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CITY OF OAKLAND



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February 8, 2011

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PUBLIC SAFETY COMMITTEE
Oakland, California

Dear Chairperson Kernighan and Members of the Committee:

Subject: Report and Ordinance Amending Section 9.08.260 of the Oakland Municipal Code to (1) Prohibit the Sexual Exploitation of Women and Children, (2) Prohibit Business Owners from Allowing Prostitution on Their Property, (3) Declare Prostitution-Related Offenses Local Crimes, and (4) Clarify Terms Related to Prostitution Offenses

SUMMARY

Chairperson Kernighan is sponsoring this proposed ordinance which is accompanied by this joint report from the City Attorney's Office and the Oakland Police Department ("OPD"). The proposed ordinance prohibits the sexual exploitation of women and children and makes it a local crime to engage in prostitution and prostitution-related offenses on city streets, sidewalks, driveways, parks and in commercial parking lots. It also prohibits property owners and operators from allowing their property to be used for prostitution activity. The City Prosecutors will work with the Oakland Police Department and the Oakland community to enforce this ordinance and prosecute violations.

Specifically, the proposed ordinance (1) prohibits the sexual exploitation of women and children in the City of Oakland (2) declares that the actions of prostitution customers, the pimps and others who exploit women and young girls for sex are local crimes under the Oakland Municipal Code, (3) prohibits business owners from allowing prostitution activities on their property, and (4) updates terms which define the crimes of prostitution and prostitution related offenses. The focus of this ordinance is to support the community's and local law enforcement's efforts to end the sexual exploitation of women and children in Oakland while providing alternatives to the victims of these crimes.

According to the U.S. State Department, prostitution has become big business in Oakland, rivaling only the illegal weapons trade and narcotics trade in its sheer size and scope.

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Sadly, prostitution activity increasingly involves the sale of children for sex. Girls 11 years old, or younger, are sold for sex in Oakland in what law enforcement officials have declared a problem of near epidemic proportions. The Federal Bureau of Investigation ("FBI") has declared that Oakland is a "high intensity child prostitution" city based on the high incidence of child prostitution offenses in Oakland.

The trafficking of children is an especially acute problem in Oakland. Both federal and local law enforcement officials agree that Oakland is known as an "*origination*" city. This means that a large number of girls and sometimes boys, who are linked to human trafficking or sexual exploitation cases in other parts of the country, have ties to Oakland. As the data is collected, the City of Oakland will address the sexual exploitation of male prostitution.

Law enforcement officials of the Oakland Police Department who investigate prostitution and sex trafficking crimes indicate that these problems continue. From 2006 through 2010, the Oakland Police Department has had a high number of incidents and arrests related to prostitution and human trafficking, generally averaging between 500 and 700 a year. Already in 2011, as of January 10, OPD has made seven prostitution-related arrests, including two incidents involving two young girls.

The main areas of Oakland that street level prostitution and prostitution-related crimes have impacted are collectively referred to as *The Track*. *The Track* is a term used by the pimps and the prostitutes to refer to the area where the girls walk the streets or stand in corners to solicit customers for sex. *The Track* generally has a whole infrastructure set up for prostitution which includes the cheap motels located on International Boulevard and numerous side streets where the *johns* or the *tricks* sit in their cars, solicit and engage the girls for sex. Geographically, *The Track* runs from San Pablo Avenue in north Oakland, south through west Oakland, continues through downtown, continues on Fourteenth Street as it becomes International Boulevard and continues on International Boulevard through east Oakland ending at the San Leandro city limit. The neighborhoods encompassed by *The Track* are widely viewed by many as a *Wild West* area where pimps and *johns* often prey on young girls and women for sex.

Existing state laws that address prostitution and prostitution -related offenses are enforced primarily by the Alameda County District Attorney's Office, and Human Trafficking crimes are prosecuted by the Federal or State Attorney General's Office. But the field is not preempted; Oakland and other local governmental entities may enact laws to regulate and prosecute these crimes and provide additional remedies.

