

2015 MAY 26 AM 9:08

Approved as to form and legality

DRAFT

City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE NO: _____ C.M.S.

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

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

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

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

Whereas, when Oscar Grant was fatally shot and killed by a BART Police, BART Police attempted to seize video and audio recording devices in violation of State law; and

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

Whereas such violations threaten our liberties and make our communities less safe; and

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

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

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

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

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

B. Nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person.

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, _____, 2015.

PASSED BY THE FOLLOWING VOTE:

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

NOES- ABSENT- ABSTENTION-

ATTEST: _____
LATONDA SIMMONS

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

DATE OF ATTESTATION: _____