

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

To: Office of the City Administrator

At: 2010 JAN 28 PM 6:56
Janice Lindheim

From: Police Department

Date: February 9, 2010

Re: A Joint Informational Report From the Oakland Police Department and the City Attorney's Office Concerning the Feasibility of Implementing Civil Gang Injunctions in the City of Oakland; Including Opt-Out Provisions in the Injunctions to Allow Gang Members to Repudiate the Gang; and Providing Information About the Successes and Challenges of San Francisco's Gang Injunction Program

SUMMARY

As requested by the Rules and Legislation Committee, staff has prepared this joint informational report on the feasibility of implementing civil gang injunctions in the City of Oakland, including opt-out provisions, and information relative to successes and challenges of the injunction program conducted in the City of San Francisco.

Criminal street gangs are a significant problem in the City of Oakland. Traditional policing models are not always effective in combating gang issues. The use of civil gang injunctions, although time consuming and labor intensive, has proven useful in dealing with criminal street gangs in other California cities.

FISCAL IMPACT

Significant work is involved in documenting a gang and its activities; collecting the evidence; and analyzing a large amount of data. To carry out these responsibilities effectively and consistently, the Department requires the full time services of an Administrative Analyst II a fully burdened cost of \$119,553. Additionally, the Department would be required to assign one full-time police officer with gang expertise (no additional cost) for approximately one year to investigate each sizeable target gang and work with the City Attorney to prepare the evidence for the injunction. Although the Department would bear all costs related to that officer, said officer would be performing very few other duties.

The City Attorney's Office would be required to devote a full-time attorney, part-time paralegal and a quarter of an administrative assistant to organize and analyze the evidence; prepare the pleadings; interview hundreds of officers for declarations; file the case and handle court appearances; and provide consistent advice and support for OPD in enforcing the injunction. The City Attorney will also handle any civil contempt proceedings, appeals or other legal

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proceedings that would be required following the filing of the case. The costs for the legal support are as follows:

DCAIII	1.00	\$205,940
Paralegal	.50	\$ 55,940
Legal Secretary	.25	\$ 26,583
Total		\$288,463

KEY ISSUES AND IMPACTS

The City of Oakland has a significant street gang problem. The Nortenos and Surrenos are known Oakland gangs and are most often located in East Oakland. Gangs are involved in criminal activity ranging from large scale graffiti, narcotics dealing, firearm possession, intimidation, and violent crimes such as assault, robbery and homicide. There are hundreds of documented gang members in Oakland and hundreds more of non-documented gang members or associates of gang members spread out over dozens of gangs or gang *cliques*. Documented gang members meet a certain level of criteria and are identified in a state-wide data base called CAL-GANGS. The majority of street gangs contain both juveniles and adults.

City of San Francisco

In 2007, the City of San Francisco obtained a civil gang injunction against the "Oakdale Mob". Although there were approximately 75 people identified as gang members, the injunction was only served on 22 persons who were identified as the gang *leaders* and *shot callers*. The specified geographical area (safety zone) in which the injunction applied was only four square blocks. In the year following the service of the gang injunction, robberies were reduced from 13 to 6 and homicides were reduced from two to zero. Now within the safety zone the 22 persons served within the injunction are seldom seen. (Prior to the injunction all but one of the 22 lived outside the safety zone and would only gather in the zone when involved in gang activity).

Challenges faced by San Francisco (and other cities) in obtaining a gang injunction vary. The process of obtaining an injunction is labor intensive and requires months of preparation by the police and the City Attorney prior to a lawsuit being filed. In San Francisco, community groups initially were opposed to the injunction as they feared it would criminalize youth behavior and serve to break up families. It took a significant public relations campaign to ease concerns. Gang injunctions may present concerns due to the limitations placed on individual rights.

Once a person is identified as a gang member and notified of the injunction, that person may be arrested for non-criminal behavior within the safety zone. In the prosecution of the violation, the prosecutor must prove, beyond a reasonable doubt, that the individual is a gang member, and that the injunction was violated.

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BACKGROUND

An injunction is a civil court order requiring persons subject to the provisions of the order to abide by a prescribed set of conditions within a specified geographic area. Cities throughout California have used civil gang injunctions to combat the problems associated with territorial street gangs and restore safety to the neighborhoods where the gang operates.

The standard for a civil gang injunction is provided under California Code of Civil Procedure, Section 526a. To prevail, the City must show that there is a substantial likelihood of success on the merits; the injunction will prevent a multiplicity of lawsuits; there is no adequate remedy at law; the community will suffer irreparable injury without it; and the balancing of equities warrants the issuance of the injunction. According to case law, the City must meet the “clear and convincing evidence” standard, rather than the “preponderance of the evidence” standard which is commonly used in civil lawsuits.