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FISCAL IMPACT

No new funding is being sought. We will utilize existing resources and will work with county prosecutors, the courts and community service providers to implement these local laws.

BACKGROUND

A Global Problem: Worldwide, the U.S. State Department estimates that at least one million women and children are sexually exploited by traffickers each year, generating billions in revenue. The prostitution trade knows no borders, as traffickers send women and girls who are forced into the sex trade to destinations around the world, including the United States. Many of the sex workers in cities across the United States are undocumented aliens who were smuggled into the United States from Asia, Europe, and Central and South America. These prostitutes are less likely to be working on the streets, because their status as undocumented aliens subjects them to deportation when they are apprehended. Typically, these prostitutes work at establishments professing to provide other services, such as massage parlors and motels, or are services are offered on the internet.

A Local Problem: Law enforcement agencies determined that local women and girls are also forced or coerced into the sex trade. These women and young girls are more likely to become street level prostitutes. Studies show that in the United States, street level pimps can earn staggering amounts of money. According to a study out of Washington, D.C. by the Polaris Project, which is one of the largest anti-trafficking organizations in the United States with programs operating at national and local levels, a pimp who controls four girls can bring in close to \$2,000 a night, or an average of \$500 per girl. Based on these numbers, a pimp can earn over \$600,000 a year. Such easy money is making this the fastest growing criminal industry in America.

Street Prostitution in Oakland: According to OPD Vice and Child Exploitation law enforcement officials familiar with the problem, as Oakland police clamped down on the narcotics trade over the last ten years, drug dealers have gradually moved to the more lucrative and less risky trade of selling women and young girls for sex. Pimps are less likely to get caught than street level drug dealers, in part because they do not have to carry the *commodity* on their person.

Historically, street prostitution in Oakland involved mostly adult women, but at the beginning of the 21st century, the sale of children for sex became a more common occurrence. Oakland law enforcement officials say that a third of teenage girls working as prostitutes in Oakland were abducted and forced onto the streets. Between 1999 through 2002, the OPD Vice and Child Exploitation Unit interviewed more than 100 child prostitutes; the vast majority of these child prostitutes were females who were 15 years of age or younger. The interviews

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revealed that most of these children ended up in prostitution after they ran away from homes where they were victims of physical, sexual or emotional abuse. Many young girls were recruited by pimps and solicitors to become prostitutes from group homes.

As the recession continues, experts in the field fear that more children will land on the streets or in group homes. Homeless children and young adults are more vulnerable to exploitation, abuse and recruitment into the life of prostitution because they need food, clothing, shelter and affection. Truants are also frequent targets of pimps. Law enforcement authorities and social workers say that truancy and homelessness of children is growing with the recession. Unfortunately, in most cases the women and children are held against their will and continue to work for their abusers to avoid being hurt. The victimization of women and children in prostitution and human trafficking have led the City and the Oakland Police Department to work closely with other agencies to offer prostitutes support and social services for rehabilitation. Implementation of this ordinance will continue this objective.

Economic and Quality of Life Impacts: Prostitution-related crimes have a negative impact on the local economy and on the quality of life of Oakland residents. Legitimate businesses experience economic losses when customers stop patronizing businesses due to prostitution-related activities that occur around the businesses.

At numerous community meetings, residents and business owners complain about the effect of prostitution activity on their neighborhoods. They recount the numerous and frequent times in which they or their children had encounters with prostitutes, the *johns* and the *pimps*. They also complain about discarded condoms on and around their property, and the vehicles which drive through their neighborhoods looking for prostitutes.

Prostitution offenses are not victimless crimes. These offenses victimize the women and children who are forced into or caught in the life of prostitution, and victimize entire communities which are forced to tolerate the open sex markets.

