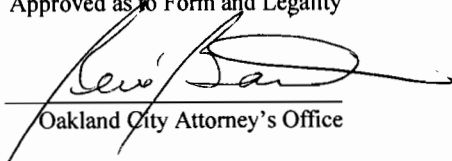


OFFICE OF THE CITY CLERK
Introduced by Councilmember Patricia Kernighan


Oakland City Attorney's Office

2011 JAN 27 PM 4:42

OAKLAND CITY COUNCIL

Ordinance No. 13057 C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE SECTION 9.08.260 TO (1) PROHIBIT THE SEXUAL EXPLOITATION OF WOMEN AND CHILDREN, (2) PROHIBIT BUSINESS OWNERS FROM ALLOWING PROSTITUTION ON THEIR PROPERTY, (3) DECLARE PROSTITUTION RELATED OFFENSES LOCAL CRIMES, AND (4) CLARIFY TERMS RELATED TO PROSTITUTION OFFENSES

WHEREAS, prostitution and sex trafficking are part of a global criminal enterprise where women are brought into the United States from other countries, moved through interstate lines, or sold as local prostitutes in city streets or through commercial establishments such as massage parlors; and

WHEREAS, prostitution and sex trafficking now involve children with more frequency, and Oakland law enforcement officials who investigate prostitution in Oakland have documented an alarming increase in prostitution incidents involving young girls; and

WHEREAS, according to the National Center for Missing and Exploited Children, girls become victims of prostitution, on average between the ages of twelve and fourteen years old; and

WHEREAS, studies cited by the U.S. Department of Justice indicate that the majority of young girls who become involved in prostitution are lured or forced into prostitution by experienced pimps and criminals who mentally and physically abuse them to build a relationship of dependency; and

WHEREAS, according to the U.S. Department of Justice, approximately 55 percent of runaway or missing girls engage in regular prostitution, of which about 75 percent work for a pimp; and

WHEREAS, there is a serious problem of prostitution and human trafficking in Oakland which since 2006 to the present, has resulted in numerous calls for service, complaints from residents and an average of 500 to 700 arrests per year; and

WHEREAS, street prostitution and prostitution related activity in Oakland is concentrated in the area known "The Track" which runs from San Pablo Avenue in North

Oakland to 67th Street, Market Street from 30th Street to West MacArthur, West MacArthur from Broadway to Emeryville City lines, 38th Street from Telegraph Avenue to Broadway, Downtown area bounded by San Pablo Avenue, Castro Street, 18th Street and Clay Street, International Boulevard from 1st Avenue to the San Leandro City lines, MacArthur Boulevard from Fruitvale to San Leandro City lines; and

WHEREAS, within The Track and in other locations certain business establishments such as motels and massage parlors are known for facilitating and allowing prostitution activities on their premises, thereby contribute to the sexual exploitation of children and women by allowing their premises to be used as centers for prostitution, and

WHEREAS, prostitution and sex trafficking are a lucrative business which, according to local law enforcement officials, is attracting criminals from the illegal drug trade who prefer to work as pimps and panderers because of the high profit margin and due to their belief that pimping and pandering carry less risk of criminal prosecution and conviction; and

WHEREAS, prostitution and sex trafficking victimize the women and children who are exploited for sex, bring violence and fear into the affected areas, adversely impact businesses in Oakland, and discourage residents from enjoying their communities; and

WHEREAS, Oakland residents and business proprietors have voiced their concerns to City Council offices, law enforcement officials, the City Attorney's Office and other City departments regarding the widespread problem of prostitution in certain areas of Oakland; and

WHEREAS, the City Council seeks to protect the well-being of Oakland residents, support local businesses, and protect the women and children who are victims of these crimes by focusing local law enforcement and local prosecution of the pimps, panderers, unscrupulous business owners and others who engage in the sexual exploitation of women and children while helping to rehabilitate the victims through diversion programs and other support services;

NOW, THEREFORE,

THE CITY COUNCIL OF OAKLAND DOES ORDAIN AS FOLLOWS:

The Oakland Municipal Code, Title 9, Chapter 9.08, is amended as follows. This Ordinance prohibits prostitution and prostitution related offenses and makes them local crimes subject to local prosecution. The Title of Section 9.08.260 is changed to reflect its broader scope and application. Section A is updated to clarify terms used to define prostitution related crimes. Section B is updated to clarify relevant factors for determining the crime of loitering for the purpose of engaging in prostitution. Section C is added to prohibit the soliciting and engaging in prostitution offenses. Section D is added to prohibit controlling, overseeing, directing, supervising, recruiting, aiding, selling, pandering or otherwise soliciting a prostitute. Section E is added to prohibit business owners from allowing their property to be used for prostitution activities. A violation of any provision of this Chapter and Section constitutes a misdemeanor.

