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TO: PUBLIC SAFETY COMMITTEE – Oakland, California

FROM: Barbara Parker - City Attorney
and Rebecca Kaplan – Councilmember-at-Large

DATE: July 10, 2012

SUBJECT: AN ORDINANCE REPEALING ORDINANCE No. 4718 N.S. and SECTION 9.08.200 OF THE OAKLAND MUNICIPAL CODE PROHIBITING MARATHONS

RECOMMENDATION

Adoption of this proposed Ordinance repealing Ordinance No. 4718 N.S. and Section 9.08.200 of the Oakland Municipal Code Prohibiting Marathons.

EXECUTIVE SUMMARY

This proposed Ordinance is sponsored by City Attorney Barbara Parker and Councilmember-at-Large – Rebecca Kaplan.

Passage of the proposed ordinance would cause the repeal of an existing prohibition (OMC §9.08.200) against public marathons and endurance contests occurring within the City of Oakland. The repeal of Ordinance No. 4718 N.S. and OMC§9.08.200 would eliminate potential confusion over whether the Oakland Running Festival, various walkathons, and similar events are prohibited in Oakland, and would make the Oakland Municipal Code consistent with State law.

OUTCOME

Passage of this proposed ordinance repeals Ordinance No. 4718 N.S. and section 9.08.200 from the Oakland Municipal Code. Said provisions currently prohibit, as a misdemeanor violation, any public exhibition of endurance contests, including walkathons, dance marathons, and skate marathons. This proposed ordinance deletes the current prohibition in its entirety.

BACKGROUND/LEGISLATIVE HISTORY

Before presenting this proposed ordinance to Council, The City Attorney's office researched the origins of the 1930 Ordinance. During the 1920's and 1930's, endurance contests were a national fad in the United States. They occurred in such forms as pole sitting, marathon dances (also referred to as "walkathons"), and marathon roller skating competitions. In dance-a-thons,

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couples would dance (stay on their feet and move to music) non-stop for hundreds of hours to earn prize money. Spectators would pay to watch the contestants.

Many municipalities across the country found such events to be disruptive, immoral, and contrary to public health and safety. They passed various forms of ordinances which banned such events, or limited their duration. Locally, Fresno, Sacramento, and Modesto passed ordinances harming such events, and cited health and moral grounds. These actions followed several publicized instances of exhaustion, lawsuits, and doctors' concerns. Oakland's original Ordinance No. 4718 N.S. was passed during this era.

Current Oakland Municipal Code Section §9.08.200 (prior code §3-6.03) was adopted on November 18, 1930 as Ordinance No. 4718 N.S. It currently reads as follows:

It is unlawful for any person within the city, to promote, conduct, carry on or take part in, any public exhibition of endurance contests commonly known and designated as "walkathons" or "dance marathons" or "skate marathons."

In 1953, California Penal Code sections 11450-11454, which used substantially the same language as the Oakland Ordinance, were passed, and prohibited marathon dances and public endurance exhibitions statewide. (Stats. 1953, c. 32, §20.) The state law was proposed by Oakland-area representative Thomas W. Caldecott. The statewide regulation of such behavior preempted any local regulation, but the Oakland Municipal Code was not amended. In 1975, an amendment to the Penal Code added an exception for charitable organizations, possibly in order to promote such events for fundraising. (Stats. 1975, c. 67 §1-2.)

In 1990, the Penal Code sections were repealed (Assembly Bill No. 1909), accompanied by the comment that "the Legislature finds and declares that the criminal law is sometimes inappropriately used as a means to control human behavior which the majority of people find distasteful." (Stats. 1990, c. 569 §1.) The Oakland Municipal Code was not amended in the aftermath of the repeal of Penal Code §§11450-11454.

On May 20, 2009, as a preface to the inaugural Oakland Running Festival footrace, the City Council unanimously passed Resolution No. 82034 C.M.S. that honored Corrigan Sports for organizing the event which later took place on March 27, 2010.

ANALYSIS

Since 1930, the dance marathon and endurance contest fad has passed away, and popular morals and standards have changed. Currently, marathon footraces and walkathons are more commonly associated with bodily health and fundraising for charities, rather than the negative connotations of the past. In Resolution No. 82034 C.M.S., the Oakland City Council recognized that the Oakland Running Festival would "help put Oakland on the map in the running community and could bring millions of dollars in revenue to our hotels, restaurants and tourist attractions as

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runners from all over the world visit our city.” The Council supported the event as a marketing and economic tool for the City.

