

CITY OF OAKLAND



ONE FRANK OGAWA PLAZA • 2<sup>ND</sup> FLOOR • OAKLAND, CALIFORNIA  
94612

Ignacio De La Fuente  
City Council Member, District 5

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Larry Reid  
City Council President

TO: Oakland City Council  
FROM: Councilmember De La Fuente and Council President Larry Reid  
DATE: 10/4/11  
**SUPPLEMENTAL REPORT RE: JUVENILE PROTECTION CURFEW**

This supplemental report provides additional information on current statistics related to youth involved in crime as both suspects and/or victims of crime as well as information to support the daytime curfew hours that were added to the ordinance at the September 22<sup>nd</sup> Rules and Legislation committee meeting.

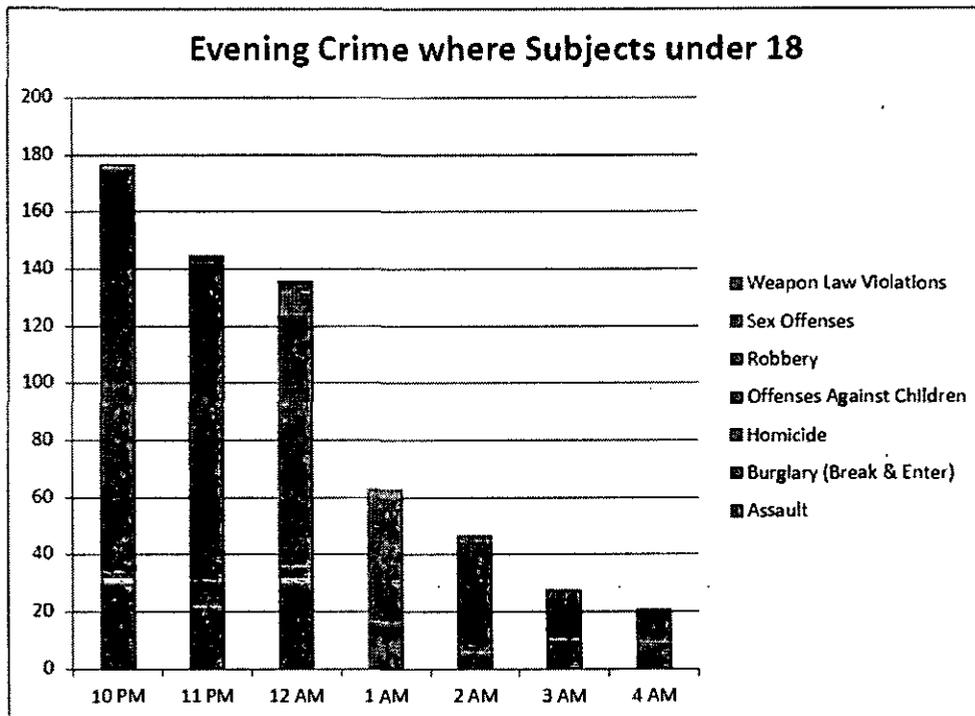
The charts included with this supplemental, *Attachments A, B, C, D*, represent the homicides and shootings involving youth under the age of 18 as victims and suspects from January 2010 to September 2011.

Since the council last considered a youth protection curfew on February 10, 2010, twelve young people under the age of 18 have been killed in our City, including two infants.

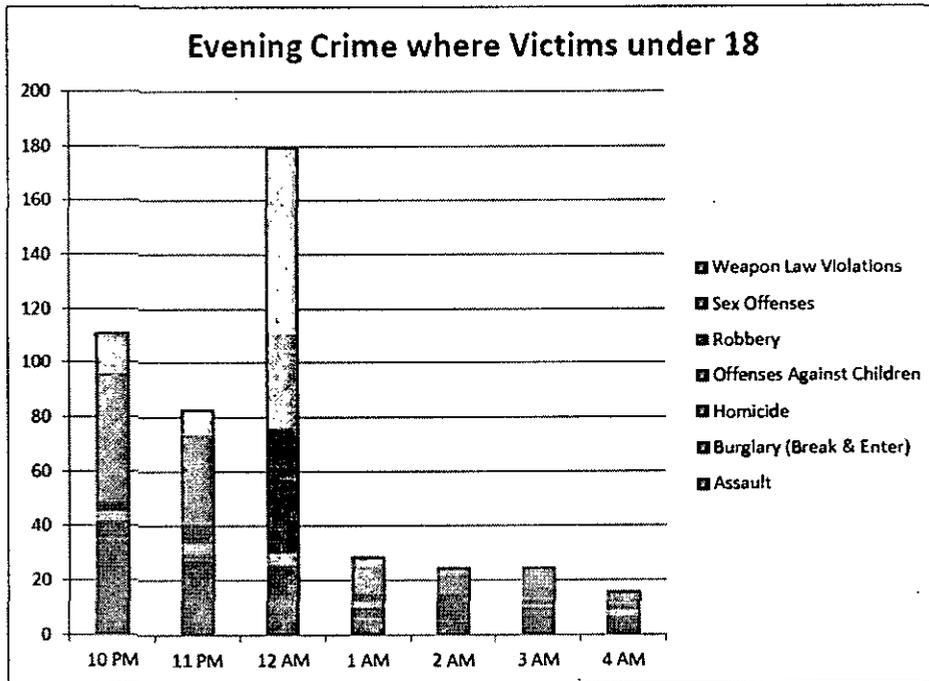
Attachment A, illustrates that the largest number of shootings and homicides involving youth, take place during the 10:00 PM to 11:00 PM hour. Attachment B shows shootings and homicides involving youth by month of the year with a high of 59 incidents in September 2010. Attachment C shows the locations where youth are involved in crime with the numbers representing the number of incidents at a particular location. Attachment D shows the number of shootings and homicides involving youth by day of the week.

The following charts provide stats regarding youth (under the age of 18) crime and victimization from January 2008 to date. "Evening" refers to the hours between 10:00 PM and 5:00 AM. "Morning" refers to the hours between 8:00 AM and 2:00 PM.

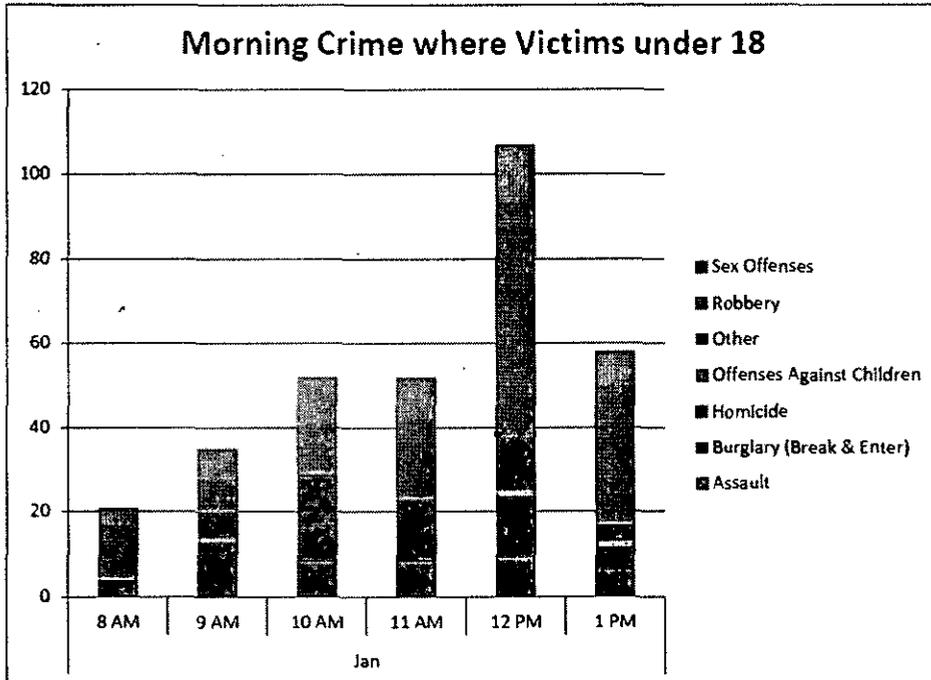
Item: 14 1  
ORA/City Council  
October 4, 2011



