction with the Oakland Police Department and the Alameda County District Attorney's Office to increase prosecution of the criminal offenses committed in Oakland. The focus of the prosecutors' work is to support the Police Department's ability to charge and prosecute infractions and misdemeanors which, though not serious or violent crimes, nevertheless erode and negatively impact the quality of life for all residents of the City of Oakland.

To supplement the ability of the Police Department and Special Prosecutors to attack lower level crimes, a comprehensive review of the Oakland Municipal Code (OMC) was performed to identify areas where more legal tools were needed to deter crime, target chronic offenders, and make social services available to help at-risk individuals. This review revealed that some OMC sections were outdated and needed to be replaced with updated ordinance, or repealed due to the existence of adequate state law. Furthermore, because charging some violators with misdemeanor offenses may not be the most appropriate route in some cases, these ordinances

grant discretion to the prosecutor to reduce certain misdemeanors and charge them as infractions¹ reducing the maximum penalty to a fine without jail time. Overall, Special Prosecutors handling of these offenses will accomplish the goal of diverting at-risk individuals to community service or social services programs.

The Chief of Police opines that consistent misdemeanor charging of quality-of-life crimes and offenses will empower the community, police officers, and provide a means by which the City can reduce crime in Oakland neighborhoods. Effective law enforcement depends on effective partnerships. As the Oakland Police Department's April 22, 2008 Crime-Fighting Council Report indicates, "*partnerships with residents, the business community, the City Attorney's office, and other members of the criminal justice system are critical to the success of a sustainable crime reduction strategy. If the City does not develop these effective partnerships and engage the stakeholders that have the capacity to effect change within their sphere of influence, the City will have little success in reaching its sustainable crime reduction goal.*"

Outdated ordinances which will be repealed are section 5.18.030 (solicitation/begging in public) and section 9.08.100 (public drunkenness).

Four proposed ordinances address aggressive solicitation (new OMC chapter 9.10), trespassing (new OMC section 9.08.175), urinating and defecating in public (new OMC section 9.08.020), and loitering for the purpose of illegal drug activity (new OMC chapter 9.58).

KEY ISSUES AND IMPACTS

Oakland continues to seek a solution to the outside perception and reality of high crime in Oakland, and find ways to protect the safety of residents and improve the quality of life in Oakland neighborhoods. This commendable goal has been difficult to achieve because crime is a complex issue, the causes of crime are varied, and significantly more resources were needed to achieve the City's crime fighting strategic plan. Now, with the hiring of the Special Prosecutors, the City and court have the capacity to prosecute a larger number of Quality of Life crimes which occur in Oakland.

In order to best exploit the new resource of the Special Prosecutors, and the increase in Police Department sworn staff to over 803 officers (as of November 15, 2008), the OMC needed to be examined to determine if additional legal tools were needed. The review of the OMC during the past months has shown that a number of amendments to the OMC would increase OPD's ability to approach the City's goal of improving the overall quality of life for its residents by reducing lower level crime. The anticipated reduction in lower level crime will allow OPD to devote more of its limited resources to fighting and solving serious crime.

¹ OMC violations are classified as either misdemeanor (punishable by a fine up to \$1,000 and/or up to 6 months in jail) or infraction (punishable by a fine up to \$500 and no jail time). Violations which can be optionally charged at more than one level of seriousness are commonly referred to a "Wobblers."

Moreover, by granting discretion to the prosecuting attorney to charge certain misdemeanors as infraction offenses provides the flexibility to pursue strategic prosecutions of violators. Handling of violations by the Special Prosecutors enhances the City's ability to provide intervention services to at-risk persons, or impose alternative jail "restorative justice" conditions that make sense for Oakland neighborhoods. An equally important component of the Program will be to provide "intervention" services to first time offenders whose criminal path may be changed if adequate support services, counseling, and job training are provided. The Program has a "restorative justice" component which will require certain offenders to restore the community they harmed. These amendments will strengthen the OPD's Strategic Crime Fighting Plan, further its Community Policing and Measure Y goals, empower the City's communities, and come a step closer to achieving the Council's goals of protecting the safety of residents and improving the quality of life in our neighborhoods.

(1) Aggressive Solicitation Ban (new OMC Chapter 9.10) and the Repeal of OMC Section 5.18.030

OMC section 5.18.030 was passed circa 1957, and is an outright ban on any public begging or solicitation of alms. In the intervening years, there have been significant developments in judicial decisions which have held that people have a constitutional right to solicit alms for themselves. Thus, section 5.18.030 is obsolete and should be repealed.

The constitutional right to solicit alms for oneself is not without limitation, and potential contributors have an equal right not to be harassed if they choose not to make donations. Additionally, robberies near automated bank tellers and check cashing business can be reduced, and the fear and apprehension caused by those soliciting alms near such locations, if solicitations are prohibited in close proximity to such places.

These proposed ordinances preserve the right of persons to solicit alms for themselves, while protecting the rights of those who do not wish to contribute alms, by banning aggressive solicitation. "Aggressive" behavior is clearly defined and includes soliciting – in a manner which causes the object of solicitation to fear bodily harm, by intentionally touching the object, by blocking the path of the object, and by physically following the object.

This proposed ordinance creates a 20 foot zone around automated teller machines (ATM) and check cashing businesses where no solicitations can be conducted. It also prohibits solicitation in the roadway, though not from parked cars.

