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OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND
AGENDA REPORT

To: Office of the City Administrator
2009 JAN 29 PM 4:37 Dan Lindheim

From: Oakland Police Department and the Office of President Pro-Tempore Larry Reid
Date: February 10, 2009

Re: **A Report from the Oakland Police Department (OPD) and the Office of President Pro-Tempore Reid (1) Proposing A Juvenile Protection Curfew Ordinance and Authorizing its Implementation to Begin Immediately to Help Remedy the Victimization, Exploitation, and Criminal Activities that Adversely Impact Youth in the City of Oakland; (2) Proposing an Ordinance Repealing Oakland Municipal Code sections 9.12.020 and 9.02.030 Prohibiting Minors From Loitering in Public Places; and (3) Proposing a Resolution Authorizing Funding in an Amount not to Exceed Seventy-Five Thousand Two Hundred Ninety Dollars and Thirty-Six Cents (\$ 75,290.36) For The First Year Expenses**

SUMMARY

The proposed ordinance enacts a Juvenile Protection Curfew Ordinance that would prohibit (with some exceptions) the presence of all youth under 18 years of age on City streets between the hours of 10:00 p.m. and 5:00 a.m. (Sunday through Thursday) and 11:00 p.m. to 5:00 a.m. on Friday and Saturday. As a component of the Oakland Police Department's (OPD) strategic plan, the ordinance will be evaluated after one year to review its effectiveness. The purpose of this ordinance is to protect youth from becoming victims/perpetrators of crime, and to increase parental involvement and accountability. Another component of the ordinance is to repeal OMC sections 9.12.020 and 9.02.030 prohibiting minors from loitering in public places.

The juvenile protection curfew ordinance would allow officers to lawfully:

1. Make contact with youth during certain hours of the night;
2. Conduct a records check for juvenile violations (e.g., truancy);
3. Contact the parent/guardian from the field and/or transport the youth home; and
4. Transport juveniles to a receiving center (when necessary) where they will be provided a counselor who will attempt to contact a responsible parent or guardian to pick up the minor.

Additionally, the counselor will work with the young person to determine why he/she was out during curfew hours and determine the circumstances at home that may have caused them to be out during curfew hours. Counseling services will also be provided to parents/guardians who arrive at the detention center. In the event that a responsible parent/guardian is unavailable to retrieve the child from the detention center (depending on the circumstances), the child may be transported to their residence by OPD. In severe cases, Alameda County Social Services will be called.

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Parents/guardians of youth who violate the curfew ordinance more than two (2) times or who fail to pick up their children twice within a period of six (6) months, or whose minor is also habitually truant from school *may* be charged for a misdemeanor or an infraction violation (at the prosecutor's discretion) of the curfew ordinance. The City of Oakland's Special Prosecution Team will prosecute these cases as they are identified by OPD and the counselors.

FISCAL IMPACT

Approval of the resolution accompanying this Juvenile Curfew Ordinance report will authorize the City Administrator to identify and appropriate the funding necessary for OPD to implement the Juvenile Curfew Ordinance. More information regarding costs and funding needs are outlined below.

With limited capacity and overtime resources, OPD will participate in area specific operations based upon prevailing crime trends of juveniles as either victims or suspects. The following information details the estimated costs associated with each one (1) day juvenile protection curfew operation and also includes the total funding necessary for the 12 planned operations over the period of the 2009 calendar year. It is requested that the City Administrator be authorized to transfer appropriate funds to carry out the intent of the resolution.

Staffing	Cost
1 Sergeant X 7 hours of OT (\$81.62 / hour) per operation	\$ 571.34
8 Officers X 7 hours of OT (\$70.74 / hour) per operation	\$ 3,961.44
4 Counselors X 6 hours (\$60 / per hour) per operation	\$ 1,440.00
1 Recreation center representative X 6 hours (\$19.25/hr.) per operation	\$115.50 (6 hours per day Sun-Thu.) or \$134.75 (7 hours Fri. <u>or</u> Sat.).
Receiving Centers	\$0 ¹
Miscellaneous Costs (contract assessment, utilities, supplies, equipment)	\$2,000 (1 time cost)
Total cost per Operation	\$6,107.53
Total cost for all 12 operations in 2009	\$75,290.36

The resolution authorizing the City Administrator to identify and appropriate funding for implementation of this ordinance is also presented with this report for approval by the Council.

¹ Oakland Parks and Recreation through Project Resolve will have recreation centers open after hours. As such, the only cost directly related to the ordinance is staff cost during curfew hours.

