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OFFICE OF THE CITY CLERK  
OAKLAND  
CITY OF OAKLAND  
2012 MAY 10 4:52 PM  
AGENDA REPORT

TO: City Council  
FROM: Barbara Parker, City Attorney

DATE: May 22, 2012

**PUBLIC SAFETY COMMITTEE**  
Oakland, California

**RE: ORDINANCE PROHIBITING THE POSSESSION OF THE TOOLS OF VIOLENCE  
DURING A DEMONSTRATION**

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**SUMMARY**

This ordinance is sponsored by City Attorney Barbara Parker and City Councilmember Pat Kemighan.

This ordinance makes demonstrations safer by banning materials that have been repeatedly used as dangerous weapons without depriving the citizens the opportunity to protest with picket signs or other means of communication.

**FISCAL IMPACT**

The City, its citizens and local businesses have incurred tens of thousands of dollars of damage from the demonstrations in Oakland during the past year and in other years. This ordinance would deter the violence, property damage, and arson that have accompanied past demonstrations in Oakland, resulting in a positive fiscal impact for both the City and citizens.

**BACKGROUND**

The City of Oakland supports and has a long and proud history of supporting peaceful protests and demonstrations. Unfortunately, some individuals have used protests in Oakland as "cover" to commit acts of violence, arson and vandalism.

Recent protests and marches in Oakland are evidence that certain individuals are bringing weapons and other tools of violence to demonstrations and using these tools to commit violence, arson and vandalism. The Oakland Police Department, independent media, victims and witnesses have witnessed the following:

November 2, 2011

A vandal participating in the General Strike March using a pressurized paint sprayer, possibly improvised from a fire extinguisher, painted graffiti on the walls and windows of the Whole Foods grocery store in Oakland.

While customers sought safety inside, vandals participating in the General Strike March used heavy sticks to attack the windows and doors of the Whole Foods grocery store in Oakland.

A vandal participating in the General Strike March used a hammer to shatter the window of a bank while customers inside feared for their safety.

Vandals participating in the General Strike March used aerosol paint to vandalize businesses and bus stops in Oakland.

Vandals participating in the General Strike March started fires in the streets of Oakland and outside the Travelers Aid building requiring police and fire response and thus diverting public safety personnel from other areas of Oakland.

January 28, 2012

Some individuals participating in the so-called Move-In Day March carried shields, some as large as 3 feet tall by 6 feet wide and made out of corrugated steel. They advanced on police lines in an effort to break through and take over the Kaiser Convention Center. Individuals holding shields formed skirmish lines for the purpose of confronting police, while others threw or launched rocks and other objects at police from behind the phalanx of shields. Organizers of the Move-In Day have characterized the action as a "battle" with officers.

Vandals participating in Move-In Day used paint to spew graffiti throughout Frank H. Ogawa Plaza.

A vandal participating in Move-In Day used a large wrench to illegally open a fire hydrant to deter police response.

May 1, 2012

Vandals participating in the May Day Protest used fire accelerant to light an Oakland police car on fire and start other fires.

Vandals participating in the May Day Protest and seeking to incite police threw projectiles filled with paint at police officers. One officer was injured when paint went into his eyes.

A vandal participating in the May Day Protest brandished and threatened police officers with a weapon made from a large pole or stick.

Vandals participating in the May Day Protest used large poles and sticks to strike police cars and attack businesses.

Vandals participating in the May Day Protest used spray paint to commit vandalism throughout downtown Oakland.

Vandals participating in the May Day Protest threw fireworks into crowds and at police officers in an effort to incite police.

Vandals participating in the May Day Protest threw objects at the police from behind the protection of home-made shields.

A peaceful march scheduled for the same day had to change its route out when shield-bearing individuals joined the march.

## **KEY ISSUES AND IMPACTS**

This ordinance addresses violence, property damage and arson that have endangered peaceful demonstrations in Oakland.

Clubs, sling shots, paint projectiles and fireworks have been used as weapons to hit, threaten or injure other persons. Bags of paint and other paint projectiles, when thrown or propelled at police officers, can injure officers or bystanders. Vandals have used hammers, clubs, spray paint and other pressurized paint sprayers to vandalize local businesses, stores, parks, bus shelters and public property. Metal and other impact resistant shields may conceal weapons from the vision of police officers, may be used to hit police officers and have allowed individuals who hide behind them to throw bottles, rocks, paint or other objects at police officers. Individuals wielding metal or other impact resistant shields have confronted or provoked police officers, thereby endangering both officers and nearby peaceful demonstrators. Large wrenches have been used to illegally open fire hydrants, thereby deterring or delaying police and fire response.