(2) Adding OMC Section 9.08.175 Prohibiting Trespassing

Trespassing on private or business property adversely impacts the quality of life in neighborhoods by enabling persons to use and sell drugs, litter, and loiter, without fear of police intervention. Similar Penal Code sections require someone with legal control of the property to make a report that someone does not have permission to be on the property and that the person has failed to leave upon demand. It is not always practical for people to report trespassing when the business is closed and/or the owner is not present.

This proposed ordinance provides property owners with the ability to care for their property (as required by law) while providing potential violators with clear notice by posting signage stating that the property is closed to unauthorized persons during certain hours and that violators are subject to citation and/or arrest.

(3) Adding OMC Section 9.08.020 Prohibiting Urinating and Defecating In Public

Persons urinating and defecating in public places and/or places open to public view is offensive, against common decency, adversely impacts the quality of life in neighborhoods and creates a nuisance and public health hazard.

This proposed ordinance requires persons to utilize urinals, toilets or commodes located in restrooms, or using a portable or temporary toilet or other facility designed for the sanitary disposal of human waste and which is enclosed from public view.

(4) Adding OMC Chapter 9.58 Prohibiting Loitering In Public For The Purpose Of Engaging In Illegal Drug Activity

Persons who loiter in public for the purpose of engaging in drug related activities adversely impact the Quality of Life in the City and such activity is directly related to violent crime associated with drug-dealing. This activity creates an atmosphere of fear and intimidation, keeping residents indoors and unable to freely use public sidewalks without apprehension of being accosted or being the victim of random drug related violence such as drive-by shootings.

This proposed ordinance identifies and prohibits the various "markers" associated with street corner drug-dealing such as; acting as a "lookout," summoning prospective buyers by word, signal or action, exchanging objects, packages and/or currency, possession of narcotic paraphernalia and being under the influence of narcotics.

This proposed ordinance will assist police officers in investigating and deterring street corner narcotics activity. Similar provisions contained within Ordinance 12470 C.M.S. expired by its own terms (sunsetting) on March 4, 2004. Though this proposed ordinance is similar to existing state law, it classifies violations as an infraction, as compared to the higher misdemeanor classification under state law.

(5) Amending OMC Sections 9.08.160 (Sitting or Lying In the Street or Sidewalk), 9.08.170 (Blocking Pedestrian Travel), 9.08.180 (Possessing an Open Container of Alcohol In Public View) and 9.08.260 (Loitering For The Purpose Of Prostitution) To Grant Discretion To The Prosecutor To Charge Violations As Infractions Or Misdemeanors

Violations of these OMC sections are misdemeanors that are often committed by persons in dire economic situations and or in need of mental or alcohol substance abuse treatment services, or, in need of protection and counseling. Though violations of these sections are all currently classified as misdemeanors, it is recognized that in some cases, community goals may be best served by reducing the charges of these violations to infractions.

This proposed ordinance grants discretion to the prosecuting attorney to reduce the violation from a misdemeanor and instead to charge them as an infraction. By doing so, violators may be given more appropriate sentences or penalties and/or be directed to treatment or counseling programs, rather than be prosecuted in misdemeanor court. It is anticipated that the Special Prosecutors will handle these cases in criminal court, and will work with violators to divert appropriate cases to counseling or treatment program.

(6) Repealing OMC section 9.08.100 Prohibiting Public Drunkenness

OMC Section 9.08.100 prohibiting public intoxication was enacted prior to Penal Code section 647(f) and is now superfluous and should be repealed. Published case law has declared that local ordinances regulating this conduct is preempted by the Penal Code. Violators can still be prosecuted under state law.

(7) Adding OMC Section 1.28.015 to Codify The Grant of Discretion To The Prosecuting Attorney To Charge Certain Misdemeanor Violations As Infractions

This is a technical ordinance to codify the creation of a “wobler” category of misdemeanors, and the granting of discretion to the prosecuting attorney to reduce the enumerated misdemeanor violations to the infraction level.

PROJECT DESCRIPTION

This project expands and furthers the City’s ability to meet Council’s goals to reduce overall crime and to improve the Quality of Life for all City residents. It also provides the community with an opportunity to clarify its expectations and standards relative to quality of life issues of loitering, loitering for the purpose of drug-dealing, trespassing, urinating and defecating in public and aggressive panhandling. This set of ordinances provides citizens with the means to protect their property and neighborhoods, and provides the police with the ability to enforce those community standards with prosecutions by the City Attorney’s Office. These amendments will strengthen the City’s Community Policing Program, support the City’s Measure Y goals, improve the operations of the City’s Special Prosecution Team, and are integral to the City’s Crime Fighting Strategic Plan.

While a number of existing Penal Code sections address some of these issues, they are all misdemeanor violations which require prosecution by the District Attorney’s Office. The District Attorney’s office is an independent agency which, given the high level of serious and violent crime in Oakland, is not able to prioritize the prosecution of Quality of Life offenses to the level needed to effectuate the City’s goal of remedying crime in the City. Passage of these ordinances will enable the Special Prosecutors of the City Attorney’s Office to charge these violations. Also, by granting discretion to the prosecutor to charge certain misdemeanor violations as infractions, the Special Prosecutors, in conjunction with the OPD, will be able to

strategically address the needs of violators, including connecting them with social services, “restorative justice” programs, and counseling as the facts of each case warrant.