Several legal challenges have been brought against civil gang injunction actions with little success. Opponents often argue that these actions violate the freedom of association and freedom of speech of individuals. The courts, however, have consistently upheld gang injunctions against “associational” conduct that is criminal or creates a public nuisance¹. Moreover, the courts have held that a gang injunction will be upheld against a Free Speech challenge if the order “burdens” speech no more than necessary to serve an important governmental interest, holding that harassing or threatening speech may be enjoined as conduct (People v. Acuna (1997) 14 Cal.4th 1090, at 1121).

PROGRAM DESCRIPTION

Civil gang injunctions are obtained against a gang whose activities constitute a public nuisance. The action is filed by the City on behalf of the People of the State of California pursuant to California Civil Code Sections 3479 and 3480. The complaint is filed along with an application for a temporary restraining order and a preliminary injunction against the gang association. The complaint is supported by a record of evidence showing that the gang association and its members engage in nuisance activity in furtherance of a common objective. The evidence includes arrests, detentions, calls for service, shootings, homicides, robberies, graffiti, incidents of intimidation, trespass, etc., all with a nexus to the activities of the street gang and its members. The evidentiary record is submitted to the court through the declarations of police officers, including patrol officers, probation officers and officers considered gang and drug experts.

Upon obtaining the injunction, the City is required to serve it on individual gang members. Upon doing so, the served defendants are prohibited from doing the acts disallowed under the order within the safety zone. The injunction may also include the imposition of a curfew. If the order is violated the City can bring civil contempt proceedings or the District Attorney can bring criminal contempt proceedings. The penalties for civil contempt include five days jail for each

¹ See, Gallo v. Acuna (1997) 14 Cal.4th 1090, 1112.

provision violated and or \$1,000 in fines. The penalties for criminal contempt are six months jail for each provision violated and/or \$1,000 fine, or probation (gang conditions, search and seizure).

Opt-Out Provision

Some people named as gang members in the lawsuit may contend that despite their past criminal record and other evidence, they are no longer gang members. To contest this, an individual gang member would normally have to intervene in the lawsuit and litigate the matter before the court. In order to avoid the attorneys' fees that an individual would have to incur to contest inclusion in a gang injunction in this way, some jurisdictions have agreed to include an "opt out" provision in their injunctions. An "opt out" provision essentially allows an individual to submit a motion to the court explaining that they are not a gang member or are no longer a gang member, and ask to be removed from the injunction. The individual will usually need to present sworn evidence that he or she is gainfully employed, attending school or other evidence showing no ties to the gang. The City Attorney, with Police Department assistance, would assess all "opt out" motions and determine whether to oppose an individual being removed from the injunction.

SUSTAINABLE OPPORTUNITIES

Economic: Improved public safety in Oakland neighborhoods attracts businesses, enhances property values and furthers economic development throughout the City.

Environmental: Eliminating gang activity reduces criminal activity which is directly associated with blight and unclean conditions, providing for a healthier environment.

Social Equity: Rendering safe Oakland neighborhoods that historically have been considered "unsafe" brings social equity into those neighborhoods.

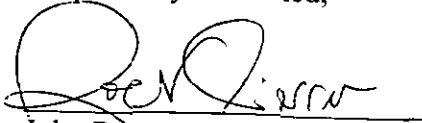
DISABILITY AND SENIOR ACCESS

There are no ADA or senior citizen access issues identified in this report.

RECOMMENDATION

Staff recommends acceptance of this report.

Respectfully submitted,

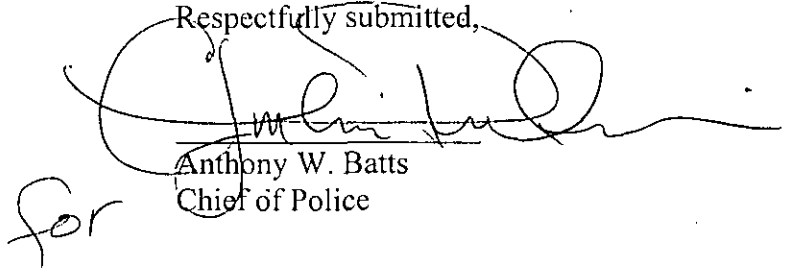


John Russo
City Attorney

Prepared by:

Rocio Fierro
Deputy City Attorney

Respectfully submitted,



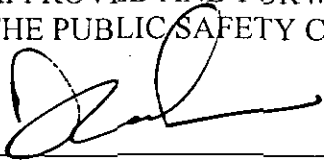
for

Anthony W. Batts
Chief of Police

Prepared by:

Lt. Michael Poirier
Bureau of Field Operations
Oakland Police Department

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:



Office of the City Administrator