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OFFICE OF THE CITY CLERK
OAKLAND

REVISED

13 SEP 11 AM 11:35

APPROVED AS TO FORM AND LEGALITY
M. M. [Signature]
City Attorney

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER GALLO

**ORDINANCE PROHIBITING THE POSSESSION OF THE TOOLS OF VIOLENCE
AND VANDALISM DURING A DEMONSTRATION**

WHEREAS, the purpose of the ordinance is to promote the purposes as set forth below and in the accompanying agenda report; and

WHEREAS, the City of Oakland supports and has had a history of supporting peaceful protests and demonstrations; and

WHEREAS, some individuals have used protests in Oakland as "cover" to commit acts of violence, arson and vandalism; and

WHEREAS, on November 2, 2011, a vandal participating in the General Strike March using a pressurized paint sprayer spray painted graffiti on the windows of the Whole Foods grocery store in Oakland; and

WHEREAS, on November 2, 2011, vandals participating in the General Strike March used heavy sticks to attack the windows and doors of the Whole Foods grocery store in Oakland; and

WHEREAS, on November 2, 2011, a vandals participating in the General Strike March using a pressurized paint sprayer and aerosol paint painted graffiti on the walls of Burger King and Rite Aid stores and numerous other stores and buildings in Oakland; and

WHEREAS, on November 2, 2011, vandals participating in the General Strike March used aerosol paint to vandalize businesses and bus stops in Oakland; and

WHEREAS, on November 2, 2011, vandals participating in the General Strike March used large wooden sticks to break windows of businesses and assault peaceful demonstrators; and

WHEREAS, on November 2, 2011, a vandal participating in the General Strike March used a hammer to attack a bank and shatter the bank's windows while innocent customers inside feared for their safety; and

WHEREAS, on November 2, 2011, individuals participating in the General Strike March started a fire in the streets of Oakland requiring police and fire response and thus diverting public safety personnel from other areas of Oakland; and

WHEREAS, on January 28, 2012, vandals participating in the Move In Day March and carrying hand-made shields, some as large as 3 feet tall by 6 feet wide and made out of corrugated steel, advanced on police officer lines in an effort to break through and illegally occupy the Kaiser Convention Center; and

WHEREAS, on January 28, 2012, to provoke the police, vandals participating in the Move In Day March threw objects at the police from behind the protection of a phalanx of home-made shields; and

WHEREAS, shields used by persons endanger the safety of police officers and peaceful protestors. The shields block the view of protestors and police, help conceal weapons from the vision of police officers, may be used to hit police officers, and protect aggressors who hide behind them to throw bottles and rocks at police officers; and

WHEREAS, on January 28, 2012, vandals participating in the Move In Day March used paint to spew graffiti throughout Frank H. Ogawa Plaza, and

WHEREAS, on January 28, 2012, a vandal participating in the Move-In Day March used a large wrench to open illegally a fire hydrant to deter police response; and

WHEREAS, on May 1, 2012, vandals participating in the May Day Protest used spray paint to spew graffiti throughout Frank H. Ogawa Plaza, and

WHEREAS, May 1, 2012, vandals participating in the May Day Protest brandished and threatened police officers with weapons made from large poles and sticks, and

WHEREAS, May 1, 2012, a vandals participating in the May Day Protest used a large wrench, large poles, and sticks to strike police cars and attack businesses, and

WHEREAS, on May 1, 2012, vandals participating in the May Day Protest used fire accelerant to light an Oakland police car on fire and to start other fires, and

WHEREAS, on May 1, 2012, vandals participating in the May Day Protest and seeking to incite police, threw projectiles filled with paint at police officers, injuring at least one officer, and

WHEREAS, on May 1, 2012, vandals participating in the May Day Protest, to provoke the police, threw objects at the police from behind the protection of a of home-made shields; and

WHEREAS, May 1, 2012, a vandals participating in the May Day Protest threw fireworks into crowds and at police officers in an effort to incite violence and unrest, and

WHEREAS, on May 1, 2012, a peaceful march scheduled for the same day had changed its route when individuals bearing shields joined the march; and

WHEREAS, on July 13, 2013, vandals participating in the protests over the George Zimmerman verdict smashed windows of the Oaklandish store, and

WHEREAS, on July 14, 2013, vandals participating in the protests over the George Zimmerman verdict smashed windows at the Awaken Café and injured two customers with the shattered glass, and

WHEREAS, on July 14, 2013, vandals participating in the protests over the George Zimmerman verdict smashed windows at Chase Bank, Dogwood, and Beeline Glass; and

WHEREAS, on July 15, 2013, vandals participating in the protests over the George Zimmerman verdict smashed windows at The Men's Warehouse near 15th Street and Broadway; and

WHEREAS, on July 15, 2013, vandals participating in the protests over the George Zimmerman verdict smashed windows at Youth Radio, and

WHEREAS, on July 15, 2013, vandals participating in the protests over the George Zimmerman verdict smashed windows at Comerica Bank.

