

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2007 NOV 15 PM 3:21

To: Office of the City Administrator
Attn: Deborah Edgerly
From: Police Department
Date: November 27, 2007

Re: A Report and Proposed Ordinance Repealing Ordinances No. 11987, 12015, 12093, And 12684 C.M.S. Which Declare Vehicles Used To Solicit An Act Of Prostitution, For Pandering, For Pimping, Or To Illegally Acquire A Controlled Substance, To Be Public Nuisances, And Authorize The Seizure And Forfeiture Of Said Vehicles; And a Proposed Resolution Authorizing The City Administrator, Or Her Designee, On Behalf Of The City Of Oakland, To Support Assembly Bill #1724 (Jones), Which Seeks To Change State Law To Authorize Local Governments To Enact And Enforce Local Legislation To Forfeit Nuisance Vehicles Used In The Illegal Purchase Of A Controlled Substance, Pimping, Pandering, Or Solicitation Of Prostitution

SUMMARY

The proposed ordinance would repeal Ordinances No. 11987, 12015, 12093, and 12684, chaptered as Oakland Municipal Code Chapter 9.56 and commonly known as "Beat Feet," or the Nuisance Vehicle Forfeiture Ordinance. Repeal of these Ordinances is recommended as a result of the California Supreme Court's decision in the lawsuit O'Connell v. City of Stockton (2007) 41 Cal.4th 1061, finding that state law preempts local entities from enacting this type of ordinance.

The proposed resolution would authorize the City Administrator to instruct the City's legislative lobbyist to support Assembly Bill #1724 (Jones), which seeks to change state law to expressly authorize local governments to enact and enforce local legislation to forfeit vehicles used in illegal purchases of controlled substances, pimping, pandering, and solicitation of prostitution.

FISCAL IMPACT

The Vehicle Seizure Program is a self-sustaining program housed in the General Fund (1010) under Project P708010. The program was suspended in 2006. No expenditures have been made since and any net proceeds remaining from settlement monies or the proceeds of vehicle auctions will be posted to the project. Staff anticipates reconciling and closing the Project by June 30, 2008.

BACKGROUND

In 1997, the City Council passed Ordinance No. 11987 C.M.S., in response to community complaints of the negative effects on public streets and sidewalks caused by street prostitution occurring in automobiles and the nuisance caused by street level drug purchases by persons in

automobiles. Over the years, various amendments were made to the Ordinance (Ordinances No. 12015, 12093, and 12684) which included a right to a jury trial, a post-seizure hearing, and adding violations for vehicles used by pimps and panderers.

In 1998, taxpayer Sam Horton filed suit against Oakland, alleging that the Ordinance was unconstitutional because it was preempted by California law. In July 2000, the California Court of Appeal, First District, issued a ruling in the lawsuit Sam Horton v. City of Oakland (2000) 82 Cal.App.4th 580, finding that the terms of Oakland's Nuisance Vehicle Forfeiture Ordinance did not conflict with California law and denied Horton's preemption challenge.

In early 2001, the City of Stockton passed Ordinance 015-01C.S. (effective July 12, 2001 and codified as Stockton Municipal Code, Chapter 5, Part XXV), which is substantially similar to the Oakland's Nuisance Vehicle Forfeiture Ordinance in many respects. In late 2001, taxpayer Kendra O'Connell filed suit against the City of Stockton, alleging that Stockton's Nuisance Vehicle Ordinance was preempted by California law. The California Court of Appeal, Third District, found that Stockton is preempted from enacting such law. Because this Third District ruling directly contradicts the First District's ruling in Horton v. City of Oakland, Stockton appealed to the California Supreme Court.

Oakland was sued again in the fall of 2001 by a taxpayer (Aram Sohigian) who is challenging Oakland's Ordinance on numerous grounds. Oakland was successful, in the Alameda County Superior Court, in having the suit dismissed. The Court of Appeal agreed with the trial court on all counts except one (potential excessive fines), and also held that Sohigian had no standing to raise preemption because of the prior ruling in Horton v. City of Oakland. Sohigian appealed to the Supreme Court and review was granted; however, the Supreme Court held the case so it could first decide the Stockton case.

On July 26, 2007, the California Supreme Court ruled, in O'Connell v. City of Stockton (2007) 41 Cal.4th 1061, that Stockton's Nuisance Vehicle Ordinance is preempted by California law, and overruled the 2000 decision of the Court of Appeal, First District, in Horton v. City of Oakland.