It is commonly recognized that Quality of Life issues are at the root of many of our community and crime concern problems. This set of ordinances provides the “missing link” in community policing enabling the reporting, identification and prosecution of quality of life issues that have chronically impacted the City of Oakland.

This set of ordinances provides officers with a larger “toolbox” to address community problems. Officers will be trained and understand that the purpose of these ordinances is not to generate statistics or revenue, but to provide quality policing services which emphasize the “spirit of the law” and not the “letter of the law.” The Police Department is sensitive to the fact there may be concerns about how these violations are handled, in relationship to whether a warning is more appropriate than a citation or arrest. A key point to consider is the “intent” of the violator. It is possible with some of these ordinances that a person could find him/herself in “technical” violation of one of these sections by inadvertent action or mistake of fact. The training will emphasize the utilization of proper judgment and decision making when enforcing these codes, recognizing the importance of community awareness, understanding, and support for this project.

SUSTAINABLE OPPORTUNITIES

Economic: With the reduction of crime, the City may experience economic growth through business development and an increase in property values, which will raise tax revenues and enable the City to provide a higher level of overall service to its residents.

Environmental: Crime breeds blight and degradation of a community. Prosecution of lower level “quality of life” offenses will create a cleaner City, motivating citizens to get involved in the Departments efforts to improve the quality of life in the City of Oakland.

Social Equity: The creation of “wobbler” misdemeanors, which can be lowered to infraction offenses by the prosecuting attorney, provides for more tailored penalties and recognizes that a number of persons who commit quality of life violations are in dire economic situations, or in need of substance or alcohol counseling or victim protection services...


DISABILITY AND SENIOR ACCESS

There are no ADA or senior citizen access issues identified in this report

RECOMMENDATION

Staff recommends that Council accept this report, recommendations, and approve the proposed ordinances explained above.


Respectfully Submitted,



John Russo
City Attorney

Prepared by:
Pelayo A. Llamas, Jr.
Deputy City Attorney


Respectfully submitted,



Wayne G. Tucker
Chief of Police

Prepared by:
Lt. Lawrence Green
Bureau of Field Operations

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:



Office of the City Administrator

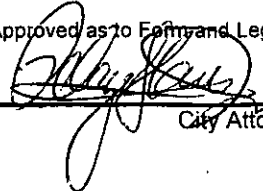
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2008 DEC -4 AM 10:00

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

Approved as to Form and Legality


City Attorney

INTRODUCED BY VICE-MAYOR LARRY REID

**AN ORDINANCE ADDING CHAPTER 9.10 TO THE
OAKLAND MUNICIPAL CODE TO PROHIBIT
AGGRESSIVE SOLICITATION**

WHEREAS, aggressive solicitation for money or things of value directed at residents, visitors, tourists and merchants in areas of the City open to the public imperils their safety and welfare. This conduct in turn jeopardizes the City's economy by discouraging visitors and prospective customers from coming to Oakland for business, recreation, and shopping. This conduct also threatens to drive City residents out of the City for their recreational and shopping activities. Further, aggressive solicitation undermines the public's basic right to be in and enjoy public places without fear or apprehension that they will be harassed or aggressively pursued by others seeking handouts.

WHEREAS, solicitation of funds in the proximity of automated teller machines and check-cashing establishments is particularly threatening to customers of those establishments because of the possibility that they may become the victim of theft or a robbery; and

WHEREAS, solicitation of funds from persons in automobiles on the roadway causes traffic congestion and poses a threat of injury to persons making solicitations, and to other users of the roadway; and

WHEREAS, by enacting an ordinance prohibiting aggressive solicitation, the City of Oakland will recognize the right of economically disadvantaged persons to solicit the contribution of food or money to provide themselves with life's necessities while also protecting the general public from aggressive panhandlers who do not respect the rights of the general public to refuse to make contributions to any person who solicits contributions for themselves; and

WHEREAS, by enacting a local ordinance, the City Council can provide for the prosecuting attorney to exercise discretion in reducing a violation from a misdemeanor to an infraction; now, therefore

THE 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 9.10, added to Title 9 -- Public Peace, Welfare, Morals and Welfare of the Oakland Municipal Code, to read as follows:

Chapter 9.10 AGGRESSIVE SOLICITATION BAN

9.10.010 Definitions.

As used in this Chapter, the following terms have the following meanings:

A. "Aggressive manner" means:

1. Approaching or speaking to a person, or following a person before, during or after soliciting if that conduct is intended or is likely to cause a reasonable person to fear bodily harm to oneself or to another, or damage to or loss of property or otherwise be intimidated into giving money or other thing of value; or
2. Intentionally touching or causing physical contact with another person without that person's consent in the course of soliciting; or
3. Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact; or
4. Using violent or threatening gestures toward a person solicited.

B. "Check cashing business" means any person duly licensed by the Attorney General to engage in the business of cashing checks, drafts or money orders for consideration pursuant to Section 1789.31 of the California Civil Code.

C. "Soliciting" means asking another person for money or objects of value, with the intention that the money or thing of value be transferred at that time, and at that place. Soliciting shall include using the spoken, written, or printed word, bodily gestures, signs, or other means with the purpose of obtaining an immediate donation of money or other thing of value .

