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Introduced by Councilmember Patricia Kernighan

Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Ordinance No. 13058 C.M.S.

ORDINANCE ADDING CHAPTER 9.56 TO THE OAKLAND MUNICIPAL CODE, DECLARING VEHICLES A PUBLIC NUISANCE AND AUTHORIZING IMPOUNDMENT OF SUCH VEHICLES WHEN THEY ARE USED TO SOLICIT AN ACT OF PROSTITUTION, FOR PANDERING, PIMPING, OR ILLEGAL DUMPING

WHEREAS, citizens of Oakland have been in frequent contact with the Oakland Police Department and have provided testimony before the Oakland City Council Public Safety Committee regarding the nuisance created by persons driving vehicles into their neighborhoods in order to solicit acts of prostitution, purchase drugs, and illegally dump waste and garbage; and

WHEREAS, persons who illegally dump waste and solicit acts of prostitution from their vehicles bring crime and decay to Oakland neighborhoods; and

WHEREAS, Prostitution and prostitution related crimes has become big business in Oakland rivaling only the illegal weapons trade and narcotics trade in sheer size and scope, according to the U.S. State Department; and

WHEREAS, in recent years, law enforcement officials have documented an alarming increase in the number of underage girls working as street prostitutes in the City of Oakland; and

WHEREAS, in recent years, the acts associated with the control and exploitation of prostitutes, otherwise known as "pimping," has drawn criminals to pursue this "trade" due to the perception that pimping is more lucrative and carries less risk of criminal prosecution than the illegal drug trade; and

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

WHEREAS, according to the US Department of Justice, approximately 55 percent of runaway or missing girls engage in formal prostitution, and of the girls engaged in formal prostitution, about 75 percent work for a pimp; and

WHEREAS, according to the US Department of Justice, it is not only the girls on the streets that are affected—for boys and transgender youth, the average age of entry into prostitution is eleven to thirteen years old; and

WHEREAS, the areas most plagued with street prostitution and prostitution related crimes is known on the streets of Oakland as “The Track” and runs from San Pablo Boulevard in North Oakland to International Boulevard in East Oakland; and

WHEREAS, street prostitution is a pervasive problem especially in the area known as “The Track” in large part because of the easy vehicular access to the sidewalks and streets where the prostitutes gather to meet their customers; and

WHEREAS, illegal dumping is a long standing problem in certain areas of the City of Oakland, involving in many instances individuals from out of town who drive to Oakland looking for places to dump waste, debris, garbage and often toxic materials; and

WHEREAS, in 1997, the Oakland City Council enacted Ordinance No. 11987 C.M.S., which was subsequently amended by Ordinances No. 12015, 12093 and 12684 C.M.S., and this Ordinance declared vehicles that were used to solicit an act of prostitution or to illegally acquire a controlled substance to be public nuisances, and authorized the seizure and forfeiture of said vehicles; and

WHEREAS, Ordinance No. 11987 C.M.S. and its amendments were codified as Chapter 9.56 of the Oakland Municipal Code (named the Nuisance Vehicle Forfeiture Ordinance), subsequently challenged in court, and upheld by the California Court of Appeal in the 2000 decision in Horton v. City of Oakland; and

WHEREAS, the Oakland City Council repealed its Nuisance Vehicle Forfeiture Ordinances following the California Supreme Court decision in O’Connell v. City of Stockton (2007) 41 Cal.4th 1061, holding that Stockton’s Nuisance Vehicle Ordinance, which was similar to Oakland’s Ordinance, was preempted by California law, which decision overruled the 2000 Horton decision; and

WHEREAS, on January 1, 2010, the State Legislature enacted Vehicle Code Section 22659.9 which permits a city or a county to adopt ordinances which declare a motor vehicle to be a public nuisance and authorize under limited conditions the seizure and temporary impoundment of said motor vehicle when they are used in the commission or attempted commission of prostitution related offenses in violation of Penal Code Sections 266h, 266i or 647(b), or if the motor vehicle is used for illegal dumping in violation of Penal Code Section 374.3; and

WHEREAS, seizure and impoundment of the vehicles of persons who solicit acts of prostitution and/or illegally dump waste will prevent future use of the impounded vehicles for similarly unlawful purposes and will further serve as a deterrent to such unlawful behavior thereafter.

NOW THEREFORE,

THE CITY COUNCIL OF OAKLAND DOES ORDAIN AS FOLLOWS:

THE FOLLOWING CHAPTER 9.56 IS ADDED TO TITLE 9—PUBLIC PEACE, MORALS AND WELFARE, OF THE OAKLAND MUNICIPAL CODE.