The City-sponsored Oakland Running Festival has now had three years of continued operation, and has generated a positive economic impact on the businesses of Oakland. In 2011, the event helped bring in approximately \$3 million in revenue to local hotels, restaurants, retailers, transportation companies, and entertainment venues. In 2012, according to a study conducted by the Regional Economic Studies Institute (RESI), the event helped bring in approximately \$3.5 million in local revenues, and \$300,000 for local charities¹. The estimated benefit to local charities since 2010 is \$800,000. The Oakland Running Festival has grown by 10% each year; in 2012, it attracted over 8,200 runners, 1,560 of who were from outside of the San Francisco Bay Area. Participants in 2012 were from 38 different states, and six countries.

This proposed ordinance repeals Ordinance No. 4718 N.S. and Oakland Municipal Code §9.08.200, which prohibit dance marathons, walkathons, and skate marathons, and other public human endurance contests. Although the statute is no longer enforced, its presence in the Code may cause confusion or have a chilling effect upon organizing future marathon events. The organizers of marathons, and participants, would be subject to arrest for a misdemeanor violation.

The repeal of Ordinance No. 4718 N.S. and OMC §9.08.200 would not abrogate the City’s police power to regulate marathons and similar events. The current Oakland Running Festival applies for and obtains a Special Events permit to coordinate traffic impacts and general safety concerns associated with this type of event.

In repealing Ordinance No. 4718 N.S. and OMC 9.08.200, the City Council will send the message that it supports creative thinking, revitalization and tourism in Oakland. It will help the local economy and raise the quality of life, as the participation in Oakland Running Festival and the money raised for local charities and Oakland have demonstrated.

POLICY ALTERNATIVES

<i>Alternative</i>	Repeal only part Ordinance No. 4718 N.S. and OMC section 9.08.200 to clearly allow marathon footraces and charitable walkathons, but retain the bans against dance marathons and skate marathons.
<i>Pros</i>	The City Council may deem it proper to retain certain prohibitions on these types of endurance contests in the City of Oakland.

¹ For 2012, the benefited local charities included the Ella Baker Center for Human Rights, Running for a Better Oakland, Oakland Rising, the Child Abuse Listening, Interviewing and Coordination Center, the Asian Pacific Environmental Network, and Team in Training

Cons	Retaining certain parts of Ordinance No. 4718 N.S. and OMC section 9.08.200 to continue to prohibit dance marathons and skate marathons, while exempting virtually identical events which are held for charitable purposes, may cause confusion, and be difficult to enforce, depending on the meaning of "charitable purposes."
Reason for not recommending	There is no factual information to indicate that dance marathons, skate marathons, or other types of endurance contests are still a public safety concern which cannot be adequately regulated through existing laws.

PUBLIC OUTREACH/INTEREST

This item did not require any additional outreach other than the required posting on the City's website.

COORDINATION

Jim MacIrvine, Special Events coordinator for the Oakland City Administrator's Office, provided input and data about the Oakland Running Festival.

COST SUMMARY/IMPLICATIONS

Repeal of Ordinance No. 4718 N.S. and OMC section 9.08.200 will not change the status quo because it is not being enforced.

SUSTAINABLE OPPORTUNITIES (Mandatory)

Economic: Repeal of Ordinance No. 4718 N.S. and OMC section 9.08.200 will not change the status quo because it is not being enforced.

Environmental: Repeal of Ordinance No. 4718 N.S. and OMC section 9.08.200 will not change the status quo because it is not being enforced.

Social Equity: Repeal of Ordinance No. 4718 N.S. and OMC section 9.08.200 will not change the status quo because it is not being enforced.

CEQA

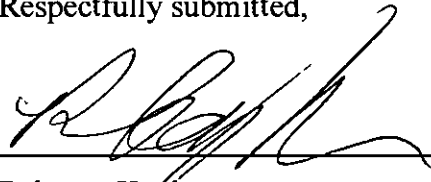
The proposed legislation is exempt from CEQA, and a statement to this effect is contained in the proposed Ordinance.

For questions regarding this report, please contact Ada Chan, at 510-238-7083, or Pelayo Llamas at 510-238-6621.



Barbara J. Parker
City Attorney

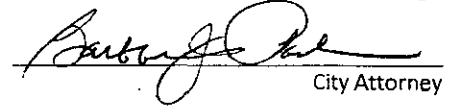
Respectfully submitted,



Rebecca Kaplan
Councilmember-At-Large

Reviewed by: Mark Morodomi
Supervising Deputy City Attorney

Prepared by: Pelayo A. Llamas, Jr.
Deputy City Attorney
And Ada Chan, Policy Analyst


City Attorney

12 JUN 27 PM 4:43
INTRODUCED BY COUNCILMEMBER KAPLAN AND CITY ATTORNEY PARKER

OAKLAND CITY COUNCIL

ORDINANCE NO.