D. "Public place" means an area in the City of Oakland open to the public or exposed to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles and public transportation vehicle located on the driven portion of a roadway, whether moving or not, and buildings open to the general public, including those which serve food or drink,

or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

9.10.020 Aggressive Soliciting Prohibited.

A. It is unlawful for any person to solicit in an aggressive manner in any public place.

B. No person shall solicit within twenty (20) feet of any entrance or exit of any check cashing business or within twenty feet of any automated teller machine without the consent of the owner of the property or another person legally in possession of such facilities. Provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the facility.

C. No person shall solicit an operator or other occupant of a motor vehicle while such vehicle is located on the driven portion of any street or highway, for the purpose of performing or offering to perform a service in connection with such vehicle or otherwise soliciting donations. Provided, however, that this Subsection shall not apply to services rendered in connection with emergency repairs requested or summoned by the operator or passenger of such vehicle.

9.10.030 Penalties

Any person violating any provision of this Chapter shall be guilty of a misdemeanor or an infraction pursuant to the provisions of section 1.28.015 of this Code. The applicable fines shall be imposed in accordance with Chapter 1.28 of this Code.

Section 3. Severability

If any section, paragraph clause, phrase, or word in this ordinance is declared invalid or unconstitutional by any court with jurisdiction to make such decision, said decision shall not affect the remaining portions of this ordinance. The City Council hereby finds and declares that it would have enacted this ordinance without that section, paragraph, clause, phrase, or word.

Section 4. 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, _____, 200__

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, KAPLAN, 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

DATE OF ATTESTATION: _____

**AN ORDINANCE ADDING CHAPTER 9.10 TO THE
OAKLAND MUNICIPAL CODE TO PROHIBIT
AGGRESSIVE SOLICITATION**

NOTICE AND DIGEST

This Ordinance adds Oakland Municipal Code Chapter 9.10 and establishes a prohibition on aggressive solicitation (panhandling) in any public place in the City of Oakland. It also prohibits any type of solicitation closer than 20 feet from an Automated Teller Machine (ATM) or check cashing establishment, solicitation to any person who is in an automobile located in a roadway. "Aggressive solicitation" is defined to mean soliciting in a way that causes a reasonable person to fear harm of property damage, intentionally touching a person in the course of solicitation; and blocking or interfering with a person's free passage.

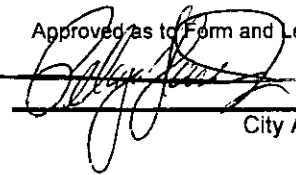
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OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

Approved as to Form and Legality



City Attorney

INTRODUCED BY VICE-MAYOR LARRY REID

AN ORDINANCE TO REPEAL SECTION 5.18.030 OF THE OAKLAND MUNICIPAL CODE WHICH PROHIBITS SOLICITATION OF CONTRIBUTIONS FOR ONESELF IN PUBLIC

WHEREAS, the Oakland City Council periodically amends the Oakland Municipal Code in order to conform with developments in statutory and case law; and

WHEREAS, the constitutionality of Oakland Municipal Code section 5.18.030, which prohibits solicitation on one's own behalf for contribution of anything of value while in a public place, has become dubious since it was passed in 1957 (added by Ord. 5178 C.M.S., 2-19-57; amended by Ord. 9087 C.M.S., 11-5-74) due to the development of constitutional law in the intervening 50 years; and

WHEREAS, by repealing Oakland Municipal Code section 5.18.030, the Oakland Municipal Code will be corrected to reflect the current state of the law; now, therefore

THE 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. Section 5.18.030 of the Oakland Municipal Code is hereby repealed to strike the following language:

~~**5.18.030 Soliciting for private needs.**~~

~~No person shall solicit contributions for himself or herself in or upon any public street or public place in the city.~~

Section 3. 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, _____, 200_

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, KAPLAN, 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

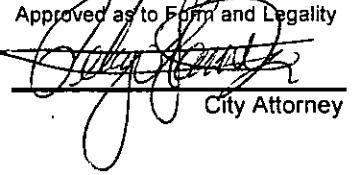
DATE OF ATTESTATION: _____

**AN ORDINANCE TO REPEAL SECTION 5.18.030 OF THE
OAKLAND MUNICIPAL CODE WHICH PROHIBITS
SOLICITATION OF CONTRIBUTIONS FOR ONESELF IN
PUBLIC**

NOTICE AND DIGEST

This Ordinance repeals Oakland Municipal Code section 5.18.030. Section 5.18.030 prohibited solicitation and begging for oneself in all public places.

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Approved as to Form and Legality

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

INTRODUCED BY VICE-MAYOR LARRY REID

AN ORDINANCE ADDING SECTION 9.08.175 TO THE OAKLAND MUNICIPAL CODE PROHIBITING TRESPASSING AFTER BEING GIVEN NOTICE

WHEREAS, trespassing on private or business property traditionally requires that the landowner, manager, or tenant make a report to the police that a person does not have permission to be on a property and has failed to leave; and

WHEREAS, it is impractical for non-resident landowners, or business owners, to report trespassing to the police when the violation occurs during times when the business is closed or the property manager is not present; and

WHEREAS, trespassing in doorways, common areas, patios, or other similar places, is the cause of nuisances such as graffiti, littering, illegal drug use and sales, loitering, and unsanitary conditions; and

WHEREAS, by the use of posted writings stating the time during which such areas are to be closed to unauthorized persons, potential violators are provided with clear notice of when and where they will be trespassing, now, therefore

THE 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 - Section 9.08.175 of the Oakland Municipal Code is hereby amended to add the following section:

9.08.175 REMAINING ON PRIVATE OR BUSINESS PROPERTY AFTER BEING REQUESTED TO LEAVE.

- A. No person shall willfully remain upon any private property or business premises after being notified to leave by the owner, lessee, other person in charge of the premises.
- B. 1. No person, without permission, expressed or implied, of the owner, lessee, or other person in charge of private property or business

premises shall enter upon such private property or business premises after having been notified by the owner, lessee, or other person in charge of the premises to keep off or to keep away from the property.

