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FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. 18772 C.M.S.

ORDINANCE ADDING CHAPTER 9.06 TO THE OAKLAND MUNICIPAL CODE TO (1) ALLOW CITY EMPLOYEES AND ESSENTIAL INFRASTRUCTURE WORKERS CARRYING OUT THEIR DUTIES ON PUBLIC PROPERTY TO ESTABLISH SAFE WORK ZONES SUBJECT TO SPECIFIED CRITERIA TO PROTECT FIRST AMENDMENT RIGHTS AND THE SAFETY OF SUCH WORKERS AND THE PUBLIC; AND (2) MAKE WILLFUL FAILURE TO LEAVE A DESIGNATED SAFE WORK ZONE, AFTER REQUEST BY A PEACE OFFICER, A MISDEMEANOR

WHEREAS, the City of Oakland, like other employers, is obligated to provide employees with a worksite that is safe, healthful, and as free from “danger to the life, safety, or health of employees as the nature of the employment reasonably permits;”¹ and

WHEREAS, Oakland has a long history of protecting workers and has enacted numerous worker protection ordinances including but not limited to the Living Wage Ordinance (O.M.C. Chapter 2.28), Worker Retention at Large-Scale Hospitality Business Ordinance (O.M.C. Chapter 2.36), City Minimum Wage, Sick Leave, and Other Employment Standards (O.M.C. Chapter 5.92), the Hotel Minimum Wage and Working Conditions Ordinance (O.M.C. Chapter 5.93), the Hospitality and Travel Worker Right to Recall Ordinance (O.M.C. Chapter 5.95), and the Grocery Worker Hazard Pay Ordinance (O.M.C. Chapter 5.96); and

WHEREAS, City staff are deployed throughout the City on a daily basis to carry out City business including but not limited to sewer maintenance, tree maintenance, investigation and cleaning of illegal dumping, construction inspections, and cleaning and closure of homeless encampments pursuant to the Encampment Management Policy adopted by the City Council in October 2022 (“Policy”); and

WHEREAS, the City enacted its Policy to guide its staff through interventions in and around homeless encampments to address public health and safety concerns, but such Policy does not address workplace protections for City staff engaged in such interventions; and

¹ See Cal. Labor Code sections 6300, 6400, 6306.

WHEREAS, the City is aware of several recent incidents where City staff assigned to and engaged in cleaning and closing homeless encampments pursuant to the Policy have been threatened and physically assaulted by individuals in and surrounding homeless encampments, which have been lawfully noticed for cleaning and closure; and

WHEREAS, the City is also aware that threats to and physical assaults on City staff are not limited to those working to clean and clear homeless encampments; and

WHEREAS, in July 14, 2022, a Public Works staff member assigned by a supervisor to clean and clear an area at the Wood Street encampment on City property was harassed and spat upon by an individual opposing the City action; and

WHEREAS, on August 31, 2022, a Public Works Supervisor attempting to carry out duties at a homeless encampment on the Embarcadero Trail was physically assaulted by an individual who prevented them from completing the necessary work. The Supervisor reported being afraid due to a credible threat of additional violence and later obtained a temporary civil harassment restraining order to protect himself from future harm from this advocate; and

WHEREAS, on October 19, 2022, two City Sewer Maintenance Workers were threatened by an individual with a sharp object while trying to conduct a sewer inspection on 47th Avenue. The workers reported that they were scared and traumatized and unable to complete the necessary inspection; and

WHEREAS, in April 2023, during the closure of the encampment located at 1707 Wood Street, City staff witnessed individuals damaging equipment, blocking equipment by laying under trucks, removing debris from packers in operation. Police officers and Public Works employees were threatened with buckets of feces and bodily harm. Due to these threats and behaviors, Police officers closed the street to the public and the operation was delayed at significant cost to the City; and

WHEREAS, City staff have been prevented from providing outreach to individuals living in encampments and connecting them to services due to hostile behavior by advocates. This delay in services and outreach has, on more than one occasion, resulted in individuals dying in encampments before receiving services; and

WHEREAS, on October 16, 2023, a Parking Control Technician was bitten by a dog while working to move cars at the 3600 Alameda Homeless Encampment. The worker was unable to complete the necessary inspection which led to the City delaying the encampment closure; and

WHEREAS, On October 20, 2023, a Gardener was assaulted while cleaning an area at Lake Merritt. The worker was then unable to continue or complete the assignments as needed. This has altered the worker to be hyper vigilant and work in a traumatic environment; and

