



AGENDA REPORT

TO: Jestin D. Johnson
City Administrator

FROM: Joe DeVries
Deputy City Administrator
and Chief Resilience Officer

SUBJECT: SUPPLEMENTAL - Safe Work Zone
Ordinance

DATE: November 14, 2023

City Administrator Approval


Jestin Johnson (Nov 17, 2023 16:31 PST)

Date: Nov 17, 2023

RECOMMENDATION

Staff Recommends That The City Council Adopt An Ordinance Adding Chapter 9.06 To The Oakland Municipal Code To (1) Allow City Employees And Essential Infrastructure Workers Carrying Out Their Duties On Public Property To Establish Safe Work Zones Subject To Specified Criteria To Protect First Amendment Rights And The Safety Of Such Workers And The Public; And (2) Make Willful Failure To Leave A Designated Safe Work Zone, After Request By A Peace Officer, A Misdemeanor

REASON FOR SUPPLEMENTAL

At the December 12, 2022, Public Works Committee meeting, staff was asked to provide a supplemental report clarifying the perimeter of the safe work zone and the difference between this proposed ordinance and current law. The Rules Committee held the item, pending the installation of the new administration.

During the transition period to a new administration in early 2023, staff from the City Administrator's Office (CAO), the Public Works Department (OPW), and the Department of Transportation (OakDOT) met with representatives from Pacific Gas and Electric (PG&E), East Bay Municipal Utility District (EBMUD), Comcast, and AT&T on multiple occasions and learned of widespread incidents of essential infrastructure workers not being able to perform their duties in the City of Oakland (City) due to threats and harassing behavior. Representatives from these partner organizations noted how difficult it was to staff operations in Oakland due to these incidents and asked that the City consider expanding the scope of the ordinance to include all essential infrastructure workers performing services in the City.

PG&E provided a five-year trend analysis of workplace violence in Oakland, which significantly increased in 2022 and 2023 (**Table 1**). Although it dipped slightly in 2021 due to COVID-19, it has doubled in comparison to the baseline of 10 incidents a year.

City Council
December 5, 2023

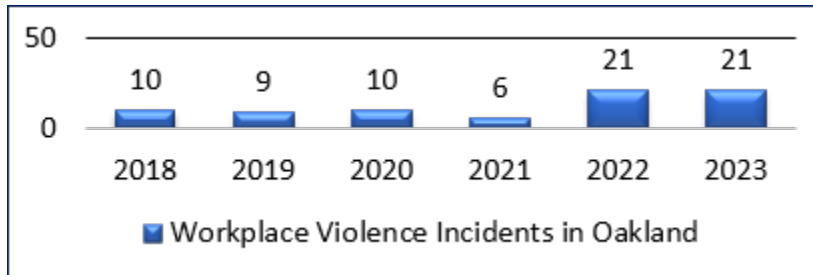


Table 1 PG&E Workplace Violence Incidents 2018-2023

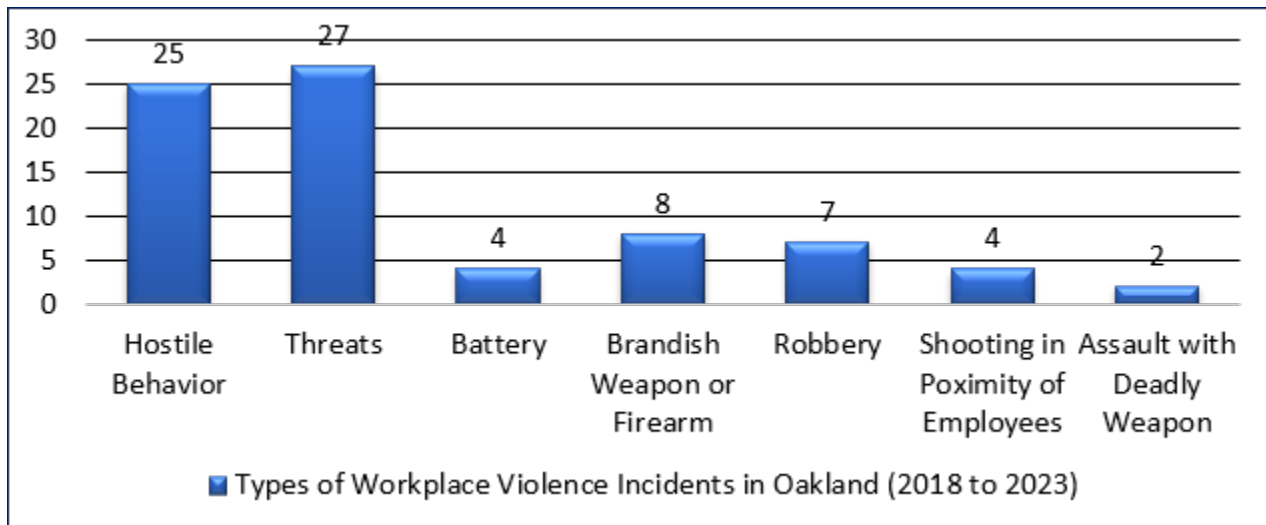


Table 2 PG&E Types of Workplace Violence 2018-2023

PG&E also reported that Oakland employees have a higher number of “Unassociated Person Encounters” than PG&E employees elsewhere. Oakland employees had hostile encounters with unassociated persons 48% of the time in the past five years. In comparison, all other employees in the company only had unassociated person encounters about 20% of the time. (Table 2) shows that the PG&E Oakland employees encounter a significant amount of hostile activity and threats. They also view shooting incidents in close proximity to their work locations. This is unique to Oakland employees in comparison to other cities.