BACKGROUND

Parents and guardians have traditionally set curfews for their children, but as a result of social trends and a decrease in parental supervision, many youth are at risk for delinquency and victimization. Rising numbers of young people loitering and aimlessly present on the City's major thoroughfares at night, the significant level of night-time crime involving youth as perpetrators and victims, and with more young women engaging in prostitution, the need for early intervention, parental involvement, and a curfew ordinance can not be more urgent. Other cities in California and across the country have already responded by enacting juvenile curfew ordinances; some of these cities include Dallas, Texas; Denver, Colorado; and Long Beach, California.

Dallas, Texas

In response to a spike in crimes involving juveniles, the City of Dallas enacted a curfew ordinance in 1993. Three months after the enactment of the ordinance the Dallas Police Department found that juvenile victimization during curfew hours declined by 17.7 % and juvenile arrests during curfew hours decreased by 14.6% compared to the same time the year before, according to the 1996 Office of Juvenile Justice and Delinquency Prevention Report.² Since that time juvenile crime and victimization has remained unchanged during curfew hours. Dallas officers that have been on the force since the enactment of the ordinance site public awareness of the ordinance and individuals choosing to abide by the law as the reason for the leveling off of juvenile crime and victimization.³ Components of the Dallas' ordinance include:

- Curfew violators are taken to the police station where their parents/guardians are called.
- Businesses that allow minors on the premises during curfew hours can be fined up to \$500 for each violation.
- Counseling and other social services are only provided to curfew violators determined to be runaways.
- The ordinance sunsets every three years to provide an opportunity for review and evaluation.

Denver, Colorado

Denver enacted its curfew ordinance in 1994 in response to community concerns about juvenile crime. Immediately after enactment of the ordinance, Denver experienced a decrease in crime, particularly in its commercial districts. Denver enhances enforcement efforts according to crime trends; e.g., during the months of April through September when juvenile crime is on the rise, teen centers are opened to handle the increased number of youth.⁴ Key components of Denver's ordinance include:

² Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Juvenile Justice Bulletin, Curfew: An Answer to Juvenile Delinquency and Victimization 4 (April 1996).

³ Phone conversation with Lt. Henton, Dallas Police Department, Youth Services Division.

⁴ Phone Conversation with Tiffany Vu, Denver Department of Safety

- Curfew violators are taken to teen centers where counselors work with the minor and their parent/guardian during summer months (April-September).
- During non-summer months curfew violators are given tickets, whereupon diversion is an option. If diversion is not successfully completed parents/guardian may be responsible for paying the citation.
- Where applicable, diversion classes are offered to habitual offenders as an alternative to prosecution.
- Parents/guardians are cited (an infraction) if the minor in their charge is a habitual (three times during April-September) curfew violator.

Long Beach, California

In an attempt to thwart escalating gang activity and juvenile crime, in January 1994 Long Beach officials established a 10:00 p.m. to 6:00 a.m. curfew ordinance. The ordinance led to a 14 % decrease in the average number of crimes committed per hour by juveniles, and a 23 % decrease in gang related shootings compared to the same time period in 1993.⁵ Although the ordinance is in effect daily, operations or sweeps are performed in the summer months and during major school recesses (e.g., holiday breaks). As such, during the summer of 2008 juvenile victims of violent crime decreased by 22 % compared to the same time period in 2007.⁶ Components of Long Beach's ordinance include:

- Curfew violators are taken home during curfew hours.
- If a parent or responsible adult is not at the residence the minor is taken to the police station where their parents/guardians are called.
- Counseling is only *recommended* for minors suspected of gang membership.
- Parents/guardians are not subject to legal penalties for a minor's violation of the ordinance.

KEY ISSUES AND IMPACTS

As a result of the social trends affecting the City of Oakland, staff recommends the adoption of a Juvenile Protection Curfew Ordinance. The purpose of this ordinance is to promote the safety and well-being of the City's youngest citizens (persons under the age of 18) whose inexperience renders them particularly vulnerable to participation in unlawful activities (i.e., drug and gang) and victimization by older perpetrators of crime; and to promote the general welfare and protect the general public through the reduction of juvenile violence and crime within the City, and assist in fostering and strengthening parental responsibility for their children.

⁵ Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Juvenile Justice Bulletin, Curfew: An Answer to Juvenile Delinquency and Victimization 4 (April 1996).

⁶ Phone conversation with Lt. Tyrone Hatfield, Long Beach Police Department, Youth Division.

The enforcement of the Juvenile Protection Curfew Ordinance is a means of early intervention and is focused on reducing the risks of juvenile delinquency and victimization through increased accountability for the juveniles, and their parents and/or guardians. It also provides a means of identifying at-risk youth and providing them and their families with social services and other resources.