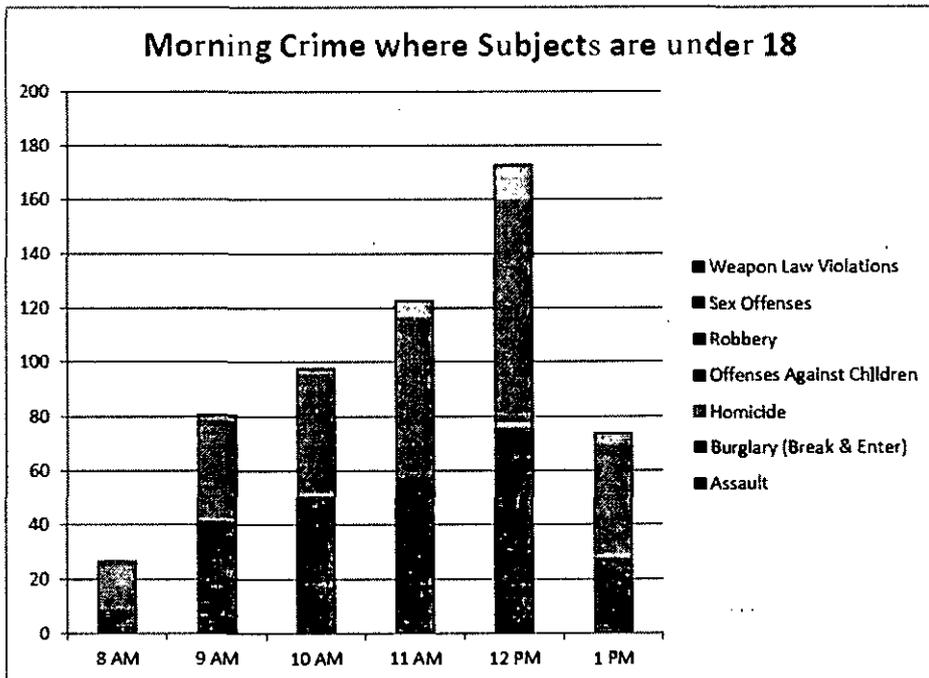
Count of Incident Number								
	Assault	Burglary (Break & Enter)	Homicide	Offenses Against Children	Robbery	Sex Offenses	Weapon Law Violations	Grand Total
10 PM	17	12	2	2	111	1	1	177
11 PM	22	8	0	1	111	3	0	148
12 AM	8	22	2	4	88	12	0	138
1 AM	10	6	0	0	44	1	2	63
2 AM	2	4	0	2	37	1	1	47
3 AM	1	9	0	0	15	3	0	28
4 AM	1	8	0	0	12	0	0	21
<b>Grand Total</b>	<b>61</b>	<b>70</b>	<b>4</b>	<b>9</b>	<b>448</b>	<b>21</b>	<b>4</b>	<b>617</b>



Count of Incident Number	Assault	Burglary (Break & Enter)	Homicide	Offenses Against Children	Robbery	Sex Offenses	Weapon Law Violations	Grand Total
10 PM	35	7	3	4	47	14	1	111
11 PM	28	2	4	7	33	9	0	83
12 AM	15	11	4	46	35	69	0	180
1 AM	6	4	2	3	10	4	0	29
2 AM	5	4	0	6	7	3	0	25
3 AM	8	2	1	2	4	8	0	25
4 AM	2	5	2	2	2	3	0	16
<b>Grand Total</b>	<b>99</b>	<b>35</b>	<b>16</b>	<b>70</b>	<b>138</b>	<b>110</b>	<b>1</b>	<b>469</b>



Count of Incident Number								
	Assault	Burglary (Break & Enter)	Homicide	Offenses Against Children	Other	Robbery	Sex Offenses	Grand Total
Jan								
8 AM	1		1		2	13	4	21
9 AM	4		9	1	6	8	7	35
10 AM	8		15		6	12	11	52
11 AM	8		9		6	19	10	52
12 PM	9		15	1	13	54	14	107
1 PM	6		6	1	4	33	8	58
Grand Total	36		55	3	37	139	54	325



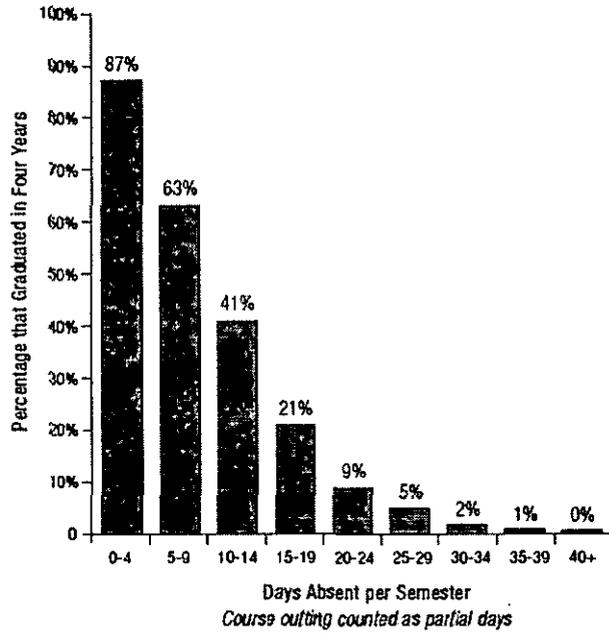
Count of Incident Number	Assault	Burglary (Break & Enter)	Homicide	Offenses Against Children	Robbery	Sex Offenses	Weapon Law Violations	Grand Total
Jan								
8 AM		9			17	1		27
9 AM	7	35			37	2		81
10 AM	8	43	1		44	2		98
11 AM	9	49		1	58	4	2	123
12 PM	13	63	2	3	79	8	5	173
1 PM	3	25	1		41	3	1	74
Grand Total	40	224	4	4	276	20	8	576

#### Daytime Curfew – 8:30 AM to 1:30 PM

The proposed ordinance establishes that children under 18 cannot loiter in the public right of way or in business establishments between 8:30am and 1:30pm when school is in session. Students should be in school during these hours. Youth, parents or owners of establishments that permit youth to violate the curfew ordinance can be found guilty of an infraction. In other cities day-time curfews have reduced daytime burglaries, as well as decreased school truancy. In a survey of Mayors in 72 cities that have a daytime curfew, 100% reported it has had both of these benefits.

