

INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM AND LEGALITY

Chad
CITY ATTORNEY
FILED
OFFICE OF THE CITY CLERK
OAKLAND
03 FEB 13 PM 3:02

ORDINANCE NO. 12470 C.M.S.

REVISED

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLAND, CALIFORNIA, TO ADD CHAPTER 9.58, SECTIONS 9.58.010 - 9.58.030 TO TITLE 9 OF THE OAKLAND MUNICIPAL CODE PROHIBITING LOITERING IN PUBLIC FOR THE PURPOSE OF ENGAGING IN ILLEGAL DRUG ACTIVITY

WHEREAS, there has been an increasing problem in the City of Oakland with individuals loitering in public for the purpose of engaging in drug related activities, especially in front of and around alcohol beverage sale establishments; and

WHEREAS, the City finds that persons who loiter or linger for the aforementioned purpose jeopardize the public's safety and welfare, fuel fear among the community, and said loitering activity is a factor which not only depreciates the value of property upon which such activity occurs, but also depreciates the value of adjacent and surrounding properties, and adversely affects the city's image, business climate, potential development, and housing costs; and

WHEREAS, State law contained in the California Health and Safety Code section 11530 currently prohibits loitering for the purpose of engaging in drug related activities, violations thereof being a misdemeanor; and

WHEREAS, an appellate court in California has upheld the constitutionality of California Health and Safety Code section 11530 et seq.; and

WHEREAS, the City believes that prescribing the penalty of infraction for the aforementioned offense would provide an extra tool necessary to effectively address the stated public nuisance in Oakland because an individual cited for an infraction will have to deal directly with the courts, which have the discretion to impose the prescribed penalty and infraction prosecutions are less burdensome on scarce prosecutorial resources; and

WHEREAS, California Health and Safety Code section 11538 specifically provides for local legislation in this area; and

WHEREAS, the City Council, as the legislative body of the City, has an obligation pursuant to the City Charter and the Oakland Policy Plan to protect Oakland's physical environment, conserve existing neighborhoods and protect the health, safety, and welfare of the citizens of Oakland;

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

Section 1. That 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. Chapter 9.58, Sections 9.58.010 - 9-58.030 is added to Title 9 -- Public Peace, Welfare, Morals and Welfare of the Oakland Municipal Code, to read as follows:

"Chapter 9.58 LOITERING FOR THE PURPOSE OF ENGAGING IN ILLEGAL DRUG ACTIVITY

Section 9.58.010. As used in this subdivision, the following terms have the following meanings:

- (a) "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.
- (b) "Public place" means an area open to the public or exposed to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those which serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

Section 9.58.020.

(a) It is unlawful for any person to loiter in any public place in a manner and under circumstances manifesting the purpose and with the intent to commit an offense specified in Chapter 6 (commencing with Section 11350) and Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code.

(b) Among circumstances that may be considered in determining whether a person has the requisite intent to engage in drug-related activity are that the person:

- (1) Acts as a "look-out." For the purposes of this ordinance the term lookout means one who uses signals or language to warn others that law enforcement officers are in the area.

- (2) Transfers small objects or packages for currency in a furtive fashion.
 - (3) Tries to conceal himself or herself or any object that reasonably could be involved in an unlawful drug-related activity.
 - (4) Uses signals or language indicative of summoning purchasers of illegal drugs.
 - (5) Repeatedly beckons to, stops, attempts to stop, or engages in conversations with passersby, whether on foot or in motor vehicle, indicative of summoning purchasers of illegal drugs.
 - (6) Repeatedly passes to or receives from passersby, whether on foot or in a motor vehicle, money or small objects.
 - (7) Is under the influence of a controlled substance or possesses narcotic or drug paraphernalia. For the purpose of this paragraph, "narcotic or drug paraphernalia" means any device, contrivance, instrument, or apparatus designed or marketed for the use of smoking, injecting, ingesting, or consuming marijuana, hashish, PCP, or any controlled substance, including, but not limited to, roach clips, cigarette papers, and rollers designed or marketed for use in smoking a controlled substance.
 - (8) Has been convicted in any court within this state, within five years prior to the conviction under this section, of any violation involving the use, possession, or sale of any of the substances referred to in Chapter 6 (commencing with Section 11350) of Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code, or has been convicted of any violation of those provisions or substantially similar laws of any political subdivision of this state or any other state.
 - (9) Is currently subject to any order prohibiting his or her presence in any high drug activity geographic area.
 - (10) Has engaged, within six months prior to the date of violation of this section, in any behavior described in this subdivision, with the exception of paragraph (8), or in other behavior indicative of illegal drug-related activity.
- (c) 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 unlawful drug use and trafficking, or if they occur on or in premises that have been reported to law enforcement as a place suspected of unlawful drug activity. Any other relevant circumstances may be considered in determining whether a person has the requisite intent. Moreover, no one 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.

(d) No officer shall be authorized to issue a citation for a violation of this Chapter until that officer has received formal training on the ordinance from the Oakland Police Department.

Section 9.58.030. Violation of Section 9-58.020 is an infraction and punishable as provided in Section 1.28.020(B) of the Oakland Municipal Code.

Section 9.58.040. This Chapter shall expire on March 4, 2004 unless a vote to either extend or make this Chapter permanent has been passed by a majority vote of the City Council."

Section 3. Severability

If any section, paragraph clause, phrase, or word in this ordinance is declared unconstitutional by any court with jurisdiction to make such decision, said decision shall not affect the rest of this ordinance. The City Council hereby finds and declares that it would have enacted this ordinance without that section, paragraph, clause, phrase, or word.

Introduction Date: **FEB 1 1 2003**

Schedules / IN COUNCIL, OAKLAND, CALIFORNIA, **FEB 2 5 2003**, 2003

PASSED BY THE FOLLOWING VOTE:

AYES- ~~BRUNNER, CHANG, BROOKS, NADEL~~, REID, WAN, QUAN, and PRESIDENT DE LA FUENTE - 5

NOES- BROOKS, Brunner, Nadel - 3

ABSENT- 0

ABSTENTION- 0

ATTEST



CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California