WHEREAS, the City has been made aware of numerous threats and assaults against the employees of City contractors, partner organizations and essential infrastructure and construction workers, including stabbings and physical attacks requiring hospitalization and long recovery times; and

WHEREAS, Pacific Gas and Electric Company (PG&E) has reported that incidents of workplace violence for their staff in Oakland have doubled in 2021 and 2022 over the prior five years of data and include hostile behavior, threats, battery, brandishing a weapon, robbery, and assault with a deadly weapon; and

WHEREAS, representatives from the City Administrator's Office, Public Works Department, and Department of Transportation met with representatives from PG&E, Comcast, AT&T, and the East Bay Municipal Utility District multiple times in the winter and spring of 2023 and learned of widespread incidents of harassment, threats, theft of equipment, and disruption of work causing disruptions to service for residents and businesses in Oakland; and

WHEREAS, the City is keenly aware that it must protect the Constitutional rights of community members, including unhoused community members, during encampment interventions and other City business, while also ensuring that City workers are safe while acting within the course and scope of their employment; and

WHEREAS, this Ordinance provides clear guidelines for establishing and enforcing safe work zones to protect workers while avoiding police discretion and implicit bias that can occur when enforcing case-by-case threats to essential workers; and

WHEREAS, the Ordinance requires that workers make specific findings regarding the size and scope of the safe work zones in order to provide a baseline level of protection that is narrowly tailored to the need and protects the rights of the public to observe operations on public property; and

WHEREAS, Pursuant to Oakland Municipal Code 1.28.010, unless otherwise provided, violation of any provision of the Municipal Code is 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; and

WHEREAS, it is the intent of the City Council to allow for the creation of Safe Work Spaces to protect not just City workers but also the employees of City contractors when conducting work at the City's behest on City property and/or rights-of-way, as well as the workers who provide essential services for Oakland residents such as utility services and other essential infrastructure workers;

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 a part of this Ordinance.

SECTION 2. Oakland Municipal Code Title 9 is hereby amended to add Chapter 9.06, the Safe Work Zone Ordinance, as set forth below:

9.06.010 Title and Purpose

The purpose of this Chapter is to promote the health, safety, and general welfare of City employees and other essential infrastructure workers while executing their duties in public spaces such as City owned or operated properties and public rights-of-way. This Chapter shall be known as the Safe Work Zone Ordinance.

9.06.020 Safe Work Zones

Protected Workers (as defined herein) may designate “safe work zones” on public property within the City of Oakland, including the public right-of-way, for the purpose of providing a safe area for such Protected Workers to carry out their duties, as directed. Such Safe Work Zones must be established in the manner described in this Chapter and authorized by the Protected Workers’ employers.

9.06.030 Definitions

“Essential Infrastructure” means streets, sidewalks, parks, public buildings, utility lines and poles, street lights, traffic signals, sewers and storm drains, natural gas lines, water mains, telecommunications and cable equipment, and related equipment and locations that are designed to deliver essential utilities to the public.

“Peace Officer” has the same meaning as in California Penal Code 830.1.

“Protected Worker” means City employees, City contractors, and employees of public utility companies and other public agencies performing work on essential infrastructure on public property within the City of Oakland.

“Public property” means all real property owned, leased, possessed, maintained, or controlled by the City of Oakland or any other government agency or special district, including the Port of Oakland, Caltrans, BART, or Federal government, and including public rights-of-way, streets and sidewalks, but only to the extent that the City of Oakland Police Department has jurisdictional authority over such public property.

“Safe Work Zone” means an area demarcated by a Protected Worker with physical boundaries or clear signage as described in Section 9.06.040.A and specifically intended to identify an area off-limits to members of the public to allow Protected Workers to safely carry out their duties, as directed. Safe Work Zones may also include the interior of a Protected Worker’s vehicle as well as the area immediately around the exterior of those vehicles when Protected Workers are accessing equipment and tools. A Safe Work Zone must be for the purpose of protecting the workers and/or members of the public from injury or harassment and not for the purpose of limiting observation of activities.

9.06.040 Designation of Safe Work Zones

A. Demarcation. Safe Work Zones may be designated by any form of demarcation or signage including but not limited to caution tape, other colored tape, chalk marks, spray painted

perimeters, orange plastic fencing, other types of fencing, temporary or permanent posted signage, traffic cones, physical barriers specifically erected by Protected Workers conducting duties in the Safe Work Zone, or by clear verbal instructions identifying the boundaries of a Safe Work Zone. Designated Safe Work Zones shall be no larger than is reasonably necessary for Protected Workers to safely carry out their duties without risk of injury to persons or property and shall not impede reasonable observation by members of the public.