WHEREAS, that same day a vandal attempting to smash windows at Flora Restaurant and Bar hit a waiter in the face with the hammer the vandal was using; and

WHEREAS, sticks, poles, or other rigid supports, impact-resistant shields, sling shots, hammers, large wrenches, fireworks, paint projectiles, and fire accelerants can readily be used as weapons to hit or poke other persons; and

WHEREAS, the City has a significant governmental interest in preventing such use of sticks, poles, impact-resistant shields, sling shots, hammers, large wrenches, fireworks, paint projectiles, and fire accelerants in areas of high concentrations of people and limited means of escape, such as when there is a demonstration; and

WHEREAS, impact-resistant shields, aerosol spray cans, pressurized paint sprayers, sling shots, hammers, large wrenches for opening fire hydrants, fireworks, paint projectiles, and fire accelerants are tools of individuals who seek to vandalize, damage property, injure nonviolent demonstrators, and incite police; and

WHEREAS, persons carrying or in the possession of impact-resistant shields, aerosol spray cans, pressurized paint sprayers, sling shots, hammers, large wrenches for opening fire hydrants, fireworks, paint projectiles, or fire accelerant endanger the safety of peaceful demonstrators by subjecting them to violence, the threat of violence and creating riotous and unlawful conditions; and

WHEREAS, the City has authority under the United States Constitution to adopt reasonable time, place, and manner regulations of speech in the City; and

WHEREAS, the United States Court of appeals for the Ninth Circuit, has upheld the constitutionality of a Los Angeles ordinance prohibiting possession, during

demonstrations, of items such as large sticks and poles that can be used as weapons; and

WHEREAS, the City of Salt Lake City enacted and implemented, without legal challenge, regulations that prohibited citizens from carrying various dangerous items while participating in demonstrations at the 2002 Winter Olympics; and

WHEREAS, the City has a vital and substantial interest in safeguarding its citizens against the recurrence of violence and in protecting its police force from violent acts that have occurred at demonstrations in Oakland; and

WHEREAS, the City has a vital and substantial interest in safeguarding the property of citizens against damage and destruction and in protecting its own property from damage and destruction during demonstrations; and

WHEREAS, this ordinance makes demonstrations safer by banning materials that have become dangerous weapons without depriving citizens of the opportunity to march or protest with 'traditional' picket signs and other means of communication; and

WHEREAS, this ordinance does not prohibit leaflets, photographs, megaphones, or a panoply of other devices used for communicating a message or getting attention during demonstrations; and

WHEREAS, the following regulations are narrowly tailored to address the foregoing governmental interests because they leave ample alternatives for communication, are not substantially broader than necessary, and promote substantial government interests that would be achieved less effectively absent these regulations;

Now therefore,

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

SECTION 1. The following is added to the Oakland Municipal Code, Chapter 9.36 – Weapons.

Article VI.

Section 9.36.500. Tools of Violence and Vandalism at Demonstrations

A. Definitions.

The following definitions shall apply only for the purposes of this section.

"Club" means a length greater than 12 inches of lumber, wood, or metal, unless that object is one-fourth half inch or less in thickness and two inches or less in width or, if not generally rectangular in shape, such object shall not exceed three-quarter inch in its thickest dimension. Nothing in this section shall prohibit a disabled person from carrying a cane, walker, or similar device necessary for mobility so that the person may participate in a demonstration. Club shall not include an umbrella or camera tripod or

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monopod.

"Painting Device" means any aerosol paint can or pressurized paint sprayer, including but not limited to, any improvised device.

"Paint Projectile" means any container, including a plastic bag or balloon, and containing paint and designed to be thrown or projected.

"Shield" means any metal sheet more than 24 inches wide and held by straps or a handle attached on the holder's side of the metal sheet and designed to provide impact protection for the holder.

"Wrench" means a wrench with a span greater than or expandable to one and a quarter inches standard or 30 millimeters metric and of a length of 12 inches or more.

B. Weapons and Vandalism Tools Prohibited.

No person shall carry or possess a Club, tire accelerant, fireworks, Painting Device, Paint Projectile, Shield, sling shot, hammer, or Wrench while participating in any demonstration.

C. Exemptions.

The prohibitions of this section shall not apply to any law enforcement agency employee, fire service agency employee, or public works employee who is carrying out official duties.

D. Penalties.

1. Any person violating Subsection B is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months or by fine not exceeding one thousand dollars (\$1,000.00) or by both.
2. Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

SECTION 2. Severability.

If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions, which shall remain in full force and effect.

SECTION 3. 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.

SECTION 4. Status Report.

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The City Administrator's Office shall return to the City Council within 24 months of the enactment of this ordinance with a status report.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES]- BROOKS, KALB, KAPLAN,- GALLO, GIBSON MCELHANEY, REID, SCHAAF and PRESIDENT
KERNIGHAN,
NOES -
ABSENT -
ABSTENTION -

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

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D. Penalties.

1. Any person violating Subsection B is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months or by fine not exceeding one thousand dollars (\$1,000.00) or by both.

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KERNIGHAN,
NOES -
ABSENT -
ABSTENTION -

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

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Notice and Digest

ORDINANCE PROHIBITING THE POSSESSION OF THE TOOLS OF VIOLENCE AND VANDALISM DURING A DEMONSTRATION

This ordinance prohibits a person from carrying or possessing a club, fire accelerant, fireworks, painting device, paint projectile, shield, sling shot, hammer, or wrench while participating in any demonstration. Violation may be punishable as a misdemeanor.