C.M.S.

**AN ORDINANCE REPEALING ORDINANCE No. 4718 N.S. AND
SECTION 9.08.200 OF THE OAKLAND MUNICIPAL CODE
PROHIBITING MARATHONS**

WHEREAS, Oakland Ordinance No. 4718 N.S., passed on November 18, 1930, declared it a misdemeanor to promote, conduct, or carry on, within the City of Oakland, any public exhibition of endurance contests, such as "walkathons", "dance marathons," or "skate marathons"; and

WHEREAS, section 9.08.200 of the Oakland Municipal Code ("OMC") (previously codified as section 3-8.04) currently prohibits the public exhibition of endurance contests known and designated as "walkathons" or "dance marathons" or "skate marathons"; and

WHEREAS, Oakland Ordinance No. 4718 N.S., was enacted during an era when the dance marathon fad and other types of endurance contests were prevalent across the United States; and

WHEREAS, the concerns which motivated the passage of Oakland Ordinance No. 4718 N.S., have subsided, and that Ordinance is no longer deemed necessary to protect the public health and welfare; and

WHEREAS, large-scale events such as the Oakland Running Festival, which started in 2010, must continue to obtain a Special Events permit in order to be conducted, ensuring that they are safe and address traffic and the concerns of affected business and residents; and

WHEREAS, the City of Oakland recognizes that foot race marathons events and walkathons are now viewed in a positive light, as a means of charitable fundraising or of attracting people from across the nation to the neighborhoods of Oakland, and as a marketing and economic tool for the City; and

WHEREAS, on May 20, 2009, the City Council voted to pass Resolution No. 82034 C.M.S. honoring Corrigan Sports for organizing the Oakland Marathon which later took place on March 27, 2010; and

WHEREAS, in just over two years since the Oakland Marathon (now known as the Oakland Running Festival) commenced in 2010, the Oakland Running Festival has grown each year, bringing 8,211 participants in 2012 from 38 states and six countries to Oakland; and

WHEREAS, the 2011 Oakland Running Festival attracted an estimated \$3 million in revenue for local hotels, restaurants, retailers, transportation companies, and entertainment venues, and the 2012 Oakland Running Festival attracted an estimated \$3.5 million in such revenue; and

WHEREAS, the 2010, 2011, and 2012 Oakland Running Festivals combined, raised approximately \$800,000 for local charities; and increased awareness for important social causes and highlighted Oakland's vibrancy and community; and

WHEREAS, special events like marathons can be a powerful contribution to improving the quality of life in Oakland, spurring economic development and increasing public safety, attracting businesses and customers, expanding economic opportunity, and promoting an increased pedestrian presence and community safety; now therefore

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1

The City Council does hereby find and declare that the above recitals are true and correct and hereby makes them part of this Ordinance.

Section 2

Ordinance No. 4718 N.S. and the following section of the Oakland Municipal Code is hereby repealed and shall be removed from the Oakland Municipal Code:

~~9.08.200. Marathons.~~

~~It is unlawful for any person within the city to promote, conduct, carry on or take part in, any public exhibition of endurance contests commonly known and designated as "walkathons" or "dance marathons" or "skate marathons."~~

Section 3

The City Council finds and determines that the adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA"), including under Section 15061(b)(3) of the State CEQA Guidelines, and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

Section 4

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this Ordinance and the application shall not be affected thereby.

Section 5

This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes as provided by Section 216 of the City Charter, otherwise, this ordinance shall become effective upon the seventh day after final adoption.

Section 6

This Ordinance 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 of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, AND PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

DATES OF ATTESTATION _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2012 JUN 27 PM 4:43

NOTICE AND DIGEST

**ORDINANCE REPEALING ORDINANCE 4718 N.S. AND
SECTION 9.08.200 OF THE
OAKLAND MUNICIPAL CODE
PROHIBITING MARATHONS.**

This Ordinance repeals Ordinance No. 4718 N.S. and Section 9.08.200 from the Oakland Municipal Code, which currently prohibit any public exhibition of endurance contests, including walkathons, dance marathons, and skate marathons. This repeal deletes Ordinance No. 4718 N.S. and Oakland Municipal code section 9.08.200 in their entirety.