2. Any person who remains upon or returns to the private property or business premises within 24 hours after being told to leave or being cited for said violation of Subsection B.1. above, and who is again notified by the owner, lessee, or other person in charge of the property to leave, or by a police officer at the specific request of said person in charge, and who refuses to do so, shall be in violation of this Section.

3. Any person who remains upon or returns to the private property or business premises within 120 days after the date of conviction of a violation of Subsection B.1. above, and who is again notified by the owner, lessee, or other person in charge of the property to leave, or by a police officer, at the specific request of the person in charge, and who refuses to do so, shall be in violation of this Section.

C. **Notice.** The notification referred to in Subsections A and B above may be oral or in the form of a written notice, posted in a conspicuous place, describing the specific area and hours during which persons are to keep off or to keep away from the property. A written Notice shall show the dates the notice was posted and will expire. The expiration date shall be no later than six (6) months after posting.

The written notice shall be printed or posted in a conspicuous manner at every walkway and driveway entering any enclosed property or portion thereof and at a minimum of every fifty (50) feet along the boundary of any enclosed lot. This requirement is met if at least one sign is conspicuously printed or posted on the outside of every structure on such property, so as to be readable from each walkway and driveway entering such property. The sign shall include the following wording:

NO TRESPASSING

(description of location)

From __:__ p.m. to __:__ a.m.

**No Entry Without Permission
Oakland Municipal Code 9.08.175**

This notice expires _____, 20__

The language "NO TRESPASSING", "From ___:___ p.m. to ___:___ a.m.", and "No Entry Without Permission" shall be at least two inches high.

D. Penalty.

- 1. Any person who violates Subsection B.1 of this Section shall be guilty of an infraction, the penalty for which shall be imposed in accordance with Chapter 1.28 of this Code.
- 2. Any person who violates Subsection B.2 or B.3 of this Section shall be guilty of a misdemeanor, the penalty for which shall be imposed in accordance with Chapter 1.28 of this Code.

E. Exceptions. This Section shall not apply in any of the following instances:

- 1. Where its application results in or is coupled with an act prohibited by Section 365 of the California Penal Code or any other provision of law relating to duties of innkeepers and common carriers; or
- 2. Where its application would result in an interference with or inhibition of a lawful exercise of a constitutionally protected speech or assembly.

Section 3. 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, _____, 200__

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, KAPLAN, 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

DATE OF ATTESTATION: _____

**AN ORDINANCE ADDING SECTION 9.08.175 OF THE
OAKLAND MUNICIPAL CODE PROHIBITING
TRESPASSING AFTER BEING GIVEN NOTICE**

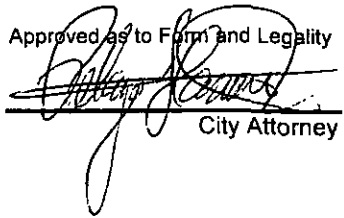
NOTICE AND DIGEST

This Ordinance adds a new section to the Oakland Municipal Code. It adds OMC Section 9.08.175 prohibiting trespassing on private or business property after being given oral or written notice.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 DEC -4 AM 10:01

Approved as to Form and Legality



City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

INTRODUCED BY VICE-MAYOR LARRY REID

AN ORDINANCE ADDING SECTION 9.08.020 TO THE OAKLAND MUNICIPAL CODE PROHIBITING PERSONS FROM DISCHARGING HUMAN BODILY WASTE IN PUBLIC

WHEREAS, persons urinating and defecating in public places or places open to public view are performing acts which are offensive to the senses and common decency, and create a nuisance which threatens the public health and welfare; and

WHEREAS, the discharge of human waste on public streets, parks, sidewalks, parking lots, or on the sides of public or private buildings or their landscaping is destructive, and not acceptable to the residents of the City of Oakland, and degrades the quality of life for visitors, residents and merchants alike, and the Oakland City Council can ban such activity; now, therefore

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

Section 1. 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 of the Oakland Municipal Code is hereby amended to add the following section:

9.08.020 URINATING OR DEFECATING IN PUBLIC

- A. No person shall urinate or defecate in or upon any public street, sidewalk, alley, roadway, plaza, beach, park, public building or other publicly maintained facility or place, or in any place open to the public or exposed to public view, except when using a urinal, toilet or commode located in a restroom, or when using a portable or temporary toilet or other facility designed for the sanitary disposal of human waste and which is enclosed from public view.
- B. Any person violating this Section shall be guilty of a misdemeanor or an infraction pursuant to the provisions of section

1.28.015 of this Code. The applicable fines shall be imposed in accordance with Chapter 1.28 of this Code.

