

INTRODUCED BY CITY ATTORNEY BARBARA J. PARKER,
DIRECTOR DARLENE FLYNN, MAYOR SHENG THAO,
CITY ADMINISTRATOR STEVEN FALK, COUNCIL
PRESIDENT NIKKI FORTUNATO BAS, AND
COUNCILMEMBER DAN KALB

APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE ADDING SECTION 1.10 TO THE OAKLAND MUNICIPAL CODE, ENTITLED “THE CIVIL PROTECTION OF THE PEOPLE OF OAKLAND ORDINANCE,” TO DETAIL THE CITY ATTORNEY’S AUTHORITY TO BRING CIVIL ACTIONS TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF OAKLANDERS AND EQUITABLY ENFORCE VIOLATIONS OF CITY LAW, CONSISTENT WITH THE CHARTER

WHEREAS, over half of Americans experienced one or more incidents of wage theft, predatory lending, predatory debt collection, unsafe housing conditions, or health problems due to pollution created by a business within the past ten years, according to a 2019 survey conducted by the Public Rights Project; and

WHEREAS, existing Oakland laws provide protections in many areas, such as dignified housing conditions, fair and safe work environments, and healthy neighborhoods, including protections against discrimination for historically and/or presently marginalized communities; and

WHEREAS, those existing Oakland laws redress racial and social inequities based on historical and systemic discrimination; and

WHEREAS, underenforcement of those existing Oakland laws contributes to a local civil enforcement gap and multiplies and magnifies racial inequities and other forms of systemic oppression; and

WHEREAS, the “civil enforcement gap” is the gap between the laws on the books and the lived realities of many people those laws are written to serve; and

WHEREAS, in June 2015 the Oakland City Council adopted Ordinance No. 13319, committing the City to intentionally integrating the principle of ‘fair and just’ in all the City does in order to achieve equitable opportunities for all people and communities; and

WHEREAS, inequities exist in every critical area of life for Oakland residents, as demonstrated by the 2018 Oakland Equity Indicators Report in which Oakland received a Citywide Equity Score of 33.5 out of 100, demonstrating substantial room for improvement; and

WHEREAS, the Oakland City Council declared racism a public health crisis in June 2022 and resolved that “City departments whose enforcement of local, state, and federal laws protect historically marginalized Oakland communities [...] play a role in improving the social determinants of health by furthering racial justice”; and

WHEREAS, the Oakland City Attorney’s Office is one of the departments described in the June 2022 Resolution whose enforcement efforts play a role in advancing racial equity, specifically through the approach of “equitable enforcement”; and

WHEREAS, “equitable enforcement” is an approach to enforcing the law that foregrounds the impact of harms on Black, Indigenous, and other People of Color, and historically and/or presently marginalized communities that are disadvantaged economically, socially, or politically and therefore more often subjected to harm; and

WHEREAS, equitable enforcement means considering equity both when identifying and pursuing cases, as well as when deciding what remedies to pursue; and

WHEREAS, the City Attorney is committed to effective and equitable civil enforcement of all Oakland laws such that Oakland’s Black, Indigenous, and other People of Color, and historically and/or presently marginalized communities, are protected by the law; and

WHEREAS, community-based organizational partners have testified that “[t]he Oakland City Attorney’s Office[’s] [civil enforcement] results in the kind of widespread impact and meaningful injunctive relief that are traditional hallmarks of class actions [which bring] about policy changes and forc[e actors] to comply with the law”; and

WHEREAS, the City Attorney currently has clear authority to enforce some, but not all, Oakland laws; and

WHEREAS, other large City Attorney offices in California have clear and comprehensive authority to enforce all of their local laws, whether through the jurisdiction’s own local ordinance(s) and/or through California’s Unfair Competition Law, Business and Professions Code Sec. 17200 et seq.; and

WHEREAS, other City Attorney offices in California, such as the San Jose City Attorney’s Office, the San Diego City Attorney’s Office, and the Los Angeles City Attorney’s Office, each already can file a civil action to enforce any violation of their respective municipal codes, request injunctive relief to stop the violation, and recover civil penalties of up to \$2,500 per violation for each day of the unlawful conduct; and

WHEREAS, without the full range of tools and authorities to enforce Oakland’s progressive laws, the City runs the risk of its laws being under-enforced, or unenforced entirely, leaving Oakland’s Black, Indigenous, and other People of Color, and historically and/or presently marginalized residents, to continue enduring the harms caused by the civil enforcement gap; and

WHEREAS, the proposed Oakland Municipal Code Chapter 1.10 provides a range of flexible remedies that can be tailored to the particular violations and circumstances of a case, including injunctive relief to prevent continued violations of the law and restitution to compensate those Oaklanders who were directly harmed by the violations; and