The Supreme Court has not yet issued a ruling in the Sohigian v. City of Oakland case, but it is expected that the case will be ordered back to the Alameda County Superior Court for further litigation.

KEY ISSUES AND IMPACTS

Passage of the proposed ordinance will comply with the ruling of the California Supreme Court and protect the City from future liability from lawsuits challenging Oakland's Ordinance. However, it will also deprive the City of a tool it has used for many years to combat the nuisance caused by street level drug dealing and prostitution.

Vehicles used in the street prostitution trade may now only be addressed in accordance with Vehicle Code section 22659.5, which allows a local entity to adopt a 5-year pilot program to allow seizure and impound of motor vehicles used in soliciting prostitution. Impounds cannot

exceed 48 hours and must be supported by a conviction or no-contest plea. There are no impound or forfeiture provisions relating to vehicles of pimps or panders.

Vehicles used by drug buyers cannot be seized, impounded, or forfeited unless they meet the criteria of Health and Safety Code section 11000 et seq (the Uniform Controlled Substances Act). This Act does not generally provide for the seizure, impound, or forfeiture of illegal drug buyers' vehicles, but instead focuses on the vehicles of illegal drug sellers. (See Health and Safety Code section 11470.)

Assembly Bill #1724 (Jones) is now pending in the California Legislature and seeks to repeal Vehicle Code section 22659.5 and replace it with provisions that expressly authorize local governments to enact and enforce local legislation to forfeit vehicles used in illegal drug purchasing, pimping, pandering, and solicitation of prostitution.

This report and proposed resolution recommend that the City formally support AB #1724. If the bill becomes law, the City would then be allowed the opportunity to enact local legislation to address the problems previously addressed by the Beat Feet Ordinance. The text of AB #1724 is included as Exhibit A to this report.

PROJECT DESCRIPTION

Because Oakland's Nuisance Vehicle Forfeiture Ordinance provides for forfeiture of the same types of activity that was prohibited in the Stockton Ordinance (illegal drug buying, and solicitation of prostitution), the Supreme Court's ruling in O'Connell v. City of Stockton effectively preempts Oakland's Nuisance Vehicle Forfeiture Ordinance.

Repeal of the Oakland Ordinance is recommended to avoid future liability from lawsuits challenging O.M.C. Chapter 9.56 on the basis of preemption. Any such lawsuit would likely prevail, because the ruling in O'Connell v. Stockton clearly prohibits this type of local ordinance.

Passage of AB #1724 would authorize Oakland and other California cities to re-enact their Nuisance Vehicle Forfeiture ordinances without concern for lawsuits based on preemption.

SUSTAINABLE OPPORTUNITIES

Economic: Passage of this proposed ordinance will likely result in a net saving of expenditures by the Police Department.

Environmental: There are no environmental opportunities resulting from the recommended changes to the Ordinance.

Social Equity: Passage of this proposed ordinance will ensure that Oakland does not seize vehicles contrary to state laws as discussed in this report.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no impacts on disability and senior access from the recommended changes to the Ordinance.

RECOMMENDATION

Staff recommends that the City Council pass the proposed ordinance repealing Ordinances No. 11987, 12015, 12093, and 12684 C.M.S. and, adopt the proposed resolution authorizing the City Administrator to seek support for Assembly Bill #1724.

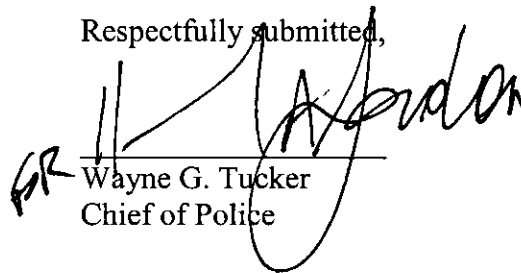
ACTION REQUESTED OF THE CITY COUNCIL

Pass the proposed ordinance repealing Ordinances No. 11987, 12015, 12093, and 12684, and adopt the proposed resolution authorizing the City Administrator, on behalf of the City of Oakland to support Assembly Bill #1724 (Jones).