KEY ISSUES AND IMPACTS

The City Council has the authority to prohibit the exploitation of women and children and to declare that prostitution and related offenses in Oakland are local crimes. State and federal laws cover some areas related to prostitution offenses, but local regulation is not preempted. California Penal Code Section 653.28 provides, "*Nothing in this chapter shall prevent a local governing body from adopting and enforcing laws consistent with the chapters relating to prostitution or prostitution-related activity. Where local laws duplicate or supplement this chapter, these chapters shall be construed as providing alternative remedies and not to preempt the field.*"

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The proposed ordinance is consistent with state law and enables the City to focus its enforcement efforts on prosecuting the prostitution customers, the pimps and others who sexually exploit women and children for their personal or economic gain.

Key Provisions

New Title: The title of Oakland Municipal Code Section 9.08.260 is changed from "Prohibition of loitering for the purpose of engaging in prostitution" to "Prohibition of Prostitution and Prostitution-Related Offenses".

General Definitions: Section 9.08.260(A)

The changes to this section revise certain provisions to make them more consistent with state law and eliminate provisions that are vague, outdated and morally offensive. The changes make this section consistent with California Penal Code 653.22.

Specifically, the section deletes the language defining prostitution as including *homosexual or other deviate sexual relations*. The section also redefines the definition of *public place* by redacting the statement that it can include *area[s] generally visible to public view* because the redacted language is overbroad and could be interpreted to include some private places. The section also deletes the definition of *known prostitute or panderer* because part of it is vague and ambiguous. Finally, the term *loitering* is redefined as *[to]delay or linger without a lawful purpose on the property and for the purpose of committing a crime as opportunity may be discovered*.

Loitering for the Purpose of Engaging in Prostitution: Section 9.08.260(B)

This section already prohibits the act of loitering for the purpose of engaging in prostitution. The new changes remove outdated language and include more specific and objective criteria for determining the commission of this offense. The changes make this section more consistent with relevant provisions of California Penal Code 653.22.

For example, the changes more narrowly define the factors that can be used to determine whether a person is loitering with the intent to commit an act of prostitution. The listed factors currently in the section - (1) repeatedly beckoning, stopping, or attempting to stop or engage passersby in a conversation, (2) repeatedly stopping or attempting to stop motor vehicles by hailing, waving arms, or any other bodily gesture, (3) is a known prostitute or panderer, or (4) was previously convicted of violating OMC 9.08.260(B) - are too vague and overbroad under current legal standards. The new changes will now require law enforcement to consider whether suspicious conduct indicates *an intent to engage in prostitution* in determining a violation of the ordinance. The changes also delete that *a person being a known prostitute or panderer* can be

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considered evidence of a violation, requiring instead that a person suspected of a violation must have a conviction within the last five years for loitering with intent to engage in prostitution, soliciting act of prostitution, soliciting lewd acts in public, or loitering in public with intent to commit prostitution.

Engaging and Soliciting Prostitution: Section 9.08.260(C)

This section is being added to prohibit the act of soliciting another to engage in prostitution, agreeing to engage in the act of prostitution and engaging in an act of prostitution. This section is consistent with California Penal Code 647(b). This section focuses on the actions of prostitution customers, the pimps and others who sexually exploit women and children for their personal purposes or for monetary gain. This section whenever applied to the conduct of a prostitute will primarily be used as a tool to divert the individual into social and support services that will help her transition out of prostitution.

Selling, Pandering, Aiding, Soliciting Prostitution: Section 9.08.260(D)

Section D is being added to prohibit the acts of selling, pandering, controlling, aiding, or soliciting acts of prostitution. This section is consistent with California Penal Code 652.23. The section makes it unlawful for a person to receive the proceeds earned by a prostitute and allows the City to more effectively target the *pimps* and the *johns* who are in the business of using or selling women and children for sex. The section defines who is a seller, a panderer, a solicitor or a purchaser of prostitution acts. The section also includes objective factors for law enforcement to determine violations.