In Oakland truancy and absenteeism are a big problem in both Elementary and High Schools. 1 in 3 Oakland unified students are truants meaning they have had at least 3 unexcused absences. 1 in 7 Oakland Unified kids are chronically absent, meaning they have missed more than 10% of the school year. For High School, the percentage is even greater with 22% of students chronically absent. This is of great concern for the City of Oakland since absenteeism is an early indicator of education poor performance and

completion of High School. Only 41% of the students absent more than 10 days of school per semester graduate High School in four years. This can be seen in the *What Matters Most for staying on track and graduating in Chicago Public Schools*, Consortium on Chicago School Research, University of Chicago, July 2007.



In a May 2011 Urban Strategies report the following graphs were presented. Figure 1 presents the High School absenteeism rates while Figure 2 depicts the Elementary absenteeism rate in Oakland.

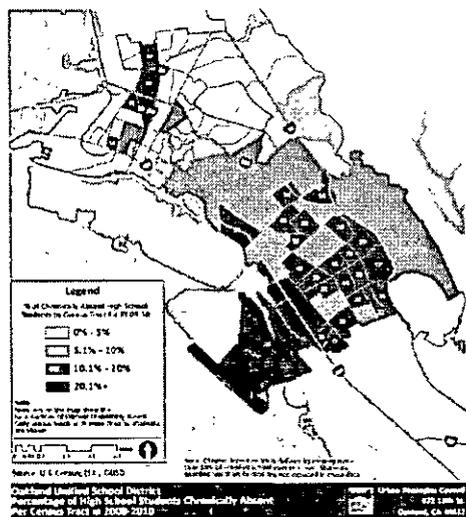


FIGURE 1

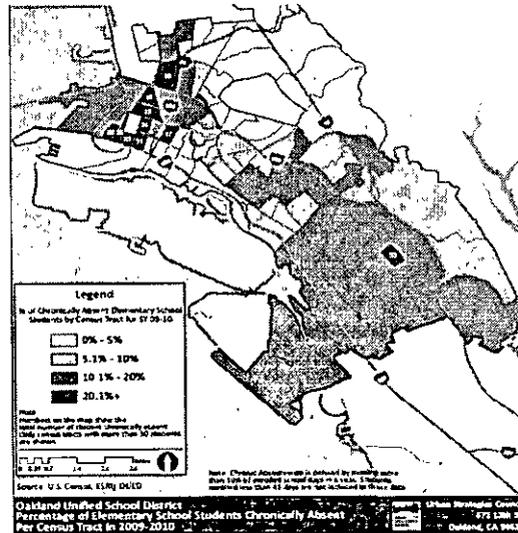


FIGURE 2

### Exemptions to Daytime Curfew

As with the evening curfew, exemptions apply to the daytime curfew. These exemptions apply specifically to the daytime curfew:

1. Going to or coming from a medical appointment
2. Permitted to leave campus for lunch or other school-related activities and had in his or her possession a valid, school-issued off-campus permit
3. Not required by his or her school vacation, track, or curriculum schedule to be in school.
4. Exempt by law from compulsory education or compulsory continued education

### Conclusion

A recent study titled "*The Impact of Juvenile Curfew Laws*" last updated in June of 2010, states "The evidence suggests that curfews are effective at reducing both violent and property crimes committed by juveniles below the statutory curfew age." The study looked at the effectiveness of curfew ordinances by comparing the arrest behavior of various age groups within a city before and after curfew enactment. The findings of the study show:

- The estimated average reduction in violent crime due to curfew enactment in the three years following enactment is 20%
- The average effect over the seven years starting with the year of enactment is 23%
- The estimated average reduction in property crime arrests over the 3 years following enactment is 9%, while the average effect over the entire 7 year sample period is 12%

While no single proposal is going to be the answer to our crime problem, we ask that the Council consider new solutions including this proposed juvenile protection curfew.

