



CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE ADDING CHAPTER 9.06 TO THE OAKLAND MUNICIPAL CODE TO (1) ALLOW THE CITY TO ESTABLISH SAFE WORK ZONES FOR CITY EMPLOYEES CARRYING OUT THEIR DUTIES ON PUBLIC PROPERTY AND (2) MAKE WILLFUL FAILURE TO LEAVE A DESIGNATED SAFE WORK ZONE, AFTER REQUEST BY A PEACE OFFICER, A MISDEMEANOR

WHEREAS, the City of Oakland, like other employers, is obligated to provide employees with a worksite that is safe, healthful, and as free from “danger to the life, safety, or health of employees as the nature of the employment reasonably permits;”¹ and

WHEREAS, Oakland has a long history of protecting workers and has enacted numerous worker protection ordinances including but not limited to the Living Wage Ordinance (O.M.C. Chapter 2.28), Worker Retention at Large-Scale Hospitality Business Ordinance (O.M.C. Chapter 2.36), City Minimum Wage, Sick Leave, and Other Employment Standards (O.M.C. Chapter 5.92), the Hotel Minimum Wage and Working Conditions Ordinance (O.M.C. Chapter 5.93, the Hospitality and Travel Worker Right to Recall Ordinance (O.M.C. Chapter 5.95), and the Grocery Worker Hazard Pay Ordinance (O.M.C. Chapter 5.96); and

WHEREAS, City staff are deployed throughout the City on a daily basis to carry out City business including but not limited to sewer maintenance, tree maintenance, investigation and cleaning of illegal dumping, construction inspections, and cleaning and closure of homeless encampments pursuant to the Encampment Management Policy adopted by the City Council in October 2022 (“Policy”); and

WHEREAS, the City enacted its Policy to guide its staff through interventions in and around homeless encampments to address public health and safety concerns, but such Policy does not address workplace protections for City staff engaged in such interventions; and

WHEREAS, the City is aware of several recent incidents where City staff assigned to and engaged in cleaning and closing homeless encampments pursuant to the Policy have been

¹ See Cal. Labor Code sections 6300, 6400, 6306.

threatened and physically assaulted by individuals in and surrounding homeless encampments, which have been lawfully noticed for cleaning and closure; and

WHEREAS, the City is also aware that threats to and physical assaults on City staff are not limited to those working to clean and clear homeless encampments; and

WHEREAS, in July 2022, a Public Works staff member assigned by a supervisor to clean and clear an area at the Wood Street encampment on City property was harassed and spat upon by an individual opposing the City action; and

WHEREAS, on August 31, 2022, a Public Works Supervisor attempting to carry out duties at a homeless encampment on the Embarcadero Trail was assaulted by an individual who prevented them from completing the necessary work. The Supervisor reported being afraid due to a credible threat of additional violence and later obtained a temporary civil harassment restraining order to protect himself from future harm from this advocate; and

WHEREAS, on October 19, 2022, two City Sewer Maintenance Workers were threatened by an individual with a sharp object while trying to conduct a sewer inspection on 47th Avenue. The Workers reported that they were scared and traumatized and unable to complete the necessary inspection; and

WHEREAS, the City is keenly aware that it must protect the Constitutional rights of community members, including unhoused community members, during encampment interventions and other City business, while also ensuring that City workers are safe while acting within the course and scope of their employment; and

WHEREAS, Oakland Municipal Code 9.16.010 provides that any person who enters upon and appropriates or encumbers any portion of the real estate belonging to or held by the City, shall be deemed guilty of an infraction unless such person shall have first obtained proper authority to do so; and

WHEREAS, Pursuant to Oakland Municipal Code 1.28.010, unless otherwise provided, violation of any provision of the Municipal Code is a misdemeanor, punishable by imprisonment in the county jail not exceeding six months or by fine not exceeding one thousand dollars (\$1,000.00) or by both; and

WHEREAS, it is the intent of the City Council to allow for the creation of Safe Work Spaces to protect not just City workers but also the employees of City contractors and partner organizations when conducting work at the City's behest on City property and/or rights-of-way;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. 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 Title 9 is hereby amended to add Chapter 9.06, the Safe Work Zone Ordinance, as set forth below:

9.06.010 Title and Purpose

The purpose of this Chapter is to promote the health, safety, and general welfare of City employees while executing their duties in public spaces such as City owned or operated properties and public rights-of-way. This Chapter shall be known as the Safe Work Zone Ordinance.

9.06.020 Safe Work Zones

The City Administrator, or their designee, may designate safe work zones on any public property, including the public right-of-way, for the purpose of providing a safe area for City employees to carry out their duties, as directed. Public property includes all real property owned, leased, possessed, maintained, or controlled by the City.

9.06.030 Designation of Safe Work Zones

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 City employees conducting duties in or around the Safe Work Zone, or by clear verbal instructions identifying the boundaries of a Safe Work Zone as designated by City staff.

9.06.040 Violations

Any person who willfully fails or refuses for any reason, after verbal or written request by a Peace Officer, to immediately leave an area designated by City staff as a Safe Work Zone, shall be guilty of a misdemeanor.

9.06.050 No Impairment of Expressive Rights

Nothing in this Chapter shall be construed to prohibit any expressive conduct or to impair the right of persons, individually or in concert, to peacefully protest near or adjacent to a Safe Work Zone insofar as the same is not prohibited by law.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the

Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 4. 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,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS

NOES –
ABSENT –
ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

ATTORNEY-CLIENT CONFIDENTIAL DRAFT ORDINANCE

NOTICE AND DIGEST

ORDINANCE ADDING CHAPTER 9.06 TO THE OAKLAND MUNICIPAL CODE TO (1) ALLOW THE CITY TO ESTABLISH SAFE WORK ZONES FOR CITY EMPLOYEES CARRYING OUT THEIR DUTIES ON PUBLIC PROPERTY AND (2) MAKE WILLFUL FAILURE TO LEAVE A DESIGNATED SAFE WORK ZONE, AFTER REQUEST BY A PEACE OFFICER, A MISDEMEANOR