Place of Prostitution and Prostitution Related Activity: Section 9.08.260(E)

Section E is being added to prohibit nuisance properties where owners or proprietors fail to take reasonable steps to prevent or stop prostitution activity in their property. The Oakland Police Department has documented numerous prostitution related crimes occurring in motels and other businesses in Oakland such as kidnapping, child rape, false imprisonment for the purpose of prostitution, torture, beatings and shootings. The section applies to motels, massage parlors and other businesses which permit their establishments to be used for prostitution activity. The section provides that any building or place used for prostitution is a nuisance per se. The section allows city agencies to investigate these properties and to work with the City Attorney's Office to enjoin and abate prostitution activity.

Under this section, the City is entitled to pursue an action for abatement and to seek injunctive relief, contempt proceedings, fines and penalties and civil damages to abate the public nuisance. In addition, violations of this section are considered a misdemeanor which can be criminally prosecuted by the City.

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SUSTAINABLE OPPORTUNITIES

Economic: Providing additional law enforcement tools and resources at the local level to reduce quality of life and prostitution crimes will help create a better environment for economic growth and development.

Environmental: There are no environmental opportunities created by this ordinance.

Social Equity: The proposed ordinance furthers social justice and equality by providing a safer environment for young women who are often preyed upon and targeted by those seeking to exploit them for the illegal sex trade.

DISABILITY AND SENIOR CITIZEN ACCESS

The proposed ordinance has no direct impact on access by seniors and people with disabilities.

RECOMMENDATION

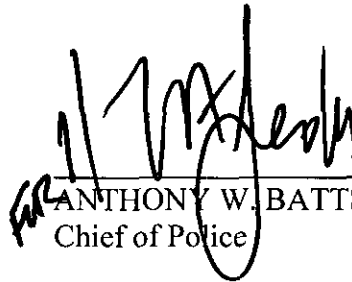
We recommend that the Council accept this report and adopt the proposed ordinance.

Respectfully submitted,



JOHN A. RUSSO
City Attorney

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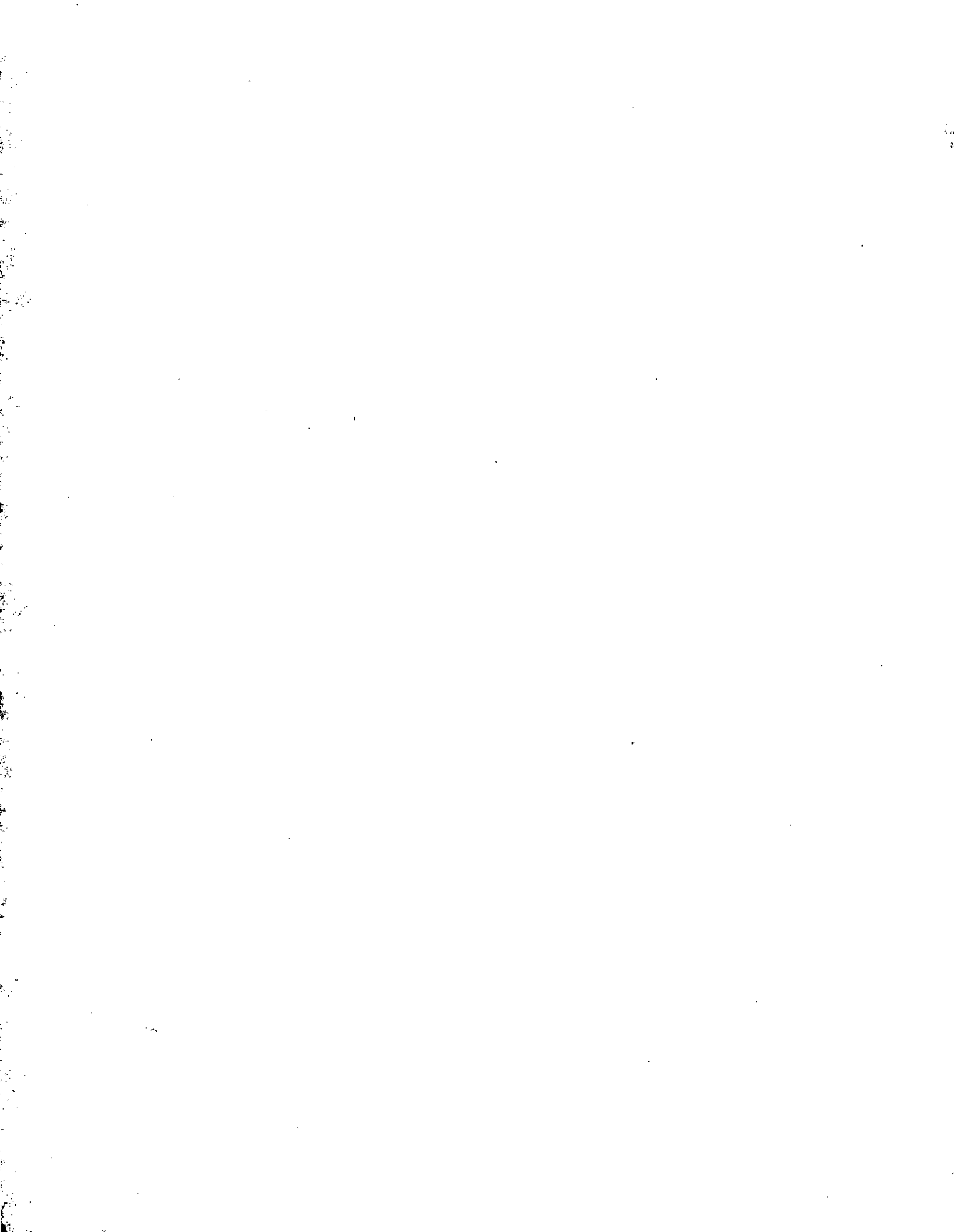
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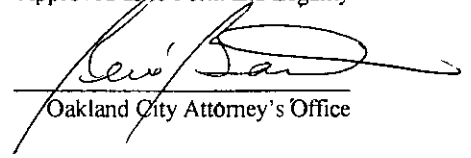
Reviewed by:
Ms. Cynthia Perkins
OPD Legislative Analyst