Section 3. 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, _____, 200_

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, KAPLAN, 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

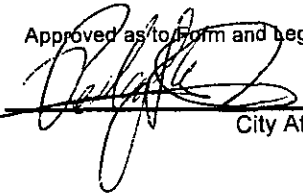
DATE OF ATTESTATION: _____

**AN ORDINANCE ADDING SECTION 9.08.020 TO THE
OAKLAND MUNICIPAL CODE PROHIBITING THE
RELEASE OF HUMAN BODILY WASTE IN PUBLIC**

NOTICE AND DIGEST

This Ordinance adds a new section to the Oakland Municipal Code. It adds section 9.08.020 to prohibit humans from urinating or defecating in public or in public view.

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2008 DEC -4 AM 10:01


City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

INTRODUCED BY VICE-MAYOR LARRY REID

AN ORDINANCE ADDING CHAPTER 9.58 TO THE OAKLAND MUNICIPAL CODE PROHIBITING LOITERING IN PUBLIC FOR THE PURPOSE OF ENGAGING IN ILLEGAL DRUG ACTIVITY

WHEREAS, there has been a continual problem in the City of Oakland with individuals loitering in public for the purpose of engaging in drug related activities, not limited to the sales or purchase of illegal drugs, especially in front of and around alcohol beverage sale establishments; and

WHEREAS, the City finds that persons who loiter or linger for the aforementioned purpose jeopardize the public's safety and welfare, and increase fear among the community, and such loitering activity is a factor which not only depreciates the value of property upon which such activity occurs, but also depreciates the value of adjacent and surrounding properties, and adversely affects the security and well being of residents, the city's image, business climate, potential development, and housing costs; and

WHEREAS, state law contained in California Health and Safety Code section 11530 currently prohibits loitering for the purpose of engaging in drug related activities, violations thereof being a misdemeanor; and

WHEREAS, an appellate court in California has upheld the constitutionality of California Health and Safety Code section 11530 et seq.; and

WHEREAS, California Health and Safety Code section 11538 specifically provides for local legislation in this area; and

WHEREAS, the City believes that prescribing the lower penalty of infraction through the Oakland Municipal Code for the aforementioned offense would provide an additional and necessary tool to effectively address the stated public nuisance in Oakland than the misdemeanor trial process would; and

WHEREAS, the City Council, previously enacted Ordinance No. 12470 C.M.S. on February 25, 2003, which was a prohibition on loitering for the purpose of illegal drug activity; and

WHEREAS, Ordinance No. 12470 C.M.S. expired by its own terms (sunsetting) effective March 4, 2004; and

WHEREAS, the City Council, as the legislative body of the City, has an obligation pursuant to the City Charter and the Oakland Policy Plan to protect Oakland's physical environment, conserve existing neighborhoods and protect the health, safety, and welfare of the citizens of Oakland; and

WHEREAS, in order to further the ability of the Oakland Police Department to protect the quality of life and safety of the residents of the City of Oakland, the City Council finds that it is in the City's best interest to re-enact the anti-drug loitering ordinance, now, therefore

THE 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. That the City Council finds it is appropriate to make violations of this Ordinance an infraction, rather than a misdemeanor as set forth in similar state law; and

Section 3. Chapter 9.58 is added to Title 9 -- Public Peace, Welfare, Morals and Welfare of the Oakland Municipal Code, to read as follows:

Chapter 9.58 LOITERING FOR THE PURPOSE OF ENGAGING IN ILLEGAL DRUG ACTIVITY

9.58.010 Definitions.

As used in this Chapter, the following terms have the following meanings:

A. "Loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime, or attempting to commit a crime, as opportunity may be discovered.

B. "Public place" means an area open to the public or exposed to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles and bicycles, whether moving or not, and buildings open to the general public, including those which serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

9.58.020 Loitering for purposes of illegal drug activity.

A. It is unlawful for any person to loiter in any public place in a manner and under circumstances exhibiting the purpose or the intent to commit a drug-related offense specified in Chapter 6 (commencing with Section 11350) and Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code.

B. Among circumstances that may be considered in determining whether a person has the requisite purpose or intent to engage in drug-related activity are that the person:

1. Acts as a "lookout." For the purposes of this chapter the term lookout means one who uses signals or language to warn others that law enforcement officers are in the area.
2. Transfers small objects or packages for currency in any fashion, including a furtive fashion.
3. Tries to conceal himself or herself or any object that reasonably could be involved in an unlawful drug-related activity.
4. Uses signals or language indicative of summoning purchasers of illegal drugs.
5. Repeatedly beckons to, stops, attempts to stop, or engages in conversations with passersby, whether on foot, bicycle, or in motor vehicle, indicative of summoning purchasers of illegal drugs.
6. Repeatedly passes to or receives from passersby, whether on foot, bicycle, or in a motor vehicle, money or small objects.
7. Is under the influence of a controlled substance or possesses narcotic or drug paraphernalia. For the purpose of this paragraph, "narcotic or drug

paraphernalia” means any device, contrivance, instrument, or apparatus designed or marketed for the use of smoking, injecting, ingesting, or consuming marijuana, hashish, PCP, or any controlled substance, including, but not limited to, roach clips, cigarette papers, and rollers designed or marketed for use in smoking or consuming a controlled substance.