Respectfully submitted,

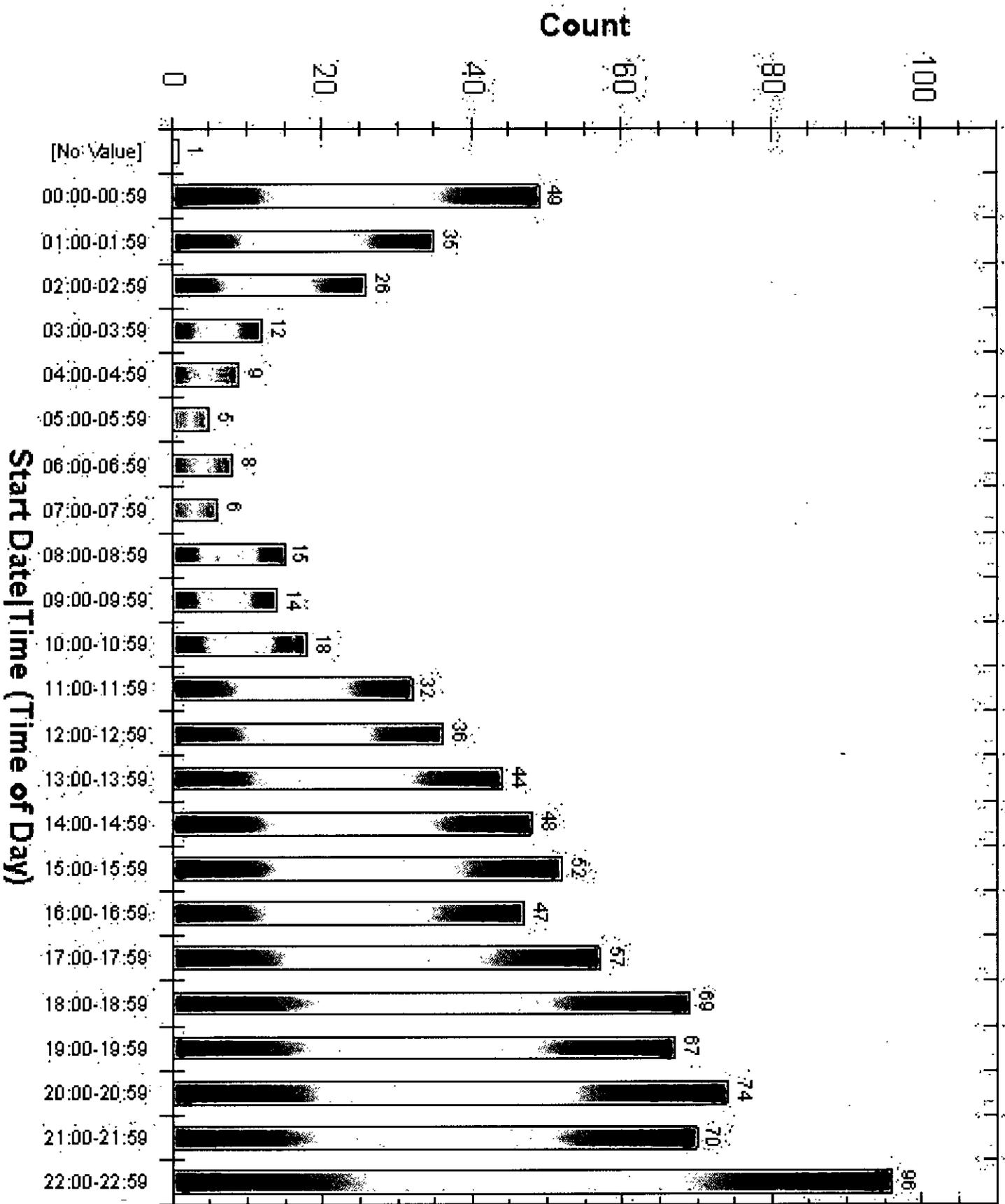
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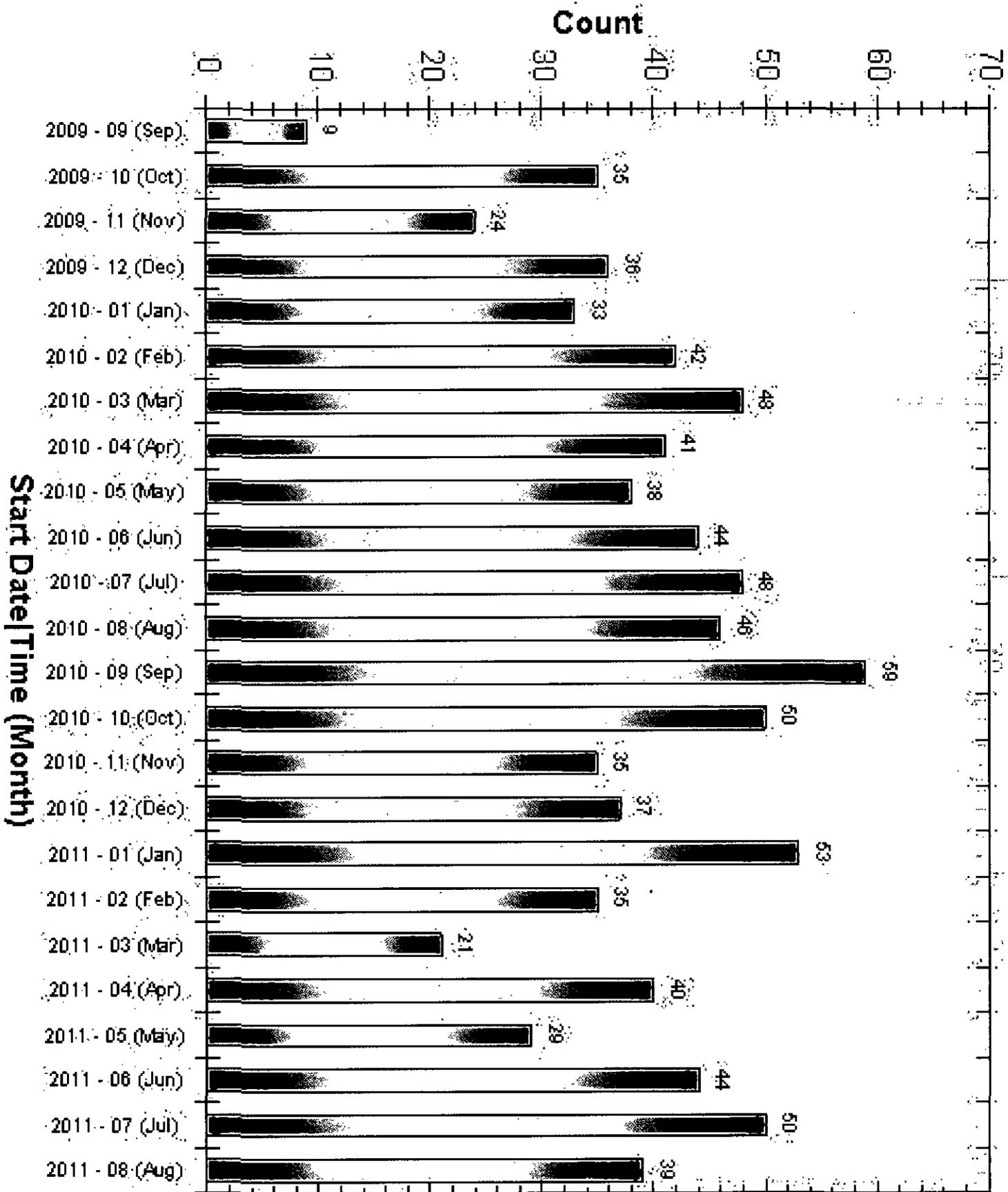
Council President Larry Reid  
Prepared by Ray Leon