9.08.260 Prohibition of Prostitution and Prostitution Related Offenses

SECTION 1. It is the intent of the City Council, in enacting this ordinance, to provide for the public health, safety, and welfare by prohibiting prostitution and prostitution related activity; protect the lives of women and children caught in the criminal enterprise of prostitution; improve the safety of the community and the economic vitality of City businesses; and affirm the City’s commitment to further the wellbeing of all City residents.

SECTION 2. The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this ordinance.

9.08.260 A. Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

“Commit prostitution” means to engage in sexual conduct for money or other consideration, but does not include sexual conduct engaged in as a part of any stage performance, play or other entertainment open to the public.

“Public place” means an area open to the public, or an alley, plaza, park, driveway, or parking lot or an automobile, whether moving or not, or a building open to the general public, including one which serves food or drink, or provides entertainment or the doorways and entrances to a building or dwelling, or the grounds enclosing a building or dwelling.”

“Loiter” means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

“Soliciting” means to entice, advice, incite, order, command, encourage or requests another person to engage in specific conduct which would constitute a crime or commit such crime of prostitution. The crime solicited need not actually be committed for solicitation to occur.

“Lewd act” means any act which involves the touching of the genitals, buttocks, or female breast of one person by any part of the body of another person and is done with the intent to sexually arouse and gratify.

“Knowingly” means having or showing awareness or understanding of a fact or circumstance that lead a reasonable person to inquire further or use reasonable care or diligence and should have known and therefore attributable by law to a given person.

9.08.260 B. Loitering for the Purpose of Engaging in Prostitution, a Misdemeanor.

It is unlawful for any person to loiter in any public place with the intent to commit prostitution. This intent is evidenced by acting in a manner and under circumstances which openly

demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution.

1. Among the circumstances that may be considered in determining whether a person loiters with the intent to commit prostitution are that the person:
 - (a) Repeatedly beckons to, stops, engages in conversations with, or attempts to stop or engage in conversations with passerby, indicative of soliciting for prostitution.
 - (b) Repeatedly stops or attempts to stop motor vehicles by hailing the drivers, waving arms, or making any other bodily gestures, or engages or attempts to engage the drivers or passengers of the motor vehicles in conversation, indicative of soliciting for prostitution.
 - (c) Has been convicted of violating this section, subdivision (a) or (b) of California Penal Code Section 647, or any other offense relating to or involving prostitution under state law or the Oakland Municipal Code within five years of the arrest under this section.
 - (d) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists, indicative of soliciting for prostitution.
 - (e) Has engaged, within six months prior to the arrest under this section, in any behavior described in this section, with the exception of paragraph (3), or in any other behavior indicative of prostitution activity.
2. The list of circumstances set forth in subdivision (a) is not exclusive. The circumstances set forth in subdivision (a) should be considered particularly salient if they occur in an area that is known for prostitution activity. Any other relevant circumstances may be considered in determining whether a person has the requisite intent. Moreover, no once 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.”

9.08.260 C. Engaging in the Act of Prostitution or Solicitation for the Purpose of Engaging in Prostitution, a Misdemeanor.

It is unlawful for any person who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this

State in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, “prostitution” includes any lewd acts between persons for money or other consideration.

1. A person agrees to engage in an act of prostitution when, with specific intent to engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution.
2. An agreement to engage in an act of prostitution by itself does not constitute a violation of law unless some act, in addition to the agreement, be done in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. An act in furtherance can consist of words only, if the statements made are unambiguous and unequivocal in conveying that the agreed act of prostitution will occur and move the parties toward completion of the act. However, the timing of the act is immaterial. It may precede, coincide with, or follow the agreement.
3. In order to prove the crime of solicitation to engage in an act of prostitution, each of the following elements must be proved:
 - (a) A person solicited another person to engage in any act of prostitution or agreed with another person to engage in an act of prostitution; and
 - (b) That person did so with the specific intent to engage in an act of prostitution;
 - (c) In addition to the agreement, the person did an act in furtherance of prostitution.

9.08.260 D. Controlling, Overseeing, Directing, Supervising, Recruiting, Aiding, or Otherwise Soliciting a Prostitute, a Misdemeanor.

1. It is unlawful for any person to do either of the following:
 - (a) Direct, control, oversee, supervise, recruit, or otherwise aid another person in the commission of a violation of subdivision (b) of section 647 or subdivision (a) of Section 653.22 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (b) Collect or receive all or part of the proceeds earned from an act or acts of prostitution committed by another person in violation of subdivision (b) of Section 647 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.