8. Has been convicted in any court within this state, within five years prior to the conviction under this section, of any violation involving the use, possession, or sale of any of the substances referred to in Chapter 6 (commencing with Section 11350) of Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code, or has been convicted of any violation of those provisions or substantially similar laws of any political subdivision of this state or any other state.

9. Is currently subject to any order prohibiting his or her presence in any high drug activity geographic area.

10. Has engaged, within six months prior to the date of violation of this section, in any behavior described in this subdivision, with the exception of subsection B.8., or in other behavior indicative of illegal drug-related activity.

C. The list of circumstances set forth in subdivision B. of this section is not exclusive. The circumstances set forth in Subsection B. should be considered particularly salient if they occur in an area that is known for unlawful drug use and trafficking, or if they occur on or in premises that have been reported to law enforcement as a place suspected of unlawful drug activity. Any other relevant circumstances may be considered in determining whether a person has the requisite intent. Moreover, no one circumstance or combination of

circumstances is in itself determinative of intent. Intent must be determined based on an evaluation of the particular circumstances of each case.

D. No officer shall be authorized to issue a citation for a violation of this Chapter until that officer has received formal training on the ordinance from the Oakland Police Department.

9.58.030 Penalty - Infraction.

Violation of Section 9.58.020 is an infraction and punishable as provided in Section 1.28.020 of the Oakland Municipal Code.

Section 4. Severability

If any section, subsection, paragraph, clause, phrase, or word in this ordinance is declared invalid or unconstitutional by any court with jurisdiction to make such decision, said decision shall not affect the remaining parts of this ordinance. The City Council hereby finds and declares that it would have enacted this ordinance without that section, paragraph, clause, phrase, or word.

Section 5. Oakland Municipal Code Chapter 1.28 is amended to add the following subsection to the list of infraction offenses:

§1.28.020.A.2.I. Section 9.58. – Loitering For the Purpose of Illegal Drug Activity.

Section 6. 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, _____, 200_

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, KAPLAN, 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

DATE OF ATTESTATION: _____

**AN ORDINANCE ADDING CHAPTER 9.58 TO THE
OAKLAND MUNICIPAL CODE PROHIBITING LOITERING
IN PUBLIC FOR THE PURPOSE OF ENGAGING IN
ILLEGAL DRUG ACTIVITY**

NOTICE AND DIGEST

This Ordinance amends Oakland Municipal Code Chapter 9.58 and establishes a prohibition on loitering in any public place in the City of Oakland for the purpose of conducting or assisting in illegal drug sales, purchases, and related activity.

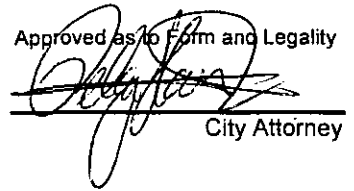
FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 DEC -4 AM 10:01

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

Approved as to Form and Legality



City Attorney

INTRODUCED BY VICE-MAYOR LARRY REID

AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE SECTIONS 9.08.160 (SITTING OR LYING ON THE STREET OR SIDEWALK), 9.08.170 (BLOCKING PEDESTRIAN TRAVEL), 9.08.180 (OPEN CONTAINER OF ALCOHOL IN PUBLIC OR ON ADJACENT PRIVATE PROPERTY), AND 9.08.260 (LOITERING FOR THE PURPOSE OF ENGAGING IN PROSTITUTION) TO GRANT DISCRETION TO THE PROSECUTING ATTORNEY TO CHARGE THESE OFFENSES AS AN INFRACTION OR A MISDEMEANOR

WHEREAS, OMC sections 9.08.160 (sitting or lying on the street or sidewalk), 9.08.170 (blocking pedestrian travel), 9.08.180 (open container of alcohol in public or on adjacent private property), and 9.08.260 (loitering for the purpose of engaging in prostitution) are currently classified as misdemeanors; and

WHEREAS, violations of OMC sections 9.08.160, 9.08.170, 9.08.180, and 9.08.260 are often committed by persons in dire economic situations or in need of mental or alcohol or substance abuse treatment services, or in need of protection and counseling; and

WHEREAS, by granting discretion to the prosecuting attorney to charge violations of OMC sections 9.08.160, 9.08.170, 9.08.180, and 9.08.260 as infractions instead of misdemeanors, appropriate violators may be given appropriate sentences or penalties, and/or be directed to treatment or counseling programs, rather than be prosecuted in misdemeanor court; now, therefore

THE 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 - Section 9.08.270 of the Oakland Municipal Code is hereby added to read as follows:

9.08.270 Penalties.

Any person violating sections 9.08.160, 9.08.170, 9.08.180, or 9.08.260 of this Chapter shall be guilty of a misdemeanor or an infraction pursuant to the provisions of section 1.28.015 of this Code. The applicable fines shall be imposed in accordance with Chapter 1.28 of this Code.