The City has a significant governmental interest in preventing such use of clubs, impact-resistant shields, sling shots, hammers, large wrenches, fireworks, paint projectiles, and fire accelerants in areas of high concentrations of people and limited means of escape. The City also has a significant governmental interest in ensuring that individuals do not disrupt peaceful demonstrations by attacking police, breaking windows, starting fires and vandalizing buildings and parks.

Clubs, impact-resistant shields, aerosol spray cans, pressurized paint sprayers, sling shots, hammers, large wrenches, fireworks, paint projectiles, and fire accelerants have little or no legitimate First Amendment purpose in a demonstration or protest, and in fact have been used repeatedly in Oakland demonstrations for solely illegal purposes: confronting or threatening police officers and vandalizing public or private property.

Persons carrying or in the possession of impact-resistant shields, aerosol spray cans, pressurized paint sprayers, sling shots, hammers, large wrenches for opening fire hydrants, fireworks, paint projectiles or fire accelerants endanger the safety of peaceful demonstrators.

The penalty for violation of this ordinance will be a misdemeanor punishable by imprisonment in the county jail for up to six months or by fine in an amount up to one thousand dollars (\$1,000.00) or by both.

The Oakland Police Department will enforce the ordinance consistent with its Crowd Control Policy.

## **SUSTAINABLE OPPORTUNITIES**

No affect from these amendments.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

No affect from these amendments.

## **RECOMMENDATION(S) AND RATIONALE**

The City Attorney's Office recommends that the City Council adopt this ordinance.

The rationale for this recommendation is that this ordinance will make illegal those tools that individuals have been using to further violence during demonstrations and will prohibit those tools at demonstrations. This ordinance will make demonstrations in Oakland safer for those citizens who protest and police officers who monitor the protests. The Chief of Police supports the purposes of this ordinance.

This ordinance is consfitutional. The ordinance is specific, and the tools described by this ordinance have little or no use in the expression of speech. Even if any item did, the City has authority under the United States Constitution to adopt reasonable time, place, and manner regulations of speech in the City. The regulations proposed by this ordinance are mamer restrictions.

The United Stated Court of Appeals for the Ninth Circuit has upheld the constitufionality of a Los Angeles ordinance prohibiting possession during demonstrations of items such as large sticks and poles that can be used as weapons. (Vlasak v. Superior Court of California, 329 F.3d 683, (9<sup>th</sup> Cir. 2003). The City of Salt Lake City enacted and implemented, without legal challenge, regulations that prohibited citizens from carrying specific items while participating in demonstrations at the 2002 Winter Olympics.

The specificity reinforces the constitutionality of the ordinance. Rather than a sweeping, all encompassing ban on items that peaceful protestors might happen to have at a demonstration, this ordinance targets only those tools of violence and vandalism that have actually been used to the detriment of Oakland taxpayers and peaceful demonstrators.

The constitutionality of this ordinance is supported by the City's substantial interest in safeguarding its citizens against violence and in protecting its police force from violence that has occurred at demonstrations in Oakland. The City also has a substantial interest in safeguarding the property of citizens against damage and destruction and in protecting its own property from damage and destruction during demonstrations.

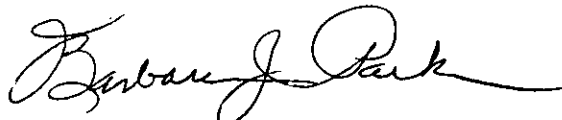
The constitutionality of this ordinance is also supported by the great availability of alternative means of speech that do not depend on the use of any of the specific items identified therein. This ordinance makes marches and large public gatherings safer by banning materials that are most likely to become dangerous weapons without depriving the citizens the opportunity to parade or protest with 'traditional' picket signs and other means of communication. This ordinance does not prohibit leaflets, photographs, megaphones, or the panoply of other devices used for First Amendment expression during demonstrations. The regulations are narrowly tailored to address the foregoing governmental interests because they are not substantially broader than necessary and promote substantial government interests that would be achieved less effectively absent the regulations.

At the May 3, 2012, Rules and Legislation Committee Meeting, there was a suggestion that the ordinance also prohibit generally any item that could be fashioned into a weapon. Adding language generally prohibiting any item that could be fashioned into a weapon creates an avenue for a constitutional challenge to the ordinance for vagueness and over-breadth. Laws affecting free speech may be challengeable if the proposed law does not draw clear lines for the public. Almost any hard item could be fashioned into a weapon, thus creating uncertainty on the part of the public about what is prohibited. For example, a ball point pen could be fashioned into a weapon, but a law prohibiting ball point pens would be overbroad.

#### **ACTION REQUESTED OF THE CITY COUNCIL**

Adoption of this ordinance.