2. Among the circumstances that may be considered in determining whether a person is in violation of subdivision (a) are that the person does the following:
 - (a) Repeatedly speaks or communicates with another person who is acting in violation of subdivision (a) of Section 653.22 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (b) Repeatedly or continuously monitors or watches another person who is acting in violation of subdivision (a) of Section 653.22 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (c) Repeatedly engages or attempts to engage in conversation with pedestrians or motorists to solicit, arrange or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22 or subdivision (b) of Section 647 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (d) Repeatedly stops or attempts to stop pedestrians or motorists to solicit arrange or facilitate an act of prostitution between pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (e) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or communicate, or stop pedestrians or other motorists to solicit, arrange, or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (f) Receives or appears to receive money or any consideration from another person who is acting in violation of subdivision (a) of Section 653.22 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (g) Engages in any of the behavior described in paragraphs (1) to (6), inclusive, in regard to or on behalf of two or more persons who are in violation of subdivision (a) of Section 653.22 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (h) Has been convicted of violating this section, subdivision (a) or (b) of Section 647 subdivision (a) of Section 653.22, Section 266h or 266i of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal

code, or any other offense relating to or involving prostitution within five years of the arrest under this section.

- (i) Has engaged, within six months prior to the arrest under subdivision (a), in any behavior described in this subdivision, with the exception of paragraph (8), or in any other behavior indicative of prostitution activity.
3. The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for prostitution activity. Any other relevant circumstances may be considered. Moreover, no one circumstance or combination of circumstances is in itself determinative. A violation of subdivision (a) shall be determined based on an evaluation of the particular circumstances of each case.
4. Nothing in this section shall preclude the prosecution of a suspect for a violation of Section 266H or 266i of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code or for any other offense, or for a violation of this section in conjunction with a violation of Section 266h or 266i of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.”

9.08.260 E Places of Prostitution Prohibited; Constitute a Public Nuisance; Subject to Injunction, Abatement, and Contempt of Court; Violations a Misdemeanor

1. Every building or place used for the purpose of lewdness, assignation or prostitution, and every building or place in or upon which acts of lewdness, or prostitution are held or occur, is prohibited and constitutes a nuisance which may be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.
 - (a) A public nuisance is anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner of any public park, square, street, or highway is a public nuisance.
 - (b) An act which affects an entire community or neighborhood, or any considerable number of persons, as specified above is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.
 - (c) Whenever there is reason to believe that a nuisance, as defined in this section is kept, maintained, or is in existence within the City of Oakland, the City Attorney may maintain an action in equity to abate and prevent

the nuisance and to perpetually enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting it

- 2. Every person who knowingly owns, operates, maintains, permits, or allows a building or place to be used for the purpose of lewdness, or prostitution, and every person occupying or leasing the property or premises of another who operates, maintains, permits or allows a building or place to be used for lewdness, or prostitution is guilty of a misdemeanor.

SECTION 4. Application. The provisions of this ordinance are consistent with state law relating to prostitution and prostitution-related activity. The ordinance is intended to supplement state law.

SECTION 5. Remedies. In addition to other remedies provided under this ordinance, under other provisions of the Oakland Municipal Code, or by state law, violations of this ordinance shall constitute a misdemeanor which may be prosecuted by the City of Oakland to the fullest extent of the law.

SECTION 6. Severability. If any article, section, subsection, sentence, clause or phrase of this ordinance or exhibit is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

SECTION 7. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

MAR 1 2011

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES – ~~Brooks~~, BRUNNER, DE LA FUENTE, KERNIGHAN, KAPLAN, NADEL, SCHAAF, and PRESIDENT REID - 7

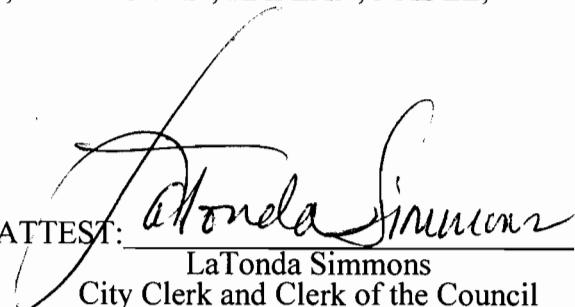
NOES – 0

ABSENT – 0

ABSTENTION – 0

Excused - Brooks - 1

ATTEST:


LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduction Date

FEB 15 2011

DATE OF ATTESTATION:

3/4/2011

NOTICE AND DIGEST

ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO PROHIBIT THE SEXUAL EXPLOITATION OF WOMEN AND CHILDREN, PROHIBIT BUSINESS OWNERS FROM ALLOWING PROSTITUTION ON THEIR PROPERTY, DECLARE PROSTITUTION RELATED OFFENSES LOCAL CRIMES, AND CLARIFY TERMS RELATED TO PROSTITUTION OFFENSES

This Ordinance amends Section 9.08.260. It changes the title of this Section to “*Prohibition of Prostitution and Prostitution Related Offenses*” to reflect the broadening of its scope and the prohibited activities. The Ordinance clarifies terms related to prostitution offenses and deletes other terms which are outdated, offensive, or inconsistent with state law. The Ordinance adds a section prohibiting the actions of prostitution customers and others who exploit women and children for sex. The Ordinance also prohibits the selling, pandering, and aiding of prostitution. The Ordinance also prohibits property owners and proprietors from allowing prostitution on their property. Finally, the Ordinance makes it a local crime to violate these provisions of the Oakland Municipal Code subject to prosecution by the City.