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2011 SEP 22 PM 6:07

CITY OF OAKLAND



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Larry Reid
City Council President

TO: Oakland City Council
FROM: Councilmember De La Fuente and Council President Larry Reid
DATE: 10/4/11
RE: An Ordinance (1) Adding Chapter 9.58 To The Oakland
Municipal Code (OMC) Prohibiting Loitering In Public For The
Purpose Of Engaging In Illegal Drug Activity And (2) Amending
OMC Section 1.28.020 To Add Violations Of OMC Chapter 9.58
To The List Of Infraction Offenses

Colleagues-

We submit to you this memorandum and accompanying ordinance and recommend its adoption. Ordinance No. 12470 passed by the City Council on February 25, 2003 expired by its own terms (sunsetting) on March 4, 2004 contained similar provisions. Section 9.58.040 of the 2003 ordinance, stated "This chapter shall expire on March 4, 2004 unless a vote to either extend or make his chapter permanent has been passed by a majority vote of the City Council."

In December of 2008, former Chief of Police Tucker and former City Attorney John Russo proposed the introduction of an updated and revised ordinance prohibiting loitering in public for the purpose of engaging in illegal drug activity but the proposal was withdrawn at the committee level. This proposed ordinance is identical to the 2008 proposal.

As stated in the 2008 report:

This proposed ordinance identifies and prohibits the various "markers" associated with street corner drug dealing such as: acting as a "lookout," summoning prospective buyers by word, signal or action, exchanging objects, packages and/or

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currency, possession of narcotic paraphernalia and being under the influence of narcotics.

Oakland has for many years had an ongoing problem with individuals loitering in public and engaging in open air drug dealing. In 2010, Oakland Police reported 2,481 cases of drug possession and sales, the three year average is 2,189 cases.

A search on the Oakland Police Department Crime Watch database shows the following *reported* narcotics related offenses for the past 90 days in each council district:

District 1	District 2	District 3	District 4	District 5	District 6	District 7
46	32	159	22	60	73	98

Violations of the proposed ordinance shall be punishable as an infraction or a misdemeanor per Oakland Municipal Code Chapter 1.28.

A supplemental report will be included in the supplemental agenda with additional information and statistical information to support this request.

Respectfully submitted,

Council President Larry Reid

Prepared by Ray Leon

Council President Pro Tempore

Ignacio De La Fuente

Prepared by Claudia Burgos

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OAKLAND CITY COUNCIL

City Attorney

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ORDINANCE No. _____ C.M.S.

DRAFT

INTRODUCED BY PRESIDENT LARRY REID AND PRO-TEMPORE DE LA FUENTE

AN ORDINANCE (1) ADDING CHAPTER 9.58 TO THE OAKLAND MUNICIPAL CODE (OMC) PROHIBITING LOITERING IN PUBLIC FOR THE PURPOSE OF ENGAGING IN ILLEGAL DRUG ACTIVITY AND (2) AMENDING OMC SECTION 1.28.020 TO ADD VIOLATIONS OF OMC CHAPTER 9.58 TO THE LIST OF INFRACTION OFFENSES

WHEREAS, there has been a continual problem in the City of Oakland with individuals loitering in public for the purpose of engaging in drug related activities, not limited to the sales or purchase of illegal drugs, especially in front of and around alcohol beverage sale establishments; and

WHEREAS, the City finds that persons who loiter or linger for the aforementioned purpose jeopardize the public's safety and welfare, and increase fear among the community, and such loitering activity is a factor which not only depreciates the value of property upon which such activity occurs, but also depreciates the value of adjacent and surrounding properties, and adversely affects the security and well being of residents, the city's image, business climate, potential development, and housing costs; and

WHEREAS, state law contained in California Health and Safety Code section 11530 currently prohibits loitering for the purpose of engaging in drug related activities, violations thereof being a misdemeanor; and

WHEREAS, an appellate court in California has upheld the constitutionality of California Health and Safety Code section 11530 et seq.; and

WHEREAS, California Health and Safety Code section 11538 specifically provides for local legislation in this area; and

WHEREAS, the City believes that prescribing the lower penalty of infraction through the Oakland Municipal Code for the aforementioned offense would provide an additional and necessary tool to effectively address the stated public nuisance in Oakland than the misdemeanor trial process would; and

WHEREAS, the City Council, previously enacted Ordinance No. 12470 C.M.S. on February 25, 2003, which was a prohibition on loitering for the purpose of illegal drug activity; and

WHEREAS, Ordinance No. 12470 C.M.S. expired by its own terms (sunsetting) effective March 4, 2004; and

WHEREAS, the City Council, as the legislative body of the City, has an obligation pursuant to the City Charter and the Oakland Policy Plan to protect Oakland's physical environment, conserve existing neighborhoods and protect the health, safety, and welfare of the citizens of Oakland; and