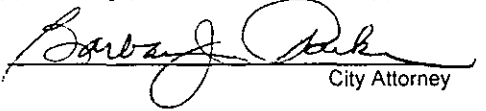
Respectfully submitted,



Barbara Parker  
City Attorney

Attorney Assigned:  
Mark Morodomi  
964388v2

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

  
City Attorney

2012 MAY 10 ... 5:21 **ORDINANCE NO.** \_\_\_\_\_ **C.M.S.**

INTRODUCED BY COUNCILMEMBER KERNIGHAN AND CITY ATTORNEY PARKER

## ORDINANCE PROHIBITING THE POSSESSION OF THE TOOLS OF VIOLENCE DURING A DEMONSTRATION

**WHEREAS**, the purpose of the ordinance is to promote the purposes as set forth below and in the accompanying agenda report; and

**WHEREAS**, the City of Oakland supports and has had a history of supporting peaceful protests and demonstrations; and

**WHEREAS**, some individuals have used protests in Oakland as "cover" to commit acts of violence, arson and vandalism; and

**WHEREAS**, on November 2, 2011, a vandal participating in the General Strike March using a pressurized paint sprayer spray painted graffiti on the windows of the Whole Foods grocery store in Oakland; and

**WHEREAS**, on November 2, 2011, vandals participating in the General Strike March used heavy sticks to attack the windows and doors of the Whole Foods grocery store in Oakland; and

**WHEREAS**, on November 2, 2011, a vandals participating in the General Strike March using a pressurized paint sprayer and aerosol paint painted graffiti on the walls of Burger King and Rite Aid stores and numerous other stores and buildings in Oakland; and

**WHEREAS**, on November 2, 2011, vandals participating in the General Strike March used aerosol paint to vandalize businesses and bus stops in Oakland; and

**WHEREAS**, on November 2, 2011, vandals participating in the General Strike March used large wooden sticks to break windows of businesses and assault peaceful demonstrators; and

**WHEREAS**, on November 2, 2011, a vandal participating in the General Strike March used a hammer to attack a bank and shatter the bank's windows while innocent customers inside feared for their safety; and

**WHEREAS**, on November 2, 2011, individuals participating in the General Strike March started a fire in the streets of Oakland requiring police and fire response and thus diverting public safety personnel from other areas of Oakland; and

**WHEREAS**, on January 28, 2012, vandals participating in the Move In Day March and carrying hand-made shields, some as large as 3 feet tall by 6 feet wide and made out of corrugated steel, advanced on police officer lines in an effort to break through and illegally occupy the Kaiser Convention Center; and

**WHEREAS**, on January 28, 2012, to provoke the police, vandals participating in the Move In Day March threw objects at the police from behind the protection of a phalanx of home-made shields; and

**WHEREAS**, shields used by persons endanger the safety of police officers and peaceful protestors. The shields block the view of protestors and police, help conceal weapons from the vision of police officers, may be used to hit police officers, and protect aggressors who hide behind them to throw bottles and rocks at police officers; and

**WHEREAS**, on January 28, 2012, vandals participating in the Move In Day March used paint to spew graffiti throughout Frank H. Ogawa Plaza, and

**WHEREAS**, on January 28, 2012, a vandal participating in the Move-In Day March used a large wrench to open illegally a fire hydrant to deter police response; and

**WHEREAS**, on May 1, 2012, vandals participating in the May Day Protest used spray paint to spew graffiti throughout Frank H. Ogawa Plaza, and

**WHEREAS**, May 1, 2012, a vandals participating in the May Day Protest brandished and threatened police officers with weapons made from large poles and sticks, and

**WHEREAS**, May 1, 2012, a vandals participating in the May Day Protest used a large wrench, large poles, and sticks to strike police cars and attack businesses, and

**WHEREAS**, on May 1, 2012, vandals participating in the May Day Protest used fire accelerant to light an Oakland police car on fire and to start other tires, and

**WHEREAS**, on May 1, 2012, vandals participating in the May Day Protest and seeking to incite police, threw projectiles filled with paint at police officers, injuring at least one officer, and

**WHEREAS**, on May 1, 2012, vandals participating in the May Day Protest, to provoke the police, threw objects at the police from behind the protection of a of home-made shields; and.