PROSTITUTION TRACKS OFFICE OF THE CITY ATTORNEY





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Introduced by Councilmember Patricia Kernighan



Oakland City Attorney's Office

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OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE SECTION 9.08.260 TO (1) PROHIBIT THE SEXUAL EXPLOITATION OF WOMEN AND CHILDREN, (2) PROHIBIT BUSINESS OWNERS FROM ALLOWING PROSTITUTION ON THEIR PROPERTY, (3) DECLARE PROSTITUTION RELATED OFFENSES LOCAL CRIMES, AND (4) CLARIFY TERMS RELATED TO PROSTITUTION OFFENSES

WHEREAS, prostitution and sex trafficking are part of a global criminal enterprise where women are brought into the United States from other countries, moved through interstate lines, or sold as local prostitutes in city streets or through commercial establishments such as massage parlors; and

WHEREAS, prostitution and sex trafficking now involve children with more frequency, and Oakland law enforcement officials who investigate prostitution in Oakland have documented an alarming increase in prostitution incidents involving young girls; and

WHEREAS, according to the National Center for Missing and Explored Children, girls become victims of prostitution, on average between the ages of twelve and fourteen years old; and

WHEREAS, studies cited by the U.S. Department of Justice indicate that the majority of young girls who become involved in prostitution are lured or forced into prostitution by experienced pimps and criminals who mentally and physically abuse them to build a relationship of dependency; and

WHEREAS, according to the U.S. Department of Justice, approximately 55 percent of runaway or missing girls engage in regular prostitution, of which about 75 percent work for a pimp; and

WHEREAS, there is a serious problem of prostitution and human trafficking in Oakland which since 2006 to the present, has resulted in numerous calls for service, complaints from residents and an average of 500 to 700 arrests per year; and

WHEREAS, street prostitution and prostitution related activity in Oakland is concentrated in the area known "The Track" which runs from San Pablo Avenue in North