WHEREAS, with the guidance of the Department of Race and Equity, the City Attorney completed a Racial Equity Impact Analysis (REIA) assessing the ways that the proposed Oakland Municipal Code Chapter 1.10 will advance equitable enforcement while limiting any potential inequitable applications; and

WHEREAS, the proposed Oakland Municipal Code Chapter 1.10 includes specific equity safeguards to ensure that Oakland's future efforts to close the civil enforcement gap do not exacerbate existing inequities; and

WHEREAS, equitable civil enforcement is an essential component in the citywide effort to reduce racial disparities and other forms of systemic oppression and create the conditions necessary for an equitable society in which all Oakland residents can participate, reach their full potential, and prosper; and

WHEREAS, the City Attorney is broadly and institutionally committed to continuing inclusive community engagement efforts that are aligned with Administrative Instruction 6802, and if proposed Oakland Municipal Code Chapter 1.10 is enacted, will remain accountable to equitable enforcement informed by community engagement and partnerships; and

WHEREAS, the City Attorney will collect data on implementation of the authority and remedies in the proposed Oakland Municipal Code Chapter 1.10 and report back to City Council to ensure the equity measures in the text of the proposed ordinance function as intended and in practice; and

WHEREAS, the proposed Oakland Municipal Code Chapter 1.10 will allow the City Attorney to partner more effectively with the Office of the City Administrator, other City departments, community-based organizations, and community members to close the civil enforcement gap and reduce historical and ongoing racial and other inequities in outcomes for Oakland residents; and

WHEREAS, the proposed Oakland Municipal Code Chapter 1.10 will support the City of Oakland's efforts to implement the principle of 'fair and just' by taking action to address the civil enforcement gap to the benefit of all Oaklanders.

EXHIBIT A

Chapter 1.10 – CIVIL ACTIONS AND CIVIL REMEDIES

1.10.010 - Purpose.

The purpose of this Chapter [“the Civil Protection of the People of Oakland Ordinance”] is to set forth the City Attorney’s authority in accordance with City Charter section 401(6) to conduct equitable enforcement through civil actions to protect the people of the City of Oakland (“City”). This Chapter will detail the City Attorney’s ability to protect the health, safety, and general welfare of Oakland’s residents and workforce, and to enforce the laws passed by the City Council. This Chapter describes the City Attorney’s authority to bring civil actions and to: (1) secure compliance with the law through various forms of relief, including civil penalties and declaratory, injunctive, and other equitable relief; and (2) recover administrative, investigative, and other fees, costs, and damages to the City as a result of violations of the law.

In accord with the City’s policy of initiating litigation only when there are not other safe, efficient, effective, and equitable means to address and resolve issues, this Chapter requires that any actions brought hereunder seek outcomes that are fair, equitable, and just.

1.10.020 - City Attorney Authority.

- A. Authorities detailed in OMC Chapter 1.10 are consistent with California state law and with the City Attorney’s authority under state law.
- B. In exercising the authorities detailed in OMC 1.10.020, the City Attorney shall seek outcomes that are fair, equitable, and just.
- C. The City Attorney may file a civil action to redress any public nuisance (including as defined under OMC Chapter 1.08) within the City of Oakland, unless otherwise prohibited by law.
- D. The City Attorney may file a civil action to redress any violation of and/or ensure compliance with any Oakland municipal law, including any City order, ordinance, or regulation, unless otherwise prohibited by law.
- E. The City Attorney may enforce any City, county, state, or federal ordinance, permit, rule, regulation, statute, constitution, or other law, when so authorized, or when so designated by the City official otherwise authorized for its enforcement, and may file a civil action to do so, unless otherwise prohibited by law.
- F. In any civil action authorized by OMC Chapter 1.10, the City Attorney may seek, and the court shall award, any or all of the following remedies, unless otherwise prohibited by law:
 - 1. Civil penalties, not to exceed two thousand five hundred dollars (\$2,500) for each violation for each day that the violation occurred or continued, or the monetary limit otherwise set by City Council for violations of City ordinances or a specific ordinance. The City Attorney shall consider in their request, and the court shall consider in determining the amount of civil penalties, at least the following

circumstances, as relevant: the nature and seriousness of the misconduct; the number of violations; the persistence of the misconduct despite prior efforts by the City or other actors to secure compliance; the length of time over which the misconduct occurred; the willfulness of the misconduct; the potential deterrent effect; the assets, liabilities, and net worth of the defendant; whether the misconduct resulted from commercial activity or financially benefited the responsible party; and other factors that serve justice.

