

APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER WANG AND JENKINS

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE 9.08.260 (PROHIBITION OF PROSTITUTION AND PROSTITUTION RELATED OFFENSES) TO CONFORM TO STATE LAW (1) BY REPEALING THE OFFENSE OF LOITERING FOR THE PURPOSE OF ENGAGING IN PROSTITUTION; (2) ADDING LOITERING FOR THE PURPOSE OF PURCHASING COMMERCIAL SEX AS AN OFFENSE; (3) ALLOWING FOR THE ADMINISTRATIVE ASSESSMENT OF FINES AGAINST SEX-PURCHASERS, SEX-TRAFFICKERS, AND PROPERTIES USED FOR PROSTITUTION; AND (4) CREATING A HUMAN TRAFFICKING SURVIVOR SUPPORT FUND

WHEREAS, the Federal Bureau of Investigation (FBI) has designated the San Francisco Bay Area as a High-Intensity Child Prostitution Area (HICPA), one of only 13 such hubs in the nation, acknowledging a local crisis of national proportions; and

WHEREAS, the Oakland City Council finds that sex-trafficking negatively impacts the public peace, health, safety, and general welfare of its residents and businesses particularly along the International Boulevard corridor; and

WHEREAS, the City Council finds that the International Boulevard corridor, specifically encompassing districts such as Little Saigon and San Antonio, and Fruitvale, serves as a primary transit and residential artery for a diverse population including Latino/Hispanic, Black, and Southeast Asian communities; and

WHEREAS, these neighborhoods face significant socioeconomic stressors, with median household incomes trailing city-wide averages and rent burdened households, making them targets for predatory exploitation; and

WHEREAS, the WestCoast Children's Clinic has documented that the rate of youth exploitation in Alameda County is 15.8%—more than double the state average—and that children as young as 12 to 14 are targeted for recruitment at local schools and transit hubs; and

WHEREAS, historical structural inequities and systemic failures have led to a staggering racial disparity where Black women and girls represent more than 60% of recovered sex trafficking victims locally, despite making up only approximately 20% of the city's population; and

WHEREAS, the presence of "the Blade" along International Boulevard has fundamentally degraded the quality of life for local residents, who report a "climate of fear" characterized by the normalization of exploitation, the presence of firearms, and the threat to their safety in residential zones, during school drop-off and pickup hours and playgrounds; and

WHEREAS, data from the Oakland Police Department (OPD) identifies Beat 19X as a corridor afflicted by high rates of gun violence directly linked to trafficking-related territorial disputes, which endangers the safety of commuters using the AC Transit and families walking to school; and

WHEREAS, the "demand" driving this violence is largely fueled by sex buyers traveling from outside these neighborhoods, who exploit vulnerable residents and then depart, leaving the resulting trauma, crime, and community destabilization behind; and

WHEREAS, sex-trafficking activity, coercion, and exploitation of children and adults impacts the quality of life in Oakland's neighborhoods, with a disproportionate concentration in communities exacerbating health disparities within the community, creating an environment that can be harmful to families and children; and

WHEREAS, local small businesses and the regional economy are stifled by the presence of "problem motels" that facilitate exploitation, and convenience stores that stay open late into the night catering to products such as skimpy clothing, see through lingerie, stiletto shoes, and boots, and wigs, products worn by prostituted children and adults, all of which contribute to reduced foot traffic for legitimate merchants and the erosion of neighborhood property values and safety; and

WHEREAS, the City Council acknowledges that individuals involved can be minors, victims of sex-trafficking and sexual exploitation, and seeks to provide support and resources for victims; and

WHEREAS, there is a need to focus law enforcement and prosecution efforts on exploiters, buyers, nuisance business owners, property owners, and others who exploit vulnerable individuals and contribute to economic decline of a neighborhood; and

WHEREAS, state laws prohibit prostitution, sex-trafficking, exploitation, and solicitation, and this ordinance is intended to clarify and reinforce these prohibitions as local crimes subject to local prosecution and fines; and

WHEREAS, California Penal Code § 653.22 was repealed by Senate Bill 357 effective January 1, 2023, making the current version of the municipal code non-conforming with state law.

WHEREAS, California Assembly Bill 379 added a prohibition prohibiting loitering for the purposes of purchasing commercial sex pursuant to Penal Code §653.25 effective January 1, 2026.

WHEREAS, amending the Oakland Municipal Code is necessary to provide clear definitions and enforcement mechanisms to address sex-trafficking-related activities effectively and establish a fund to be funded by the fines established in the Oakland Municipal Code for the purpose of victim services and individuals engaged in sex work, and to prioritize enforcement efforts against exploiters of human trafficking and prevent enforcement against minors and victims of sex trafficking.