WHEREAS, in order to further the ability of the Oakland Police Department to protect the quality of life and safety of the residents of the City of Oakland, the City Council finds that it is in the City's best interest to re-enact the anti-drug loitering ordinance, now, therefore

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

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

Section 2. That the City Council finds it is appropriate to make violations of this Ordinance an infraction, rather than a misdemeanor as set forth in similar state law; and

Section 3. Chapter 9.58 is added to Title 9 -- Public Peace, Welfare, Morals and Welfare of the Oakland Municipal Code, to read as follows:

Chapter 9.58 LOITERING FOR THE PURPOSE OF ENGAGING IN ILLEGAL DRUG ACTIVITY

9.58.010 Definitions.

As used in this Chapter, the following terms have the following meanings:

A. "Loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime, or attempting to commit a crime, as opportunity may be discovered.

B. "Public place" means an area open to the public or exposed to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles and bicycles, whether moving or not, and buildings open to the general public, including those which serve food or drink, or

provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

9.58.020 Loitering for purposes of illegal drug activity.

A. It is unlawful for any person to loiter in any public place in a manner and under circumstances exhibiting the purpose or the intent to commit a drug-related offense specified in Chapter 6 (commencing with Section 11350) and Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code.

B. Among circumstances that may be considered in determining whether a person has the requisite purpose or intent to engage in drug-related activity are that the person:

1. Acts as a "lookout." For the purposes of this chapter the term lookout means one who uses signals or language to warn others that law enforcement officers are in the area.
2. Transfers small objects or packages for currency in any fashion, including a furtive fashion.
3. Tries to conceal himself or herself or any object that reasonably could be involved in an unlawful drug-related activity.
4. Uses signals or language indicative of summoning purchasers of illegal drugs.
5. Repeatedly beckons to, stops, attempts to stop, or engages in conversations with passersby, whether on foot, bicycle, or in motor vehicle, indicative of summoning purchasers of illegal drugs.
6. Repeatedly passes to or receives from passersby, whether on foot, bicycle, or in a motor vehicle, money or small objects.

7. Is under the influence of a controlled substance or possesses narcotic or drug paraphernalia. For the purpose of this paragraph, "narcotic or drug paraphernalia" means any device, contrivance, instrument, or apparatus designed or marketed for the use of smoking, injecting, ingesting, or consuming marijuana, hashish, PCP, or any controlled substance, including, but not limited to, roach clips, cigarette papers, and rollers designed or marketed for use in smoking or consuming a controlled substance.

8. Has been convicted in any court within this state, within five years prior to the conviction under this section, of any violation involving the use, possession, or sale of any of the substances referred to in Chapter 6 (commencing with Section 11350) of Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code, or has been convicted of any violation of those provisions or substantially similar laws of any political subdivision of this state or any other state.

9. Is currently subject to any order prohibiting his or her presence in any high drug activity geographic area.

10. Has engaged, within six months prior to the date of violation of this section, in any behavior described in this subdivision, with the exception of subsection B.8., or in other behavior indicative of illegal drug-related activity.

C. The list of circumstances set forth in subdivision B. of this section is not exclusive. The circumstances set forth in Subsection B. should be considered particularly salient if they occur in an area that is known for unlawful drug use and trafficking, or if they occur on or in premises that have been reported to law enforcement as a place suspected of unlawful

drug 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.

D. No officer shall be authorized to issue a citation for a violation of this Chapter until that officer has received formal training on the ordinance from the Oakland Police Department.

9.58.030 Penalty – Misdemeanor or Infraction.

Violation of Section 9.58.020 is punishable either as a misdemeanor as provided in Section 1.28.010 of the Oakland Municipal Code, or alternatively, as an infraction as provided in Section 1.28.020 of the Oakland Municipal Code.

Section 4. Severability

If any section, subsection, paragraph, clause, phrase, or word in this ordinance is declared invalid or unconstitutional by any court with jurisdiction to make such decision, said decision shall not affect the remaining parts of this ordinance. The City Council hereby finds and declares that it would have enacted this ordinance without that section, paragraph, clause, phrase, or word.

Section 5. Oakland Municipal Code Chapter 1.28 is amended to add the following subsection to the list of infraction offenses:

§1.28.020.A.2.1. Section 9.58. – Loitering For the Purpose of Illegal Drug Activity.

Section 6. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes on final adoption as provided by Section 216 of the City Charter; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 200_

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

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NOTICE AND DIGEST

This Ordinance amends Oakland Municipal Code Chapter 9.58 and establishes a prohibition on loitering in any public place in the City of Oakland for the purpose of conducting or assisting in illegal drug sales, purchases, and related activity, punishable as an infraction.