**WHEREAS**, May 1, 2012, a vandals participating in the May Day Protest threw fireworks into crowds and at police officers in an effort to incite violence and unrest, and

**WHEREAS**, on May 1, 2012, a peaceful march scheduled for the same day had changed its route when individuals bearing shields joined the march; and;

**WHEREAS**, sticks, poles, or other rigid supports, impact-resistant shields, sling shots, hammers, large wrenches, fireworks, paint projectiles, and tire accelerants can readily be used as weapons to hit or poke other persons; and

**WHEREAS**, the City has a significant governmental interest in preventing such use of sticks, poles, or other rigid materials impact-resistant shields, sling shots, hammers, large wrenches, fireworks, paint projectiles, and fire accelerants in areas of high concentrations of people and limited means of escape, such as when there is a demonstration; and

**WHEREAS**, impact-resistant shields, aerosol spray cans, pressurized paint sprayers, sling shots, hammers, large wrenches for opening fire hydrants, fireworks, paint projectiles, and tire accelerants are tools of violent individuals who seek to vandalize, damage property, injure nonviolent demonstrators, and incite police; and

**WHEREAS**, persons carrying or in the possession of impact-resistant shields, aerosol spray cans, pressurized paint sprayers, a sling shots, hammers, large wrenches for opening tire hydrants, fireworks, paint projectiles, or tire accelerant endanger the safety of peaceful demonstrators by subjecting them to violence, the threat of violence and creating riotous and unlawful conditions; and.

**WHEREAS**, the City has authority under the United States Constitution to adopt reasonable time, place, and manner regulations of speech in the City; and

**WHEREAS**, the United States Court of appeals for the Ninth Circuit, has upheld the constitutionality of a Los Angeles ordinance prohibiting possession, during demonstrations, of items such as large sticks and poles that can be used as weapons; and

**WHEREAS**, the City of Salt Lake City enacted and implemented, without legal challenge, regulations that prohibited citizens from carrying various dangerous items while participating in demonstrations at the 2002 Winter Olympics; and

**WHEREAS**, the City has a vital and substantial interest in safeguarding its citizens against the recurrence of violence and in protecting its police force from violent acts that have occurred at demonstrations in Oakland; and

**WHEREAS**, the City has a vital and substantial interest in safeguarding the property of citizens against damage and destruction and in protecting its own property from damage and destruction during demonstrations; and

**WHEREAS**, this ordinance makes demonstrations safer by banning materials that have become dangerous weapons without depriving citizens of the opportunity to march or protest with 'traditional' picket signs and other means of communication; and

**WHEREAS**, this ordinance does not prohibit leaflets, photographs, megaphones, or a panoply of other devices used for communicating a message or getting attention during demonstrations; and



**WHEREAS**, the following regulations are narrowly tailored to address the foregoing governmental interests because they leave ample alternatives for communication, are not substantially broader than necessary, and promote substantial government interests that would be achieved less effectively absent these regulations;

Now therefore,

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

**SECTION 1.** The following is added to the Oakland Municipal Code, Chapter 9.36 – Weapons.

**Article VI.**

**Section 9.36.500. Tools of Violence at Demonstrations**

**A. Definitions.**

The following definitions shall apply only for the purposes of this section.

“Club” means any length of lumber, wood, wood lath, plastic, or metal, unless that object is one-fourth inch or less in thickness and two inches or less in width or, if not generally rectangular in shape, such object shall not exceed three-quarter inch in its thickest dimension. Nothing in this section shall prohibit a disabled person from carrying a cane, walker, or similar device necessary for mobility so that the person may participate in a demonstration.

“Painting Device” means any aerosol paint can or pressurized paint sprayer, including but not limited to, any improvised device.

“Paint Projectile” means any container, including a plastic bag or balloon, and containing paint and designed to be thrown or projected.

“Shield” means any impact-resistant material held by straps or a handle attached on the holder’s side of the impact-resistant material and designed to provide impact protection for the holder. “Handle” does not include a stick or dowel used as a sign post. Paper, cloth, cardboard, or foam core less than one-quarter inch thick are not impact-resistant material for the purposes of this ordinance.

“Wrench” means a wrench with a span greater than or expandable to one and a quarter inches standard or 30 millimeters metric and of a length of 12 inches or more.

**B. Weapons and Vandalism Tools Prohibited.**

No person shall carry or possess a Club, tire accelerant, fireworks, Painting Device, Paint Projectile, Shield, sling shot, hammer, or Wrench while participating in any demonstration.

C. Exemptions.

The prohibitions of this section shall not apply to any law enforcement agency employee, fire service agency employee, or public works employee who is carrying out official duties.

D. Penalties.

1. Any person violating Subsection B is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months or by fine not exceeding one thousand dollars (\$1,000.00) or by both.
2. Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

SECTION 2. Severability.

If any article, section, subsection sentence, clause or phrase of this ordinance or 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 3. 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.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID,  
NOES -  
ABSENT -  
ABSTENTION -

ATTEST: \_\_\_\_\_

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