WHEREAS, our language used in amending the Oakland Municipal Code is consistent with Penal Code §653.25 and is required to ensure consistency with state law.

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

SECTION 1. Recitals: The City Council of the City of Oakland hereby determines that the preceding recitals are true and correct and an integral part of the Council's decision to enact this legislation, and hereby adopts and incorporates them into this Ordinance.

SECTION 2. Amendment of Oakland Municipal Code Section 9.08.260 (Prohibition of Prostitution and Prostitution Related Offenses). Oakland Municipal Code 9.08.260 is hereby amended as follows (deletions are shown as ~~strike-through~~, additions are shown as underlined):

9.08.260 Prohibition of Prostitution and Prostitution Related Offenses

(A). Definitions. The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

"Commercial Sex" means sexual conduct on account of which anything of value is given or received by a person.

"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.

"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.

"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.

"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.

"Minor" means any person under the age of 18 years old.

"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.

"Prostituted Person" means an individual who has engaged in, or been induced to engage in, prostitution.

"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.

"Sex Purchaser" means any person that provides money, compensation, or other consideration in exchange for the performance of a commercial sex act.

B. Loitering for the Purpose of Purchasing Commercial Sex Engaging in Prostitution, a Misdemeanor. It is unlawful for any person to loiter in any public place with the intent to purchase commercial sex, 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 such as circling an area in a motor vehicle and repeatedly beckoning to, contacting, or attempting to contact or stop pedestrians or other motorists, making unauthorized stops along known prostitution tracks, or engaging in other conduct indicative of soliciting with intent to purchase commercial sex.

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 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.

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. This includes:

1. Prostituted Person. An individual who solicits, or who agrees to engage in, or who engages in, an act of prostitution with the intent to receive compensation, money, or anything of value from another person.

2. Sex Purchaser. An Individual who solicits, or who agrees to engage in, or who engages in, an act of prostitution with another person in exchange for the individual providing compensation, money, or anything of value to the other person.

A person agrees to engage in an act of prostitution when, with specific intent to so engage, ~~he or she~~ they manifest 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.

13. A person agrees to engage in an act of prostitution pursuant to subsection (1) or (2) when, with specific intent to engage, ~~he or she~~ they manifest 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.

24. An agreement to engage in an act of prostitution pursuant to subsection (1) or (2) 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.

35. 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.

D. ~~Controlling, Overseeing, Directing, Supervising, Recruiting, Aiding, or Otherwise Soliciting a Prostitute, Sex Trafficking, 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(2). 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.~~

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, 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.
 - (d) Pursuant to procedures set forth in Chapter 1.08, the City may assess civil penalties of up to \$2,500 per day against the owner of any property constituting a public nuisance under this section.
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.

F. Administrative Enforcement

1. The City may administratively assess fines as follows:
 - (a) For violations of OMC §§ 9.08.260(B)(Loitering for the Purpose of Purchasing Commercial Sex) and 9.08.260(C)(2)(Engaging in the Act of Prostitution or Solicitation for the Purpose of Engaging in Prostitution, Sex Purchasers), a fine shall be imposed not exceeding \$4,000 for a first violation and not exceeding \$8,000 for a second and subsequent violations.
 - (b) For violations of OMC § 9.08.260(D)(Sex Trafficking), a fine shall be imposed not exceeding \$10,000 for a first violation and not exceeding \$20,000 for a second violation and subsequent violations.
 - (c) These fines shall be trebled (tripled) for any violation involving a minor.
 - (d) Each act shall be considered a separate violation subject to an individual assessment of an administrative fine. Each violation will also be a separate violation for each individual involved in the offense. For ongoing violations, each day the violation occurs shall be considered a separate violation.
 2. In addition to assessing fines, the City may assess any costs relating to enforcement against the person violating this section. Costs may be set by the master fee schedule or include the actual costs incurred. All costs collected pursuant to this section will be returned to the appropriate department or placed in the general fund
 3. An administrative assessment of civil penalties, fines, and/or costs may be appealed administratively. The hearing will be held before an independent hearing officer. The decisions of the independent hearing officer will be administratively final.
 4. Affirmative Defense: Any person receiving an administrative fine or civil penalty assessment may raise as an affirmative defense that they were the victim of sex trafficking at the time of the offense. The individual raising the affirmative defense will have the burden of producing evidence establishing they were a victim of sex trafficking at the time of the offense. If the evidence presented establishes that the person cited was a victim of sex trafficking, the City or the independent hearing officer will grant the appeal in favor of the person cited with no costs, fees, or other penalties to be collected.
 5. The City may not issue an administrative fine or assessment of civil penalties against an individual who was a minor at the time of the violation of this section.
 6. In the event the City collects administrative fines and penalties pursuant to this section, the entirety of the penalties collected will be put in the Human Trafficking Survivor Support Fund.