Oakland to 67th Street, Market Street from 30th Street to West MacArthur, West MacArthur from Broadway to Emeryville City lines, 38th Street from Telegraph Avenue to Broadway, Downtown area bounded by San Pablo Avenue, Castro Street, 18th Street and Clay Street, International Boulevard from 1st Avenue to the San Leandro City lines, MacArthur Boulevard from Fmitvale to San Leandro City lines; and

WHEREAS, within The Track and in other locations certain business establishments such as motels and massage parlors are known for facilitating and allowing prostitution activities on their premises, thereby contribute to the sexual exploitation of children and women by allowing their premises to be used as centers for prostitution, and

WHEREAS, prostitution and sex trafficking are a lucrative business which, according to local law enforcement officials, is attracting criminals from the illegal drug trade who prefer to work as pimps and panderers because of the high profit margin and due to their belief that pimping and pandering carry less risk of criminal prosecution and conviction; and

WHEREAS, prostitution and sex trafficking victimize the women and children who are exploited for sex, bring violence and fear into the affected areas, adversely impact businesses in Oakland, and discourage residents from enjoying their communities; and

WHEREAS, Oakland residents and business proprietors have voiced their concerns to City Council offices, law enforcement officials, the City Attorney's Office and other City departments regarding the widespread problem of prostitution in certain areas of Oakland; and

WHEREAS, the City Council seeks to protect the well-being of Oakland residents, support local businesses, and protect the women and children who are victims of these crimes by focusing local law enforcement and local prosecution of the pimps, panderers, unscrupulous business owners and others who engage in the sexual exploitation of women and children while helping to rehabilitate the victims through diversion programs and other support services;

NOW, THEREFORE,

THE CITY COUNCIL OF OAKLAND DOES ORDAIN AS FOLLOWS:

The Oakland Municipal Code, Title 9, Chapter 9.08, is amended as follows. This Ordinance prohibits prostitution and prostitution related offenses and makes them local crimes subject to local prosecution. The Title of Section 9.08.260 is changed to reflect its broader scope and application. Section A is updated to clarify terms used to define prostitution related crimes. Section B is updated to clarify relevant factors for determining the crime of loitering for the purpose of engaging in prostitution. Section C is added to prohibit the soliciting and engaging in prostitution offenses. Section D is added to prohibit controlling, overseeing, directing, supervising, recruiting, aiding, selling, pandering or otherwise soliciting a prostitute. Section E is added to prohibit business owners from allowing their property to be used for prostitution activities. A violation of any provision of this Chapter and Section constitutes a misdemeanor.

9.08.260 Prohibition of Prostitution and Prostitution Related Offenses

SECTION 1. It is the intent of the City Council, in enacting this ordinance, to provide for the public health, safety, and welfare by prohibiting prostitution and prostitution related activity; protect the lives of women and children caught in the criminal enterprise of prostitution; improve the safety of the community and the economic vitality of City businesses; and affirm the City’s commitment to further the wellbeing of all City residents.

SECTION 2. The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this ordinance.

9.08.260 A. Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

“Commit prostitution” means to engage in sexual conduct for money or other consideration, but does not include sexual conduct engaged in as a part of any stage performance, play or other entertainment open to the public.

“Public place” means an area open to the public, or an alley, plaza, park, driveway, or parking lot or an automobile, whether moving or not, or a building open to the general public, including one which serves food or drink, or provides entertainment or the doorways and entrances to a building or dwelling, or the grounds enclosing a building or dwelling.”

“Loiter” means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

“Soliciting” means to entice, advice, incite, order, command, encourage or requests another person to engage in specific conduct which would constitute a crime or commit such crime of prostitution. The crime solicited need not actually be committed for solicitation to occur.

“Lewd act” means any act which involves the touching of the genitals, buttocks, or female breast of one person by any part of the body of another person and is done with the intent to sexually arouse and gratify.

“Knowingly” means having or showing awareness or understanding of a fact or circumstance that lead a reasonable person to inquire further or use reasonable care or diligence and should have known and therefore attributable by law to a given person.