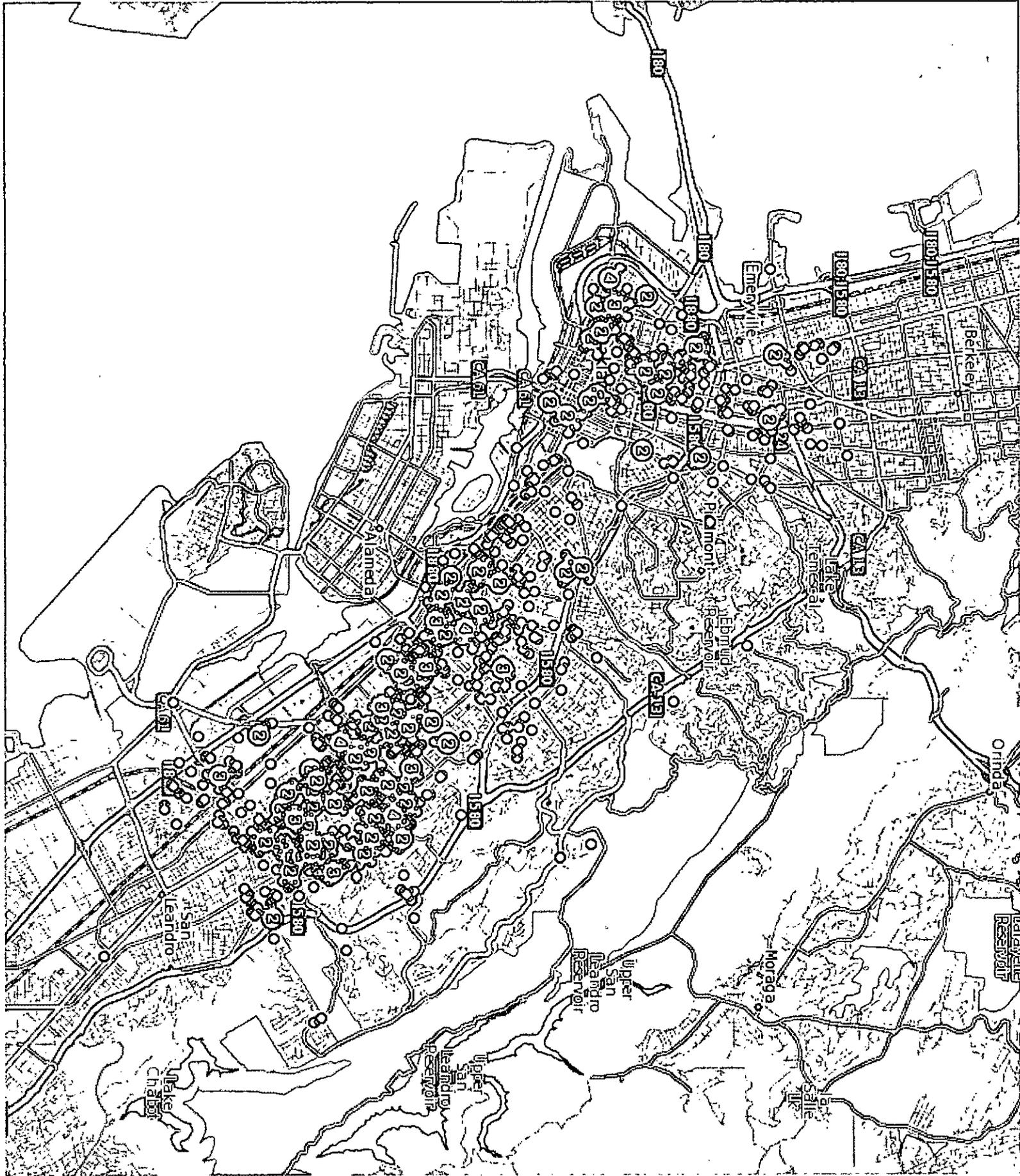
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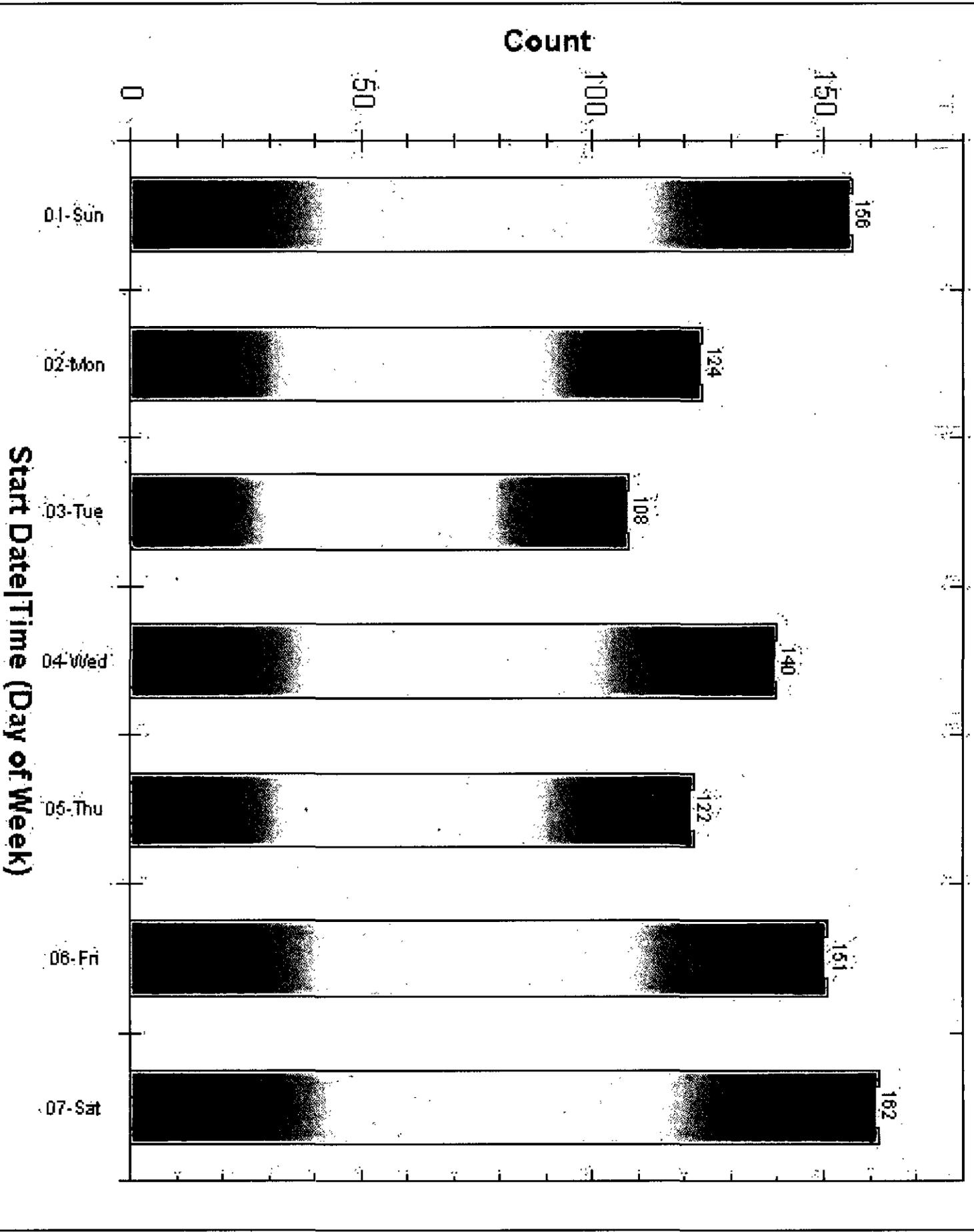
Council President Pro Tempore  
Ignacio De La Fucute  
Prepared by Claudia Burgos

Item: 14 <sup>7</sup>  
ORA/City Council  
October 4, 2011.









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FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

City Attorney

2011 SEP 29 PM 5:05

OAKLAND CITY COUNCIL

ORDINANCE No. \_\_\_\_\_ C.M.S.

**DRAFT**

INTRODUCED BY COUNCILMEMBER IGNACIO DE LA FUENTE & COUNCIL  
PRESIDENT LARRY REID

**AN ORDINANCE (1) ADDING ARTICLE II TO CHAPTER 9.12 OF THE OAKLAND MUNICIPAL CODE (OMC) TO ESTABLISH A JUVENILE PROTECTION CURFEW PROGRAM AND (2) AMENDING OMC SECTION 1.28.020 TO CODIFY THE PENALTIES FOR VIOLATIONS OF THE CURFEW ORDINANCE , AND (3) REPEALING OAKLAND MUNICIPAL CODE SECTIONS 9.12.020 AND 9.12.030 PROHIBITING MINORS FROM LOITERING IN PUBLIC PLACES**

**WHEREAS**, the City Council has determined that there has been an increase in juvenile violence, juvenile gang activity, and crime by persons under the age of eighteen (18) years ("Minors") in the City of Oakland; and

**WHEREAS**, Oakland Municipal Code sections 9.12.020 and 9.12.030 which intended to address loitering offenses committed by minors, were passed around 1947 and since then have been outdated by new case law and should therefore be repealed; and

**WHEREAS**, minors are particularly susceptible by their lack of maturity and experience to participate in unlawful and gang-related activities and to become victims of adult perpetrators of crime; and