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:


Office of the City Administrator

Respectfully submitted,


Wayne G. Tucker
Chief of Police

Prepared by:
Deputy Chief David Kozicki
Oakland Police Department

AMENDED IN SENATE AUGUST 20, 2007

AMENDED IN SENATE JULY 18, 2007

AMENDED IN SENATE JUNE 28, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1724

Introduced by ~~Committee on Judiciary (Jones (Chair), Evans, Feuer, Krekorian, Laird, Levine, and Lieber)~~ *Assembly Member Jones*

March 6, 2007

An act to ~~amend Section 340.1 of the Code of Civil Procedure~~ *repeal and add Section 22659.5 of the Vehicle Code*, relating to ~~civil procedure~~ *vehicle forfeiture*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1724, as amended, ~~Committee on Judiciary Jones. Actions: sexual abuse: certificates of merit. Vehicle: nuisance abatement: forfeiture: solicitation for controlled substances and prostitution.~~

(1) *The Uniform Controlled Substances Act provides for the forfeiture of a vehicle that is used as an instrument to facilitate the manufacture of, or possession for sale or sale of, a specified amount of controlled substances.*

This bill would authorize a city, a county, or a city and county to adopt an ordinance declaring a motor vehicle to be a nuisance subject to forfeiture when the motor vehicle is used in the acquisition or the attempted acquisition of a controlled substance.

(2) *Existing law authorizes a city, a county, or a city and county to establish a 5-year pilot program that implements a procedure to declare*

a motor vehicle to be a public nuisance when the motor vehicle is used in the commission of specified crimes related to prostitution.

This bill would repeal that provision and would authorize a city, a county, or a city and county, to adopt an ordinance declaring a motor vehicle to be a nuisance subject to forfeiture when the motor vehicle is used in the commission of specified crimes related to prostitution.

~~(1) Existing law provides for a specified period to commence an action for recovery of damages suffered as a result of childhood sexual abuse. Existing law requires every plaintiff 26 years of age or older at the time the action is filed to file certificates of merit executed by the attorney for the plaintiff and by a licensed mental health practitioner, as specified. Existing law provides that no defendant may be served, and the duty to serve a defendant with process does not attach, until the court has reviewed the certificates of merit filed pursuant to these provisions and has found that there is reasonable and meritorious cause for the filing of the action against that defendant.~~

~~This bill would require the court to keep under seal and confidential from the public and all parties to the litigation, other than the plaintiff, each certificate of merit filed pursuant to these provisions.~~

~~(2) Existing law requires that an action for recovery of damages suffered as a result of childhood sexual abuse, as defined, be commenced within 8 years of the date the plaintiff attains the age of majority or within 3 years of the date the plaintiff discovers or reasonably should have discovered that the psychological injury or illness occurring after the age of majority was caused by sexual abuse, whichever occurs later. Existing law provides that certain of those actions may not be commenced on or after the plaintiff's 26th birthday, except if the person or entity against whom the action is commenced knew, had reason to know, or was otherwise on notice of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and implement reasonable safeguards, to avoid future acts of unlawful sexual conduct.~~

~~This bill would find and declare that the above provisions did not restrict existing law relating to the delayed discovery of childhood sexual abuse or the filing of those claims under the above exception. The bill would also provide that those findings and declarations are declaratory of existing law.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

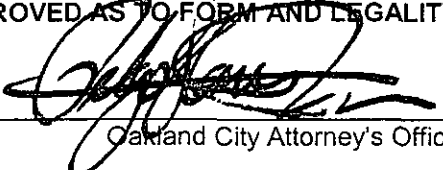
- 1 *SECTION 1. Section 22659.5 of the Vehicle Code is repealed.*
2 ~~22659.5.—(a) Notwithstanding any other provision of law, any~~
3 ~~city, any county, or any city and county, may adopt an ordinance~~
4 ~~establishing a five-year pilot program that implements procedures~~
5 ~~for declaring any motor vehicle a public nuisance when the vehicle~~
6 ~~is used in the commission of an act in violation of Section 266h~~
7 ~~or 266i of the Penal Code or subdivision (b) of Section 647 of that~~
8 ~~code, and there is a conviction of Section 266h or 266i of the Penal~~
9 ~~Code or subdivision (b) of Section 647 of that code, or a provision~~
10 ~~involving any lesser included offense to which the defendant enters~~
11 ~~a plea of guilty or nolo contendere as part of a plea agreement~~
12 ~~subsequent to the defendant having been charged with a violation~~
13 ~~of Section 266h or 266i of the Penal Code or subdivision (b) of~~
14 ~~Section 647 of that code.~~
15 ~~(b) In addition to the authority provided by subdivision (h) of~~
16 ~~Section 22651, the ordinance may also include procedures to enjoin~~
17 ~~and abate the declared nuisance by ordering the defendant not to~~
18 ~~use the vehicle again for purposes of violating Section 266h or~~
19 ~~266i of the Penal Code or subdivision (b) of Section 647 of that~~
20 ~~code and authorizing the temporary impoundment of the vehicle~~
21 ~~that the court has declared a nuisance if the defendant violates the~~
22 ~~order. The impoundment shall not exceed 48 hours.~~
23 ~~(c) The only action that may be taken to enjoin and abate the~~
24 ~~declared nuisance are those actions specified in subdivision (b).~~
25 ~~(d) Any procedures implemented pursuant to this section shall~~
26 ~~ensure that no vehicle is declared a nuisance if the vehicle is stolen,~~
27 ~~unless it is not possible to reasonably ascertain the identity of any~~
28 ~~owner of the vehicle.~~
29 *SEC. 2. Section 22659.5 is added to the Vehicle Code, to read:*
30 ~~22659.5. Notwithstanding any other provision of law, a city~~
31 ~~or a county may adopt an ordinance declaring a motor vehicle to~~
32 ~~be a public nuisance subject to forfeiture when the motor vehicle~~
33 ~~is used in the commission of any of the following:~~
34 ~~(a) A violation of Section 266h of the Penal Code.~~
35 ~~(b) A violation of Section 226i of the Penal Code.~~
36 ~~(c) A violation of subdivision (b) of Section 647 of the Penal~~
37 ~~Code.~~