Section 3.- This Ordinance shall become 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, _____, 200__

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, KAPLAN, 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

DATE OF ATTESTATION: _____

AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE SECTIONS 9.08.160 (SITTING OR LYING ON THE STREET OR SIDEWALK), 9.08.170 (BLOCKING PEDESTRIAN TRAVEL), 9.08.180 (OPEN CONTAINER OF ALCOHOL IN PUBLIC OR ON ADJACENT PRIVATE PROPERTY), AND 9.08.260 (LOITERING FOR THE PURPOSE OF ENGAGING IN PROSTITUTION) TO GRANT DISCRETION TO THE PROSECUTING ATTORNEY TO CHARGE THESE OFFENSES AS AN INFRACTION OR A MISDEMEANOR

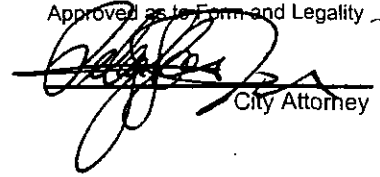
NOTICE AND DIGEST

This Ordinance amends sections of the Oakland Municipal Code. It amends sections 9.08.160 (sitting or lying in the street or sidewalk), 9.08.170 (blocking pedestrians), 9.08.180 (open container of alcohol in public or adjacent private property) and 9.08.260 (loitering for the purpose of engaging in prostitution) by granting the Prosecuting Attorney the discretion to charge violations as infractions, instead of the current misdemeanor classification.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

Approved as to Form and Legality



City Attorney

ORDINANCE No. _____ C.M.S.

2008 DEC -4 AM 10: 02

INTRODUCED BY VICE-MAYOR LARRY REID

**AN ORDINANCE REPEALING OAKLAND MUNICIPAL
CODE SECTION 9.08.100 REGARDING PUBLIC
DRUNKENNESS**

WHEREAS, the Oakland City Council periodically amends the Oakland Municipal Code ("OMC") in order to conform with developments in statutory and case law; and

WHEREAS, since OMC section 9.08.100 was enacted, Penal Code section 647(f) has been enacted, and amended by the California Legislature to prohibit public intoxication; and

WHEREAS, OMC section 9.08.100 is now superfluous and should be repealed, now, therefore

THE 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 - Section 9.08.100 of the Oakland Municipal Code is hereby repealed to strike the following language:

~~9.08.100-Drunkenness.~~

~~It is unlawful for any person to appear in any public place, or place open to public view in the city in an intoxicated or drunken condition.~~

Section 3 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, _____, 200_

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, KAPLAN, 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

DATE OF ATTESTATION: _____

**AN ORDINANCE TO REPEAL OAKLAND MUNICIPAL CODE
SECTION 9.08.100 REGARDING PUBLIC DRUNKENNESS**

NOTICE AND DIGEST

This Ordinance repeals a section of the Oakland Municipal Code. It repeals section 9.08.100 prohibiting public drunkenness.

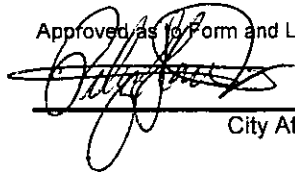
FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 DEC -4 AM 10:02

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

Approved as to Form and Legality



City Attorney

INTRODUCED BY VICE-MAYOR LARRY REID

AN ORDINANCE ADDING SECTION 1.28.015 TO THE OAKLAND MUNICIPAL CODE TO CODIFY THE DISCRETION OF THE PROSECUTING ATTORNEY TO CHARGE CERTAIN MISDEMEANOR VIOLATIONS AS INFRACTIONS

WHEREAS, Oakland Municipal Code (OMC) Chapter 1.28 sets forth the classification of OMC violations as misdemeanors or infractions; and

WHEREAS, the Oakland City Council has found and passed Ordinances which granted discretion to the prosecuting attorney to charge certain misdemeanor violations of the OMC as infractions; and

WHEREAS, OMC Chapter 1.28 should be amended to codify the discretion granted to the prosecuting attorney, now, therefore

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

Section 1 - 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 – Section 1.28.015 of the Oakland Municipal Code is hereby added to read as follows:

1.28.015 Prosecutor Discretion to Charge Certain Misdemeanors as Infractions.

A. Any person violating any of the provisions of, or failing to comply with any of the regulatory requirements of, the following code sections shall be guilty of a misdemeanor or an infraction. The complaint charging such violation shall specify whether the violation is a misdemeanor or infraction, which decision shall be that of the prosecuting attorney.

1. 9.08.020 Discharge of human bodily waste in public
2. 9.08.160 Sitting or lying on the street or sidewalk
3. 9.08.170 Blocking pedestrian travel

4. 9.08.180 Possessing an open alcoholic beverage in public or on adjacent private property
5. 9.08.260 Loitering for the purpose of engaging in prostitution.
6. 9.10.020 Aggressive Solicitation

Section 3. - This Ordinance shall become 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, _____, 200_

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, KAPLAN, 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

DATE OF ATTESTATION: _____

**AN ORDINANCE ADDING SECTION 1.28.015 TO THE
OAKLAND MUNICIPAL CODE TO CODIFY THE
DISCRETION OF THE PROSECUTING ATTORNEY TO
CHARGE CERTAIN MISDEMEANOR VIOLATIONS AS
INFRACTIONS**

NOTICE AND DIGEST

This Ordinance amends sections of the Oakland Municipal Code. It adds sections 1.28.015 to codify the granting to the Prosecuting Attorney of the discretion to charge violations of the following Oakland Municipal Code sections as infractions, instead of the current misdemeanor classification.

1. 9.08.020 Discharge of human bodily waste in public
2. 9.08.160 Sitting or lying on the street or sidewalk
3. 9.08.170 Blocking pedestrian travel
4. 9.08.180 Open alcoholic beverage in public or on adjacent private property
5. 9.08.260 Loitering for the purpose of engaging in prostitution
6. 9.10.020 Aggressive Solicitation