**WHEREAS**, a significant amount of serious crime (burglaries, robberies, assaults, etc.) is committed by and against minors during late night hours in the City of Oakland; and

**WHEREAS**, there has been an increase in minors committing robberies and burglaries between the hours of 8:00 a.m. and 2:00 p.m.; and

**WHEREAS**, one in three Oakland Unified students are truants meaning they have had at least three unexcused absences and one in seven Oakland Unified students are chronically absent, meaning they have missed more than 10% of the school year; and

**WHEREAS**, between 2001 and 2010, 12 school age children in Oakland have been murdered during hours when they should have been in school; and

**WHEREAS**, burglaries and robberies committed by youth suspects under the age of 18 is highest during the noon hour; and

**WHEREAS**, weapon law violations by youth under the age of 18 is highest during the noon hour; and

**WHEREAS**, the involvement of minors – as perpetrators and victims – in offenses dealing with human trafficking and prostitution continue to increase; and

**WHEREAS**, a significant amount of serious crime is also committed by adults during the late night hours in the City of Oakland thereby compromising the public's safety and in particular the safety of minors, and

**WHEREAS**, the California Legislature has found that a significant number of injury vehicle accidents involving minors occur between 9:00 p.m. and 5:00 a.m. and, for the safety of minors and others on the streets, has restricted driving privileges so that for the first 12 months of issuance of a driver's license, a minor may not transport passengers under age 20, and may not drive between the hours of 11:00 p.m. and 5:00 a.m. without a parent or other adult driver, as specified in Section 12814.6 of the California Vehicle Code; and

**WHEREAS**, reducing the number of minors in public places in the City of Oakland during late night hours will reduce the instances in which minors are at risk of committing serious crimes or become themselves the victims of serious crimes, and reduce the opportunity for minors to be involved in narcotics, prostitution and gang activity involving other youth or adults; and

**WHEREAS** reducing the number of minors in public places in the City of Oakland during late night hours will allow the Oakland Police Department to deploy its personnel to focus on investigating and preventing serious crimes committed by adults during the late night hours; and

**WHEREAS**, by addressing the presence of youth in public places during late night/early morning hours the City of Oakland seeks to provide for the protection of minors from violence committed by minors and adults, to enforce parental control over and responsibility for children, to protect the general public, to reduce the incidence of juvenile criminal activities and the victimization of juveniles, and to reduce the incidence of night/early morning time juvenile injury motor vehicle accidents; and

**WHEREAS**, the City Council finds and determines that passage of a youth curfew ordinance will protect the welfare of minors by:

1. Reducing the likelihood that minors will be victims of criminal acts during the curfew hours;
2. Reducing the likelihood that minors will become involved in committing criminal acts; and
3. Reducing the likelihood that minors will be exposed to narcotics trafficking and gang activity involving adults during the curfew hours; and

4. Reducing the likelihood that minors will be involved in night time injury motor vehicle collisions; and
5. Aiding parents and legal guardians in carrying out their responsibility to exercise reasonable supervision of minors entrusted to their care; and

**WHEREAS**, OMC Chapter 1.28 sets forth the classification of OMC violations as misdemeanors or infractions;

**WHEREAS**, the Juvenile Protection Curfew Ordinance creates a new infraction offense; 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:** Oakland Municipal Code Chapter 9.12, Article II is added to read as follows:

**Article II Juvenile Protection Curfew**

**§9.12.100 Definitions for Curfew Provisions**

For purposes of this Article:

- A. "Curfew hours" means:
  1. 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 5:00 a.m. of the following day; and
  2. 11:30 p.m. on any Friday or Saturday until 5:00 a.m. the following day.
  3. 8:30 a.m. on any school day until 1:30 p.m. the same day
- B. "Emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, natural disaster, an automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.
- C. "Establishment" means any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.
- D. "Legal Guardian" means (1) a person who, under court order, is the guardian of the person of a minor; or (2) a public or private agency with whom a minor has been placed by the court.
- E. "Minor" means any person under eighteen (18) years of age.
- F. "Operator" means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

- G. "Parent" means a person who is a natural parent, adoptive parent, or step-parent of another person.
- H. "Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, parks, plazas, playgrounds, sidewalks, alleys, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.
- I. "Responsible adult" means a person at least eighteen (18) years of age, temporarily authorized by a parent or legal guardian to have the care and custody of a minor.
- J. "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

#### **§9.12.110 Curfew Offenses**

- A. It is unlawful for any minor to be present in any public place or on the premises of any establishment within the City of Oakland during curfew hours.
- B. It is unlawful for any parent or legal guardian of a minor knowingly to permit, or by insufficient control to allow the minor to be present in any public place or on the premises of any establishment within the City of Oakland during curfew hours.
- C. It is unlawful for the operator or any employee of an establishment to knowingly allow a minor to remain upon the premises of the establishment during curfew hours.
- D. It is a defense to prosecution under Subsection 9.12.110.A, 9.12.110.B, or 9.12.110.C that the minor was:
  - 1. accompanied by the minor's parent or guardian, or by a responsible adult;
  - 2. on an errand at the direction of the minor's parent or legal guardian, or the responsible adult, without any detour or stop;
  - 3. in a motor vehicle involved in interstate travel;
  - 4. engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
  - 5. involved in an emergency;
  - 6. on the sidewalk abutting the minor's residence;
  - 7. attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Oakland, a civic organization, or another similar entity that takes responsibility for the minor, or travelling to or from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Oakland, a civic organization, or another similar entity that takes responsibility for the minor;

8. exercising First Amendment rights protected by the United States Constitution; or
  9. emancipated pursuant to law.
- E. It is a defense to prosecution under Subsection 9.12.110.A, 9.12.110.B, or 9.12.110.C, for a violation of the daytime curfew hours only, that the minor was:
1. going to or coming from a medical appointment;
  2. permitted to leave campus for lunch or other school-related activities and had in his or her possession a valid, school-issued off-campus permit;
  3. not required by his or her school vacation, track, or curriculum schedule to be in school; or
  4. exempt by law from compulsory education or compulsory continued education.
- F. It is a defense to prosecution under Subsection 9.12.110.C. that the operator or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.
- G. Before taking any enforcement action under this Section, a police officer shall ask the apparent offender's age and reason for being in the public place or on the premises of the establishment during curfew hours. The officer shall not issue a citation or make an arrest under this Section unless the officer has probable cause to believe that an offense has occurred and that, based on any responses and other circumstances, no defense under Subsection 9.12.110.D or 9.12.110.E is present or applicable.
- H. A person who violates a provision of this Article is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted.

#### **§9.12.120 Penalty**

- A. Any person violating the provisions of this Article shall be guilty of an infraction or a misdemeanor pursuant to the provisions of Section 1.28.020 of this Code, which states that any violation beyond the third conviction in one year may be charged as a misdemeanor, and will be cited. Minors shall be dealt with in accordance with juvenile court law and procedure.