SECTION 3. Addition of Oakland Municipal Code Section 9.08.265 (Human Trafficking Survivor Support Fund. Oakland Municipal Code 9.08.265 is hereby added to the Municipal Code as follows (additions are shown as underlined):

9.08.265 Human Trafficking Survivor Support Fund

- A. Purpose. To ensure transparency, accountability and lawful expenditure of revenue derived from fines, penalties and forfeitures collected under this Chapter and other applicable laws, a special fund is hereby established within the City Treasury.
- B. Establishment and Fund Title. All revenues collected under this Chapter shall be deposited into a Human Trafficking Survivor Support Fund, restricted for:
 - 1. Victim and survivor assistance including medical and mental health emergency housing, transitional housing, and shelter services
 - 2. Human Trafficking education and prevention programs
 - 3. Street outreach and crisis response
 - 4. Workforce development
 - 5. Legal support services
 - 6. Enforcement and abatement operations with a focus on undercover operations to apprehend buyers and traffickers

A special revenue fund to be known as the Human Trafficking Survivor Support Fund is hereby created in the City Treasury. All fines collected under this Chapter shall be deposited into said fund. The City shall establish all required revenue, expenditure, and project-level account segments, including any accounts necessary to properly record activity from each enforcement source.

- C. Revenue Sources. Revenues deposited into the Fund shall include, but not be limited to:
 - 1. All administrative fines, civil penalties, administrative citations and civil assessments collected pursuant to this Chapter and any other provision of the Oakland Municipal Code, or any future ordinance, that designates the Fund as the receiving fund for such revenues;
 - 2. Interest and investment earnings, which shall accrue and remain within the Fund.
- D. Continuous Appropriation and Expenditure Authority
 - 1. All revenues deposited into the Fund are continuously appropriated for expenditure by the City Administrator, or designee, without further Council action after the first year.
 - 2. Monies in the Fund shall be expended solely for the purposes associated with the specific fine or penalty source, as defined in the applicable section of the Oakland Municipal Code or authorizing ordinance.
 - 3. The Controller is authorized to establish all necessary accounting structures to implement this section.

E. Administration. The City Administrator shall administer the fund and ensure expenditures comply with applicable law and the purposes of this section.

SECTION 4. This Ordinance serves the public interest and is necessary to protect the health, safety and/or general welfare of the citizens of Oakland, and is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, and Article XI, Sections 5 and 7 of the California Constitution.

SECTION 5. California Environmental Quality Act Compliance. The legislation contains no provisions modifying the physical design, development, or construction of residential or nonresidential structures. Accordingly, it can be seen with certainty that there is no possibility that it: (1) may have a significant effect on the environment and/or (2) would result in any physical changes to the environment. As a result, this action is exempt from the CEQA pursuant to the following CEQA Guidelines, taken together and each as a separate and independent basis: Section 15301 (existing facilities), Section 15378 (regulatory actions), Section 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), and Section 15061(b)(3) (no significant environmental impact).

SECTION 6. 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 7. Administrative Regulations. The City Administrator may adopt administrative regulations, as needed to implement the administrative enforcement provisions of this ordinance including establishing an administrative hearing process.

SECTION 8. No conflict. Nothing in this ordinance shall be interpreted or applied to create any requirement, power, or duty in conflict with any federal or state law.

SECTION 9. 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 - BROWN, FIFE, GALLO, HOUSTON, RAMACHANDRAN, UNGER, WANG, AND
PRESIDENT JENKINS

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

3453563v.2/PB

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE 9.08.260 (PROHIBITION OF PROSTITUTION AND PROSTITUTION RELATED OFFENSES) TO CONFORM TO STATE LAW (1) BY REPEALING THE OFFENSE OF LOITERING FOR THE PURPOSE OF ENGAGING IN PROSTITUTION; (2) ADDING LOITERING FOR THE PURPOSE OF PURCHASING COMMERCIAL SEX AS AN OFFENSE; (3) ALLOWING FOR THE ADMINISTRATIVE ASSESSMENT OF FINES AGAINST SEX-PURCHASERS, SEX-TRAFFICKERS, AND PROPERTIES USED FOR PROSTITUTION; AND (4) CREATING A HUMAN TRAFFICKING SURVIVOR SUPPORT FUND

This Ordinance would amend Oakland Municipal Code § 9.08.260, prohibiting prostitution and prostitution related offenses to conform to the current California Penal Code. The Ordinance would remove the offense of loitering for the purposes of prostitution and add the offense of loitering for the purposes of purchasing commercial sex. The Ordinance would allow for the administrative assessment of fines against sex purchasers, sex-traffickers, and properties used for prostitution. The Ordinance would also create a Human Trafficking Survivor Support Fund.