1 *(d) The acquisition or the attempted acquisition of a controlled*
2 *substance that is illegal to possess pursuant to the Uniform*
3 *Controlled Substances Act (Division 10 (commencing with Section*
4 *11000) of the Health and Safety Code).*

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**All matter omitted in this version of the bill
appears in the bill as amended in Senate,
July 18, 2007 (JR11)**

FILED
OFFICE OF THE CITY CLERK
OAKLAND


Oakland City Attorney's Office

2007 NOV 15 PM 3:22

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR, OR HER DESIGNEE, TO INSTRUCT THE CITY'S LEGISLATIVE LOBBYIST TO SUPPORT PASSAGE OF CALIFORNIA ASSEMBLY BILL NO. 1724 (JONES), WHICH SEEKS TO CHANGE STATE LAW TO AUTHORIZE LOCAL GOVERNMENTS TO ENACT AND ENFORCE ORDINANCES TO FORFEIT NUISANCE VEHICLES USED IN ILLEGAL PURCHASE OF A CONTROLLED SUBSTANCE, PIMPING, PANDERING, OR SOLICITATION OF PROSTITUTION.

WHEREAS, in 1997, the Oakland City Council enacted Ordinance No. 11987 C.M.S. declaring vehicles used to solicit an act of prostitution or to illegally acquire a controlled substance to be public nuisances and authorized the seizure and forfeiture of said vehicles; and

WHEREAS, the Oakland City Council subsequently enacted Ordinances No. 12015, 12093, and 12684 C.M.S. amending various provisions of the original Ordinance No. 11987 C.M.S.; and

WHEREAS, Ordinance No. 11987 C.M.S. and its amendments are codified and appear as Chapter 9.56 of the Oakland Municipal Code (named the Nuisance Vehicle Forfeiture Ordinance); and

WHEREAS, on July 24, 2000, the California Court of Appeal, First District, issued its decision in *Sam Horton v. City of Oakland* (2000) 82 Cal.App.4th 580, finding that the terms of Oakland's Nuisance Vehicle Forfeiture Ordinance did not conflict with California law and denied a preemption challenge brought in said lawsuit; and

WHEREAS, in early 2001, the City of Stockton passed Ordinance 015-01 C.S. (effective July 12, 2001 and codified as Stockton Municipal Code, Chapter 5, Part XXV), which is substantially similar to the Oakland's Nuisance Vehicle Forfeiture Ordinance in many respects; and

WHEREAS, in late 2001, Kendra O'Connell filed suit against the City of Stockton, alleging that Stockton's Nuisance Vehicle Ordinance was preempted by California Law; and

WHEREAS, on July 26, 2007, the California Supreme Court ruled (see *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061) that Stockton's Nuisance Vehicle Ordinance is preempted by California law, and overruled the 2000 decision of the Court of Appeal, First District, in *Horton v. City of Oakland*; and

WHEREAS, Assembly Bill No. 1724 (Jones) is currently pending in the California Legislature and seeks to change California law to expressly authorize local governments, including the City of Oakland, to enact ordinances that would provide for the forfeiture of nuisance vehicles used to solicit an act of prostitution, for pimping, for pandering, or for the illegal purchase of controlled substances; and

WHEREAS, it is in the best interest of the City of Oakland that it have the authority to enact local ordinances providing for forfeiture of nuisance vehicles used to solicit an act of prostitution, for pimping, for pandering, or for the illegal purchase of controlled substances within Oakland; now therefore be it

RESOLVED: That the City Administrator, or her designee, is hereby authorized to instruct the City's legislative lobbyist to advocate for and support the passage of California Assembly Bill No. 1724 (Jones.)