“Chapter 9.56 Nuisance Vehicles

9.56.010 Definitions

For the purpose of this chapter the following words and phrases shall mean and include:

“Nuisance vehicle” means any vehicle used to agree to or engage in an act of prostitution, pandering, or pimping or to illegally dump; such vehicle is a nuisance.

“Pandering” means procuring another person for the purpose of prostitution, a crime pursuant to California Penal Code Section 266i.

“Pimping” means deriving support or maintenance from the earning or proceeds of a prostitute, a crime pursuant to California Penal Code Section 266h.

“Prosecuting Agency” means the District Attorney or the City Attorney.

“Prostitution” means the solicitation of, agreement to engage in, or engaging in any act of prostitution, as defined in California Penal Code Section 647(b).

“Illegal Dumping” means to dump or to cause to be dumped waste matter in or upon a public or private highway or road, as defined in California Penal Code Section 374.3.

9.56.020 Nuisance vehicles.

Any vehicle used to agree to or engage in an act of prostitution, or procure another person for the purpose of prostitution (pandering), or derive financial support or maintenance from the earnings or proceeds of prostitution (pimping), or illegally dumps, is declared a public nuisance, subject to seizure and an impoundment period of up to 30 days if the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years.

9.56.030 Responsibility of towing and storage cost.

The registered owner or his or her agent shall be responsible for all towing and storage charges related to the impoundment. However, notwithstanding any provision of law, if a motor vehicle is released prior to the conclusion of the impoundment period because the driver was arrested without probable cause, neither the arrested person nor the registered owner of the motor vehicle shall be responsible for the towing and storage charges.

9.56.040 Security Interest Holder

A. A vehicle removed and seized under Section 9.56.020 shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of the impoundment period if both of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or is another person who is not the registered owner and holds a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure and impoundment of the vehicle.

B. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of the impoundment period. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner as described in Section 9.56.040, or the legal owner's agent, any administrative charges imposed pursuant to Vehicle Code Section 22850.5, unless the legal owner voluntarily requested a post-storage hearing.

9.56.050 State Law Requirements

During the enforcement of any section or subsection of this chapter, the City of Oakland will follow the relevant Vehicle Code's requirements for Notice, Post-Storage Hearings, Vehicle Release, Storage Facilities, and Rental Cars.

9.56.060 Promulgation of Administrative Instructions and Protocols

The City Administrator or his designee shall promulgate vehicle impoundment administrative procedures to ensure the implementation of this Ordinance complies with state law and with the City Council's policy directives

9.56.070 Severability clause

In any section, subsection, clause, phrase or word in this chapter is declared unconstitutional or invalid by any court, said ruling shall not invalidate any other portion of this chapter. The City Council finds and determines that it would have adopted this chapter without said section, subsection, sentence, clause, phrase, or word."

9.56.080 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.

MAR 1 2011

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

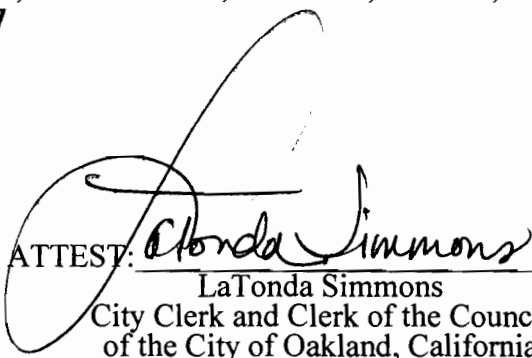
AYES - ~~Brooks~~, BRUNNER, DE LA FUENTE, KERNIGHAN, KAPLAN, NADEL, SCHAAF, and PRESIDENT REID - 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Brooks - 1

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

Introduction Date **FEB 15 2011**

DATE OF ATTESTATION: March 4, 2011

NOTICE AND DIGEST

AN ORDINANCE ADOPTING THE OAKLAND MUNICIPAL CODE TO AUTHORIZE THE CITY OF OAKLAND TO DECLARE VEHICLES A PUBLIC NUISANCE SUBJECT TO IMPOUNDMENT WHEN USED FOR SOLICITING QAN ACT OF PROSTITUTION, PANDERING PIMPING, OR ILLEGAL DUMPING

This Ordinance adds section 9.56 to the Oakland Municipal Code which permits any vehicle used to agree to or engage in an act of prostitution, or procure another person for the purpose of prostitution (pandering), or derive financial support or maintenance from the earnings or proceeds of prostitution (pimping), or illegally dumps, is declared a public nuisance, subject to seizure and an impoundment period of up to 30 days if the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years.