B. Findings. When designating a Safe Work Zone, or, prior to enforcement of violations of this Chapter, the Protected Worker shall make or confirm the following findings:

- (1) The Safe Work Zone is necessary to protect the safety of the workers involved based on the circumstances reasonably anticipated or witnessed during similar operations; and
- (2) The size of the Safe Work Zone is no larger than is reasonably necessary for Protected Workers to carry out their duties based on the size and type of equipment and the scope of the work; and
- (3) The Safe Work Zone is not expected to impede reasonable observation by members of the public and an area outside of the Safe Work Zone has been identified for members of the press and public to observe the operations; and
- (4) Members of the public have been or will be notified of the Safe Work Zone as required by Subsection (A).

In the case of a Safe Work Zone designated by a Protected Worker that is not a City of Oakland employee, when requesting assistance from a Peace Officer under this Chapter the Protected Worker must confirm (a) that the criteria above are met and (b) that the Protected Worker is duly authorized to establish the Safe Work Zone.

9.06.050 Violations

Any person who willfully fails or refuses for any reason, after verbal or written request by a Peace Officer, to immediately leave an area designated by Protected Workers as a Safe Work Zone, shall be guilty of a misdemeanor. If the findings set forth in Section 9.06.040.B have been made prior to designating the Safe Work Zone, no further findings shall be required to enforce this Chapter. Nothing in this Chapter shall prevent a Peace Officer from responding to emergency situations and enforcing other laws as appropriate, and nothing in this Chapter shall require a Peace Officer to respond to a request for assistance.

9.06.060 No Impairment of First Amendment Rights

Nothing in this Chapter shall be construed to prohibit any expressive conduct, freedom of the press, or to impair the right of persons, individually or in concert, to peacefully protest or assemble near or adjacent to a Safe Work Zone insofar as the same is not prohibited by law.

9.06.070 Reimbursement of Costs; Indemnification.

The City Administrator is authorized to require reimbursement of City staff costs and expenses required to implement the provisions of this Chapter.

Protected Workers (other than City employees) and their employers shall release, defend, indemnify and hold harmless the City of Oakland, its officers, and employees, from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorneys' fees and costs) which arise out of or are related to the authority granted by or the enforcement or non-enforcement of this Chapter.

9.06.080 Administrative Regulations

The City Administrator is hereby authorized to adopt rules and regulations consistent with this Chapter as needed to implement this Chapter, subject to the review and approval of the Office of the City Attorney, and to develop all related forms and/or other materials and take other steps as needed to implement this Chapter, and make such interpretations of this Chapter as they may consider necessary to achieve the purposes of this Chapter.

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, ~~REED~~, AND
PRESIDENT FORTUNATO BAS - 7

NOES 7
ABSENT 4
ABSTENTION 0
1 EXCUSED - Reid

Introduction Date
DEC 05 2023

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

Date of Attestation: December 23, 2023

NOTICE AND DIGEST

ORDINANCE ADDING CHAPTER 9.06 TO THE OAKLAND MUNICIPAL CODE TO (1) ALLOW CITY EMPLOYEES AND ESSENTIAL INFRASTRUCTURE WORKERS CARRYING OUT THEIR DUTIES ON PUBLIC PROPERTY TO ESTABLISH SAFE WORK ZONES SUBJECT TO SPECIFIED CRITERIA TO PROTECT FIRST AMENDMENT RIGHTS AND THE SAFETY OF SUCH WORKERS AND THE PUBLIC; AND (2) MAKE WILLFUL FAILURE TO LEAVE A DESIGNATED SAFE WORK ZONE, AFTER REQUEST BY A PEACE OFFICER, A MISDEMEANOR

This Ordinance will add Chapter 9.06 to the Oakland Municipal Code to create a misdemeanor for individuals willfully refusing to leave designated areas set up to protect the safety of City workers and essential infrastructure workers performing duties on public property within the City of Oakland. Such designated areas will be known as Safe Work Zones. The Ordinance establishes criteria that must be met before a person may be cited for refusing to leave a Safe Work Zone. The criteria are established to protect the safety of such workers and the public and to protect the rights of the public observing operations on public property.