2. Recovery of any administrative, investigative, and other costs and damages incurred by the City as a result of such violation(s).
 3. Recovery of the City Attorney's costs and attorney's fees in bringing the civil action:
 - a. For any cause of action that is not based on public nuisance, as defined in state, City, or common law.
 - b. For any cause of action that is based on public nuisance, as defined in state, City, or common law, the City Attorney may elect, at the initiation of that individual action or proceeding, to seek recovery of their own attorneys' fees for that cause of action. In such an action, the prevailing party shall have a right to recover attorney's fees. That award shall be made pursuant to California Government Code section 38773.5(b), including that no award may be made to a prevailing party that exceeds the amount of reasonable attorney's fees incurred by the City in the action.
 - c. Attorney's fees awarded under OMC Chapter 1.10 may be calculated according to the lodestar method. Where appropriate, a court of competent jurisdiction may award a lodestar multiplier based on the standards set forth in existing applicable law and jurisprudence.
 4. Declaratory relief to the extent permitted by law.
 5. Injunctive relief, including but not limited to temporary and/or permanent injunction(s), to enjoin or abate violations of the law and/or to prevent the use or employment by any person of any policy or practice which violates the law.
 6. Equitable or further relief as the court may deem proper, including but not limited to abatement, restitution, disgorgement of profits, and/or the appointment of a receiver, as may be necessary to remedy or prevent violations of the law; to prevent or redress the use or employment by any person of any policy or practice which violates the law; or to restore money or property, real or personal, which may have been acquired through policies or practices that violate the law.
- G. The intent in establishing the remedies outlined in OMC 1.10.020(F) is to provide courts with great latitude in protecting the residents of Oakland and effecting complete justice.
- H. The City is not required to exhaust administrative remedies prior to the City Attorney initiating an action under OMC Chapter 1.10.

- I. The statute of limitations for commencing a civil action under OMC Chapter 1.10 shall be three (3) years, and all remedies under OMC Chapter 1.10 are available for the entire statutory period.
- J. OMC Chapter 1.10 should be construed liberally for the accomplishment of its purposes.

1.10.030 - Authorities and Remedies Not Exclusive.

Authorities under OMC Chapter 1.10 are in addition to and do not supersede or limit any and all other authority of the City Attorney under City, county, state, or federal regulatory ordinance, permit, rule, regulation, statute, constitution, or other law. Remedies under OMC Chapter 1.10 are in addition to and do not supersede or limit any and all other remedies, whether civil, criminal, or administrative. The remedies provided for herein are cumulative and not exclusive of other remedies, including in actions by the City Administrator or their designee. The City Attorney shall have the discretion to select particular remedies to further the purposes and intent of OMC Chapter 1.10, depending on the particular circumstances. The City Attorney's decision to select particular remedies is not subject to appeal. Nothing in OMC Chapter 1.10 is intended to limit or void any rights, remedies, or authority of the City or any City official, employees, department, agency, investigator, consultant, contractor, or agent of the City provided by the City Charter or any other law, ordinance, or regulation.

1.10.040 - Implementation.

The City Attorney is authorized to adopt any procedures, rules, and regulations, and issue determinations and interpretations, as are necessary to implement and are consistent with this Chapter. The City Attorney and City Administrator will develop procedures for coordination and implementation of this Chapter.

The City Attorney shall collect data on actions filed under the authority granted by OMC Chapter 1.10 and the results of such actions. The City Attorney shall consult with the Department of Race and Equity in implementing its data collection and analysis practices under OMC Chapter 1.10. The City Attorney shall provide this analysis to Council within three years of the adoption of OMC Chapter 1.10.

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

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them part of this Ordinance.

SECTION 2. The City Council hereby adopts the addition of Chapter 1.10 of the Oakland Municipal Code, the Civil Protection of the People of Oakland Ordinance, attached as Exhibit A.

SECTION 3. 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 4. 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 – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

AN ORDINANCE ADDING SECTION 1.10 TO THE OAKLAND MUNICIPAL CODE, ENTITLED “THE CIVIL PROTECTION OF THE PEOPLE OF OAKLAND ORDINANCE,” TO DETAIL THE CITY ATTORNEY’S AUTHORITY TO BRING CIVIL ACTIONS TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF OAKLANDERS AND EQUITABLY ENFORCE VIOLATIONS OF CITY LAW, CONSISTENT WITH THE CHARTER

This Ordinance would set forth the Oakland City Attorney’s full authority to conduct civil enforcement, including filing lawsuits, to protect the people of the City of Oakland. The Ordinance would detail the City Attorney’s authority to enforce all of Oakland’s civil laws and to seek a range of remedies for the City and for Oaklanders. The Ordinance derives its authority wholly from the City Charter, the Oakland Municipal Code, and relevant state law.