

OFFICE OF THE CITY CLERK



Oakland City Attorney's Office

2007 NOV 14 09
OAKLAND CITY COUNCIL**ORDINANCE NO. 12846 C.M.S.**

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.

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. Ordinances No. 11987, 12015, 12093, and 12684 C.M.S. are hereby repealed.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 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, **DEC 18 2007**, 20_____

PASSED BY THE FOLLOWING VOTE:

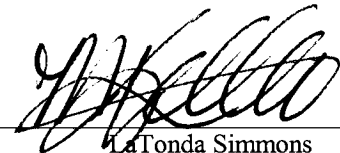
AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: _____



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

Introduction Date: **DEC 4 2007**



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) 41 Cal.4th 1061.