9.08.260 B. Loitering for the Purpose of Engaging in Prostitution, a Misdemeanor.

It is unlawful for any person to loiter in any public place with the intent to commit prostitution. This intent is evidenced by acting in a manner and under circumstances which openly

demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution.

1. Among the circumstances that may be considered in determining whether a person loiters with the intent to commit prostitution are that the person:
 - (a) Repeatedly beckons to, stops, engages in conversations with, or attempts to stop or engage in conversations with passerby, indicative of soliciting for prostitution.
 - (b) Repeatedly stops or attempts to stop motor vehicles by hailing the drivers, waving arms, or making any other bodily gestures, or engages or attempts to engage the drivers or passengers of the motor vehicles in conversation, indicative of soliciting for prostitution.
 - (c) Has been convicted of violating this section, subdivision (a) or (b) of California Penal Code Section 647, or any other offense relating to or involving prostitution under state law or the Oakland Municipal Code within five years of the arrest under this section.
 - (d) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists, indicative of soliciting for prostitution.
 - (e) Has engaged, within six months prior to the arrest under this section, in any behavior described in this section, with the exception of paragraph (3), or in any other behavior indicative of prostitution activity.
2. The list of circumstances set forth in subdivision (a) is not exclusive. The circumstances set forth in subdivision (a) should be considered particularly salient if they occur in an area that is known for prostitution activity. Any other relevant circumstances may be considered in determining whether a person has the requisite intent. Moreover, no once circumstance or combination of circumstances is in itself determinative of intent. Intent must be determined based on an evaluation of the particular circumstances of each case.”

9.08.260 C. Engaging in the Act of Prostitution or Solicitation for the Purpose of Engaging in Prostitution, a Misdemeanor.

It is unlawful for any person who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this

State in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd acts between persons for money or other consideration.

1. A person agrees to engage in an act of prostitution when, with specific intent to engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution.
2. An agreement to engage in an act of prostitution by itself does not constitute a violation of law unless some act, in addition to the agreement, be done in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. An act in furtherance can consist of words only, if the statements made are unambiguous and unequivocal in conveying that the agreed act of prostitution will occur and move the parties toward completion of the act. However, the timing of the act is immaterial. It may precede, coincide with, or follow the agreement.
3. In order to prove the crime of solicitation to engage in an act of prostitution, each of the following elements must be proved:
 - (a) A person solicited another person to engage in any act of prostitution or agreed with another person to engage in an act of prostitution; and
 - (b) That person did so with the specific intent to engage in an act of prostitution;
 - (c) In addition to the agreement, the person did an act in furtherance of prostitution.

9.08.260 D. Controlling, Overseeing, Directing, Supervising, Recruiting, Aiding, or Otherwise Soliciting a Prostitute, a Misdemeanor.

1. It is unlawful for any person to do either of the following:
 - (a) Direct, control, oversee, supervise, recruit, or otherwise aid another person in the commission of a violation of subdivision (b) of section 647 or subdivision (a) of Section 653.22 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (b) Collect or receive all or part of the proceeds earned from an act or acts of prostitution committed by another person in violation of subdivision (b) of Section 647 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.

2. Among the circumstances that may be considered in determining whether a person is in violation of subdivision (a) are that the person does the following:
- (a) Repeatedly speaks or communicates with another person who is acting in violation of subdivision (a) of Section 653.22 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (b) Repeatedly or continuously monitors or watches another person who is acting in violation of subdivision (a) of Section 653.22 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (c) Repeatedly engages or attempts to engage in conversation with pedestrians or motorists to solicit, arrange or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22 or subdivision (b) of Section 647 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (d) Repeatedly stops or attempts to stop pedestrians or motorists to solicit arrange or facilitate an act of prostitution between pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (e) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or communicate, or stop pedestrians or other motorists to solicit, arrange, or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (f) Receives or appears to receive money or any consideration from another person who is acting in violation of subdivision (a) of Section 653.22 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (g) Engages in any of the behavior described in paragraphs (1) to (6), inclusive, in regard to or on behalf of two or more persons who are in violation of subdivision (a) of Section 653.22 of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.
 - (h) Has been convicted of violating this section, subdivision (a) or (b) of Section 647 subdivision (a) of Section 653.22, Section 266h or 266i of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal

code, or any other offense relating to or involving prostitution within five years of the arrest under this section.