Expansion of the Ordinance

Based on these discussions and data, the ordinance has been revised to include public utility workers more generally. Specifically, the new version of the ordinance defines “Essential Infrastructure” to include all streets, sidewalks, parks, public buildings, utility lines and poles, streetlights, traffic signals, sewers and storm drains, natural gas lines, water mains, telecommunications and cable equipment, and related equipment and locations that are designed to deliver essential utilities to the public. It also defines “Protected Workers” as City employees, City contractors, and employees of public utility companies and other public agencies performing work on essential infrastructure on public property within the City of Oakland. The new ordinance allows any “Protected Worker” to establish a Safe Work Zone to adequately perform their duties.

December 2022 Public Works Committee Questions:

What is the designated perimeter for the work zone?

In response to the question regarding the perimeter of a Safe Work Zone, the ordinance provides this definition: an area demarcated by a Protected Worker with physical boundaries or clear signage and specifically intended to identify an area off-limits to members of the public to allow Protected Workers to safely carry out their duties, as directed. Safe Work Zones may also include the interior of a Protected Worker's vehicle and the area immediately around the exterior of those vehicles when Protected Workers are accessing equipment and tools. A Safe Work Zone must be for the purpose of protecting the workers and/or members of the public from injury or harassment and not for the purpose of limiting observation of activities.

Demarcation of Safe Work Zones may be designated by any form of demarcation or signage, including but not limited to caution tape, other colored tape, chalk marks, spray-painted perimeters, orange plastic fencing, other types of fencing, temporary or permanent posted signage, traffic cones, physical barriers specifically erected by Protected Workers conducting duties in the Safe Work Zone, or by clear verbal instructions identifying the boundaries of a Safe Work Zone. Designated Safe Work Zones shall be no larger than is reasonably necessary for Protected Workers to safely carry out their duties without risk of injury to persons or property and shall not impede reasonable observation by members of the public.

Draft Administrative Guidelines (**Attachment A**) provide further guidance on the establishing of Safe Work Zones, and staff will encourage partner agencies to develop consistent and clear signage that can be placed on the perimeter of these zones both to prevent the public from entering and to also promote the importance of protecting these workers who are performing essential services to the community.

How does this proposed policy differ from existing laws that allow the Oakland Police Department to remove any individual harassing city employees while they are performing work?

Existing state law allows for the arrest of individuals who disobey the lawful order of a police officer. California Penal Code 148(a) provides that every person who willfully resists, delays, or obstructs any public officer in the execution of any duty of their office or employment when no other punishment is prescribed shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both. It is also unlawful for any person to resist, obstruct, defeat or attempt to defeat, the enforcement or execution of any lawful order of the Council of the city, or any person lawfully acting under the authority of the said Council. (Oakland Municipal Code section 9.04.070)

Existing law does not establish a safe work zone, and in practice, there is confusion regarding when the Oakland Police Department (OPD) can intervene to protect City employees or other essential infrastructure workers from harassment, threats, and unreasonable interference with their work. OPD has stated the need for more clearly defined work areas to better identify when persons may be impeding the work of Protected Workers. This proposed Ordinance will provide that clarity.

There have been numerous examples of Oakland Public Works (OPW) staff not receiving support from OPD to remove persons from a work area who were threatening or harassing staff or creating an unsafe situation by being in the work area near heavy equipment. This is most frequently encountered by OPW staff who clean homeless encampments but has been experienced across departments and by partner agencies. These staff are simply attempting to carry out their assigned duties. In the case of homeless encampment cleanings, staff's work is fully in alignment with the Encampment Management Policy (Policy) that was unanimously adopted by the City Council on October 20, 2020 (Resolution No. [88341 C.M.S.](#)), however, frontline staff frequently bear the brunt of poor behavior by those opposed to the Policy in the form of verbal or physical abuse or by persons impeding work operations. Although OPD cannot be in all places at all times, this ordinance creates a framework that allows for a clearer response from OPD and sends a clear message to the public that the City of Oakland values the work performed by all workers who are maintaining the City's essential infrastructure.

As employers, the City and its partner agencies are obligated to provide employees with a worksite that is safe, healthful, and free from "danger to the life, safety, or health of employees as the nature of the employment reasonably permits." This proposed amendment to Oakland Municipal Code Title 9 to add Chapter 9.06, to be known as the Safe Work Zone Ordinance (Ordinance), will provide an improved measure of safety to all Protected Workers working on essential infrastructure.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt An Ordinance Adding Chapter 9.06 To The Oakland Municipal Code To (1) Allow City Employees And Essential Infrastructure Workers Carrying Out Their Duties On Public Property To Establish Safe Work Zones Subject To Specified Criteria To Protect First Amendment Rights And The Safety Of Such Workers And The Public; And (2) Make Willful Failure To Leave A Designated Safe Work Zone, After Request By A Peace Officer, A Misdemeanor

Respectfully submitted,

Tonya Gilmore for Joe DeVries
Tonya Gilmore for Joe DeVries (Nov 16, 2023 16:42 PST)

Joe DeVries, Deputy City Administrator and
Chief Resilience Officer, City Administrator's
Office

Attachments: 1- Draft Administrative Guidelines