#### **Section 3. Severability**

This Article shall be enforced to the full extent of the authority of the City of Oakland. The Subsections, paragraphs, sentences and words of this Section are deemed severable, so that, if any Section, Subsection, paragraph, sentence or word of this Section is found to be invalid or beyond the authority of the City of Oakland, such finding shall not affect the applicability and enforcement of the remaining portions of this Section

Section 4. Oakland Municipal Code Chapter 1.28.020 is amended to add the following subsection to the list of infraction offenses:

§1.28.020.A.2.k. Chapter 9.12. – Juvenile Protection Curfew.

Section 5. Oakland Municipal Code section 9.12.020 and 9.12.030 are repealed to remove the following:

~~9.12.020 Minors in public places.~~

~~Every person under the age of eighteen (18) years who loiters in or about any public street or other public place or any place open to the public in the city, between the hour of ten p.m. and the time of sunrise of the following day when not accompanied by his or her parent, guardian or other adult person having the legal care, custody or control of such person, or spouse of such person over twenty-one (21) years of age, is guilty of a misdemeanor.~~

~~9.12.030 Responsibility of parents, guardians and other persons.~~

~~Every parent, guardian, or other person having the legal care, custody, or control of any person under the age of eighteen (18) years who permits such person to violate the provision of Section 9.12.020, is guilty of a misdemeanor.~~

Section 6. This Ordinance shall become effective immediately upon 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.

Section 7. The City Administrator's Office through the Oakland Police Department shall promulgate an Administrative Instruction or the appropriate policy and train police personnel regarding the appropriate implementation of this Ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2011

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

**AN ORDINANCE (1) ADDING CHAPTER 9.12 OF THE OAKLAND MUNICIPAL CODE TO ESTABLISH A YOUTH PROTECTION CURFEW AND (2) REPEALING SECTIONS 9.12.020 AND 9.12.030 (MINORS LOITERING IN PUBLIC PLACES)**

**NOTICE AND DIGEST**

This Ordinance adds Oakland Municipal Code Chapter 9.12 and establishes a Youth Protection Curfew. The curfew prohibits persons under 18 years of age from being in any public place or establishment in the City of Oakland, between the hours of 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 5:00 a.m. of the following day, and 11:30 p.m. on any Friday or Saturday until 5:00 a.m. the following day. And between the hours of 8:30 a.m and 1:30 p.m on school days. It also prohibits parents or legal guardians from allowing minors under their control to violate this Ordinance. Additionally, it prohibits a business establishment from knowingly allowing minors to remain on its premises during curfew hours. Finally, this ordinance repeals sections 9.12.020 and 9.12.030 of the Oakland Municipal Code (minors loitering in public).

# OAKLAND CITY COUNCIL

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

INTRODUCED BY COUNCILMEMBER IGNACIO DE LA FUENTE & COUNCIL  
PRESIDENT LARRY REID

**AN ORDINANCE (1) ADDING ARTICLE II TO CHAPTER 9.12 OF THE OAKLAND MUNICIPAL CODE (OMC) TO ESTABLISH A JUVENILE PROTECTION CURFEW PROGRAM AND (2) AMENDING OMC SECTION 1.28.020 TO CODIFY THE PENALTIES FOR VIOLATIONS OF THE CURFEW ORDINANCE , AND (3) REPEALING OAKLAND MUNICIPAL CODE SECTIONS 9.12.020 AND 9.12.030 PROHIBITING MINORS FROM LOITERING IN PUBLIC PLACES**

**WHEREAS**, the City Council has determined that there has been an increase in juvenile violence, juvenile gang activity, and crime by persons under the age of eighteen (18) years ("Minors") in the City of Oakland; and

**WHEREAS**, Oakland Municipal Code sections 9.12.020 and 9.12.030 which intended to address loitering offenses committed by minors, were passed around 1947 and since then have been outdated by new case law and should therefore be repealed; and

**WHEREAS**, minors are particularly susceptible by their lack of maturity and experience to participate in unlawful and gang-related activities and to become victims of adult perpetrators of crime; and

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**WHEREAS**, a significant amount of serious crime (burglaries, robberies, assaults, etc.) is committed by and against minors during late night hours in the City of Oakland; and

Deleted: rapes

**WHEREAS**, there has been an increase in minors committing robberies and burglaries between the hours of 8:00 a.m. and 2:00 p.m.

**WHEREAS**, one in three Oakland Unified students are truants meaning they have had at least three unexcused absences and one in seven Oakland Unified students are chronically absent, meaning they have missed more than 10% of the school year; and

**WHEREAS**, between 2001 and 2010, 12 school age children in Oakland have been murdered during hours when they should have been in school; and

**WHEREAS**, burglaries and robberies committed by youth suspects under the age of 18 is highest during the noon hour; and

WHEREAS, weapon law violations by youth under the age of 18 is highest during the noon hour; and

WHEREAS, the involvement of minors – as perpetrators and victims – in offenses dealing with human trafficking and prostitution continue to increase; and

Deleted: WHEREAS, there has been an increase in minors committing shootings and other crimes during late night hours in the City of Oakland; and¶

WHEREAS, a significant amount of serious crime is also committed by adults during the late night hours in the City of Oakland thereby compromising the public's safety and in particular the safety of minors, and

WHEREAS, the California Legislature has found that a significant number of injury vehicle accidents involving minors occur between 9:00 p.m. and 5:00 a.m. and, for the safety of minors and others on the streets, has restricted driving privileges so that for the first 12 months of issuance of a driver's license, a minor may not transport passengers under age 20, and may not drive between the hours of 11:00 p.m. and 5:00 a.m. without a parent or other adult driver, as specified in Section 12814.6 of the California Vehicle Code; and

WHEREAS, reducing the number of minors in public places in the City of Oakland during late night hours will reduce the instances in which minors are at risk of committing serious crimes or become themselves the victims of serious crimes, and reduce the opportunity for minors to be involved in narcotics, prostitution and gang activity involving other youth or adults; and

WHEREAS reducing the number of minors in public places in the City of Oakland during late night hours will allow the Oakland Police Department to deploy its personnel to focus on investigating and preventing serious crimes committed by adults during the late night hours; and

WHEREAS, by addressing the presence of youth in public places during late night/early morning hours the City of Oakland seeks to provide for the protection of minors from violence committed by minors and adults, to enforce parental control over and responsibility for children, to protect the general public, to reduce the incidence of juvenile criminal activities and the victimization of juveniles, and to reduce the incidence of night/early morning time juvenile injury motor vehicle accidents; and

WHEREAS, the City Council finds and determines that passage of a youth curfew ordinance will protect the welfare of minors by:

1. Reducing the likelihood that minors will be victims of criminal acts during the curfew hours;
2. Reducing the likelihood that minors will become involved in committing criminal acts; and

- 3. Reducing the likelihood that minors will be exposed to narcotics trafficking and gang activity involving adults during the curfew hours; and
- 4. Reducing the likelihood that minors will be involved in night time injury motor vehicle collisions; and
- 5. Aiding parents and legal guardians in carrying out their responsibility to exercise reasonable supervision of minors entrusted to their care; and

WHEREAS, OMC Chapter 1.28 sets forth the classification of OMC violations as misdemeanors or infractions;

Deleted: and

WHEREAS, the Juvenile Protection Curfew Ordinance creates a new infraction offense; now therefore,