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

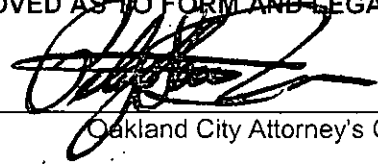
NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

FILED
OFFICE OF THE CITY CLERK
OAKLAND



Oakland City Attorney's Office

2007 NOV 15 PM 3:22 OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

ORDINANCE REPEALING ORDINANCES NO. 11987, 12015, 12093, and 12684 C.M.S. WHICH DECLARED VEHICLES USED TO SOLICIT AN ACT OF PROSTITUTION, FOR PANDERING, FOR PIMPING, OR TO ILLEGALLY ACQUIRE A CONTROLLED SUBSTANCE TO BE PUBLIC NUISANCES AND AUTHORIZING THE SEIZURE AND FORFEITURE OF SAID VEHICLES.

WHEREAS, in 1997, the Oakland City Council enacted Ordinance No. 11987 C.M.S. declaring vehicles used to solicit an act of prostitution or to illegally acquire a controlled substance to be public nuisances and authorized the seizure and forfeiture of said vehicles; and

WHEREAS, the Oakland City Council subsequently enacted Ordinances No. 12015, 12093, and 12684 C.M.S. amending various provisions of the original Ordinance No. 11987 C.M.S.; and

WHEREAS, Ordinance No. 11987 C.M.S. and its amendments are codified and appear as Chapter 9.56 of the Oakland Municipal Code (named the Nuisance Vehicle Forfeiture Ordinance); and

WHEREAS, on July 24, 2000, the California Court of Appeal, First District, issued its decision in Sam Horton v. City of Oakland (2000) 82 Cal.App.4th 580, finding that the terms of Oakland's Nuisance Vehicle Forfeiture Ordinance did not conflict with California law and denied a preemption challenge brought in said lawsuit; and

WHEREAS, in early 2001, the City of Stockton passed ordinance 015-01C.S. (effective July 12, 2001 and codified as Stockton Municipal Code, Chapter 5, Part XXV), which is substantially similar to the Oakland's Nuisance Vehicle Forfeiture Ordinance in many respects; and

WHEREAS, in late 2001, Kendra O'Connell filed suit against the City of Stockton, alleging that Stockton's Nuisance Vehicle Ordinance was preempted by California Law; and

WHEREAS, on July 26, 2007, the California Supreme Court ruled (see O'Connell v. City of Stockton (2007) 41 Cal.4th 1061) that Stockton's Nuisance Vehicle Ordinance is preempted by California law, and overruled the 2000 decision of the Court of Appeal, First District, in Horton v. City of Oakland; and

WHEREAS, pursuant to the above, the City Council has determined it is in the best interest of the City to repeal Ordinances No. 11987, 12015, 12093, and 12684 C.M.S.; now therefore

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

SECTION 1. Repeal of Ordinances No. 11987, 12015, 12093, and 12684 C.M.S.
are hereby repealed.

SECTION 2. Oakland Municipal Code, Title 9, Chapter 9.56, is hereby repealed.

SECTION 3. Effective Date.

This Ordinance shall be come 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, CHANG, 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

Notice & Digest

AN ORDINANCE REPEALING ORDINANCES NO. 11987, 12015, 12093, AND 12684 C.M.S. WHICH DECLARE VEHICLES USED TO SOLICIT AN ACT OF PROSTITUTION, FOR PANDERING, FOR PIMPING, OR TO ILLEGALLY ACQUIRE A CONTROLLED SUBSTANCE, TO BE PUBLIC NUISANCES AND AUTHORIZE THE SEIZURE AND FORFEITURE OF SAID VEHICLES.

This is an ordinance repealing Ordinances No. 11987, 12015, 12093, and 12684 C.M.S. which declare vehicles used to solicit an act of prostitution, for pandering, for pimping, or to illegally acquire a controlled substance, to be public nuisances and authorize the seizure and forfeiture of said vehicles. The effect of this ordinance is to repeal Oakland Municipal Code Chapter 9.56 "Seizure and Forfeiture of Nuisance Vehicles." This action is in response to the California Supreme Court decision O'Connell v. City of Stockton et al (2007) Cal.4th 1061.