- (i) Has engaged, within six months prior to the arrest under subdivision (a), in any behavior described in this subdivision, with the exception of paragraph (8), or in any other behavior indicative of prostitution activity.
3. The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for prostitution activity. Any other relevant circumstances may be considered. Moreover, no one circumstance or combination of circumstances is in itself determinative. A violation of subdivision (a) shall be determined based on an evaluation of the particular circumstances of each case.
4. Nothing in this section shall preclude the prosecution of a suspect for a violation of Section 266H or 266i of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code or for any other offense, or for a violation of this section in conjunction with a violation of Section 266h or 266i of the California Penal Code or subsection 9.08.260 B of the Oakland Municipal Code.”

9.08.260 E Places of Prostitution Prohibited; Constitute a Public Nuisance; Subject to Injunction, Abatement, and Contempt of Court; Violations a Misdemeanor

1. Every building or place used for the purpose of lewdness, assignation or prostitution, and every building or place in or upon which acts of lewdness, or prostitution are held or occur, is prohibited and constitutes a nuisance which may be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.
 - (a) A public nuisance is anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner of any public park, square, street, or highway is a public nuisance.
 - (b) An act which affects an entire community or neighborhood, or any considerable number of persons, as specified above is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.
 - (c) Whenever there is reason to believe that a nuisance, as defined in this section is kept, maintained, or is in existence within the City of Oakland, the City Attorney may maintain an action in equity to abate and prevent

the nuisance and to perpetually enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting it

2. Every person who knowingly owns, operates, maintains, permits, or allows a building or place to be used for the purpose of lewdness, or prostitution, and every person occupying or leasing the property or premises of another who operates, maintains, permits or allows a building or place to be used for lewdness, or prostitution is guilty of a misdemeanor.

SECTION 4. Application. The provisions of this ordinance are consistent with state law relating to prostitution and prostitution-related activity. The ordinance is intended to supplement state law.

SECTION 5. Remedies. In addition to other remedies provided under this ordinance, under other provisions of the Oakland Municipal Code, or by state law, violations of this ordinance shall constitute a misdemeanor which may be prosecuted by the City of Oakland to the fullest extent of the law.

SECTION 6. Severability. If any article, section, subsection, sentence, clause or phrase of this ordinance or exhibit is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

SECTION 7. 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 – BROOKS, BRUNNER, DE LA FUENTE, KERNIGHAN, KAPLAN, NADEL, SCHAAF, and PRESIDENT REID

NOES –

ABSENT –

ABSTENTION –

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

DATE OF ATTESTATION: _____

NOTICE AND DIGEST

ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO PROHIBIT THE SEXUAL EXPLOITATION OF WOMEN AND CHILDREN, PROHIBIT BUSINESS OWNERS FROM ALLOWING PROSTITUTION ON THEIR PROPERTY, DECLARE PROSTITUTION RELATED OFFENSES LOCAL CRIMES, AND CLARIFY TERMS RELATED TO PROSTITUTION OFFENSES

This Ordinance amends Section 9.08.260. It changes the title of this Section to "*Prohibition of Prostitution and Prostitution Related Offenses*" to reflect the broadening of its scope and the prohibited activities. The Ordinance clarifies terms related to prostitution offenses and deletes other terms which are outdated, offensive, or inconsistent with state law. The Ordinance adds a section prohibiting the actions of prostitution customers and others who exploit women and children for sex. The Ordinance also prohibits the selling, pandering, and aiding of prostitution. The Ordinance also prohibits property owners and proprietors from allowing prostitution on their property. Finally, the Ordinance makes it a local crime to violate these provisions of the Oakland Municipal Code subject to prosecution by the City.