Deleted: grants discretion to the prosecuting attorney to charge certain misdemeanor violations as infractions and

Deleted: and

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

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

Deleted: NOW, THEREFORE,

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. Oakland Municipal Code Chapter 9.12, Article II is added to read as follows:

**Article II Juvenile Protection Curfew**

**§9.12.100 Definitions for Curfew Provisions**

For purposes of this Article:

- A. "Curfew hours" means:
  - 1. 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 5:00 a.m. of the following day; and
  - 2. 11:30 p.m. on any Friday or Saturday until 5:00 a.m. the following day.
  - 3. 8:30 a.m. on any school day until 1:30 p.m. the same day
- B. "Emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, natural disaster, an automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.
- C. "Establishment" means any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment
- D. "Legal Guardian" means (1) a person who, under court order, is the guardian of the person of a minor; or (2) a public or private agency with whom a minor has been placed by the court.
- E. "Minor" means any person under eighteen (18) years of age.
- F. "Operator" means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment

- The term includes the members or partners of an association or partnership and the officers of a corporation.
- G. "Parent" means a person who is a natural parent, adoptive parent, or step-parent of another person.
  - H. "Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, parks, plazas, playgrounds, sidewalks, alleys, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.
  - I. "Responsible adult" means a person at least eighteen (18) years of age, temporarily authorized by a parent or legal guardian to have the care and custody of a minor.
  - J. "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

#### §9.12.110 Curfew Offenses

- A. it is unlawful for any minor to be present in any public place or on the premises of any establishment within the City of Oakland during curfew hours.
- B. It is unlawful for any parent or legal guardian of a minor knowingly to permit, or by insufficient control to allow the minor to be present in any public place or on the premises of any establishment within the City of Oakland during curfew hours.
- C. It is unlawful for the operator or any employee of an establishment to knowingly allow a minor to remain upon the premises of the establishment during curfew hours.
- D. It is a defense to prosecution under Subsection 9.12.110.A, 9.12.110.B, or 9.12.110.C that the minor was:
  - 1. accompanied by the minor's parent or guardian, or by a responsible adult;
  - 2. on an errand at the direction of the minor's parent or legal guardian, or the responsible adult, without any detour or stop;
  - 3. in a motor vehicle involved in interstate travel;
  - 4. engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
  - 5. involved in an emergency;
  - 6. on the sidewalk abutting the minor's residence;
  - 7. attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Oakland, a civic organization, or another similar entity that takes responsibility for the minor, or travelling to or from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the City of

Oakland, a civic organization, or another similar entity that takes responsibility for the minor;

- 8. exercising First Amendment rights protected by the United States Constitution; or
  - 9. emancipated pursuant to law.
- E. It is a defense to prosecution under Subsection 9.12.110.A, 9.12.110.B, or 9.12.110.C, for a violation of the daytime curfew hours only, that the minor was:
- 1. going to or coming from a medical appointment;
  - 2. permitted to leave campus for lunch or other school-related activities and had in his or her possession a valid, school-issued off-campus permit;
  - 3. not required by his or her school vacation, track, or curriculum schedule to be in school; or
  - 4. exempt by law from compulsory education or compulsory continued education
- F. It is a defense to prosecution under Subsection 9.12.110.C. that the operator or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.
- G. Before taking any enforcement action under this Section, a police officer shall ask the apparent offender's age and reason for being in the public place or on the premises of the establishment during curfew hours. The officer shall not issue a citation or make an arrest under this Section unless the officer has probable cause to believe that an offense has occurred and that, based on any responses and other circumstances, no defense under Subsection 9.12.110.D or 9.12.110.E is present or applicable.
- H. A person who violates a provision of this Article is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted.

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**§9.12.120 Penalty**

- A. Any person violating the provisions of this article, shall be guilty of an infraction or a misdemeanor pursuant to the provisions of Section 1.28.020 of this Code, which states that any violation beyond the third conviction in one year may be charged as a misdemeanor, and will be cited. Minors shall be dealt with in accordance with juvenile court law and procedure.
- B.

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Deleted: <#>If a minor violates the curfew two (2) times with within a six (6) month period the prosecuting agency will have the discretion to elevate the infraction to a misdemeanor. ¶

<#>Any adult violating the provisions of Subsection 9.12.110.B or C shall be guilty of a misdemeanor or an infraction pursuant to the provisions of Section 1.28.020 of this Code and will be cited. ¶

The applicable fines for violations of this Chapter shall be imposed in accordance with Chapter 1.28 of this Code

**Section 3. Severability**

This Article shall be enforced to the full extent of the authority of the City of Oakland. The Subsections, paragraphs, sentences and words of this Section are deemed severable, so that if any Section, Subsection, paragraph, sentence or word of this Section is found to be invalid or beyond the authority

of the City of Oakland, such finding shall not affect the applicability and enforcement of the remaining portions of this Section

Section 4. Oakland Municipal Code Chapter 1.28.020 is amended to add the following subsection to the list of infraction offenses:

§1.28.020.A.2.k. Chapter 9.12, – Juvenile Protection Curfew.

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Section 5. Oakland Municipal Code section 9.12.020 and 9.12.030 are repealed to remove the following:

~~9.12.020-Miners-in-public-places.~~

~~Every person under the age of eighteen (18) years who loiters in or about any public street or other public place or any place open to the public in the city, between the hour of ten p.m. and the time of sunrise of the following day when not accompanied by his or her parent, guardian or other adult person having the legal care, custody or control of such person, or spouse of such person over twenty-one (21) years of age, is guilty of a misdemeanor.~~

~~9.12.030-Responsibility-of-parents, guardians and other persons.~~

~~Every parent, guardian, or other person having the legal care, custody, or control of any person under the age of eighteen (18) years who permits such person to violate the provisions of Section 9.12.020, is guilty of a misdemeanor.~~

Section 6. This Ordinance shall become effective immediately upon 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.

Section 7. The City Administrator's Office through the Oakland Police Department shall promulgate an Administrative instruction or the appropriate policy and train police personnel regarding the appropriate implementation of this Ordinance.

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IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2011\_

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

**AN ORDINANCE (1) ADDING CHAPTER 9.12 OF THE OAKLAND MUNICIPAL CODE TO ESTABLISH A YOUTH PROTECTION CURFEW AND (2) REPEALING SECTIONS 9.12.020 AND 9.12.030 (MINORS LOITERING IN PUBLIC PLACES)**

**NOTICE AND DIGEST**

This Ordinance adds Oakland Municipal Code Chapter 9.12 and establishes a Youth Protection Curfew. The curfew prohibits persons under 18 years of age from being in any public place or establishment in the City of Oakland, between the hours of 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 5:00 a.m. of the following day, and 11:30 p.m. on any Friday or Saturday until 5:00 a.m. the following day. And between the hours of 8:30 a.m and 1:30 p.m on school days. It also prohibits parents or legal guardians from allowing minors under their control to violate this Ordinance. Additionally, it prohibits a business establishment from knowingly allowing minors to remain on its premises during curfew hours. Finally, this ordinance repeals sections 9.12.020 and 9.12.030 of the Oakland Municipal Code (minors loitering in public).