I. Data

An OPD analysis of crime statistics (January 1, 2007 – June 30, 2008) shows that from 10:00 p.m. to 6:00 a.m. during this 18 month period, a total of 830 juveniles were identified as suspects in violent crimes (23% of all juvenile crime), and that juveniles were victims in 533 violent crimes (29% of all juvenile crimes). It is important to note that these statistics only reflect the number of youths who came in contact with officers. It should be noted that these statistics do not include lower level crimes, such as shoplifting and vandalism.

Historically, the Oakland Police Department spends most of its time responding to calls for service, rather than patrolling to observe crimes in progress or to make contact with suspicious persons. Consequently, unless special operations are being conducted, officers are often unable to make contact with groups of youth and sexually exploited minors. Furthermore, these numbers do not reflect the full number of young people in public places during the proposed curfew hours. In preparation for this report staff went on OPD ride-alongs in East and West Oakland in October and November to gauge the number of youth out during curfew hours. On both occasions staff recorded anywhere from 15-50 young people present on public streets. It is also important to note that staff stopped recording the number of youth after 2:00 a.m. Additionally, Area Commanders report that during summer hours these numbers often triple.

These numbers, as well as the statistics provided by the OPD from January 2007-June 2008, clearly indicate that there is a significant potential for juvenile crime problems during certain night-time hours. As such, the City has a compelling interest in the protection and prevention of violent crimes perpetrated by and against youth.

In an effort to prevent youth from involvement in unsafe and illegal activities that can lead to victimization and even death, the proposed ordinance will address the following crimes:

Crime	Curfew Ordinance
Prostitution and Human Trafficking	This ordinance is a mechanism to get sexually exploited minors off the street during hours when street prostitution is most prevalent and provide them with much needed services.
Loitering	The ordinance would allow counselors to engage youth, find out why they were out during curfew hours, and provide activities and services to them and their parents/guardians.

Crime	Curfew Ordinance
Robbery	Rat pack robberies ⁷ are prevalent all over the City and have increased over the last two years. This ordinance would provide a means for the OPD to engage youth who may be participating in these activities and stop this trend before it becomes commonplace. Additionally it may help prevent these types of robberies if youth are involved in programs like Project Resolve (see pg. 8 for a description), which aims to help young people get on track.
Drug Activity	This ordinance is a mechanism to get minors involved in drug activities off of street corners and into a structured program where they (and their parents/guardians) be connected to service resources and positive alternatives.

II. Impact

There are a variety of issues that staff has considered / researched relating to this proposed curfew ordinance.

1. Legality

A Juvenile Protection Curfew City ordinance was proposed in 1995. At that time, questions were raised concerning the extent to which such curfews impacted the constitutional rights of juveniles. Since then, the Ninth Circuit of the United States Court of Appeals⁸ published a decision (Nunez v. City of San Diego 114 Fed. 3d 935 [9th Circuit 1997]) clearly expressing the constitutional guidelines for valid night-time juvenile curfew ordinances. The Court applied the strict scrutiny test, and concluded that a city can have a compelling interest in protecting the safety and welfare of its minors. The Court stated that “greater restrictions of minors may be justified because they have a greater vulnerability at night than do adults and because minors are not equally able as adults to make mature decisions regarding the safety of themselves and others.” Furthermore, as long as the city can show “a nexus between the curfew and its compelling interest of reducing juvenile crime and victimization,” a curfew ordinance will not be invalidated on the grounds that it is not narrowly tailored.

The Ninth Circuit stressed that a juvenile curfew ordinance must include exceptions to allow for minors to conduct legitimate and constitutionally protected activities during curfew hours. The

⁷ “Rat Packs” are groups (4 to 8 persons or so) of youth, usually aged 14 to 18 years old, who wander about at night and commit street robberies on pedestrians. Victims are often Latino males who suspects have stated are believed to be carrying large amounts of cash from day labor jobs, and who are believed to be unlikely to report the crimes.

⁸ A number of California Appellate court decisions have upheld various curfew ordinances. The California Supreme Court has not published a decision construing the legality of juvenile night time ordinances.

draft ordinance being presented by staff contains all nine of the exceptions that the Court outlined in its opinion. The specific exceptions are stated in the Program Description section of this report.

2. Identification

Under the proposed curfew ordinance, a juvenile could be stopped and questioned on a suspected curfew violation based on the juvenile's appearance, so long as the officer has reasonable suspicion that the juvenile is under 18 years old. Probable cause to arrest a juvenile would be based on whether at the time of the arrest the facts and circumstances within the arresting officer's knowledge led the officer to believe that the juvenile was under 18 and that the juvenile did not fit into one of the nine exceptions.

If a juvenile shows the officer identification or other information that he/she was at least 18 years old, the juvenile would be released. Otherwise, the officer would question the juvenile to see if the juvenile fit within one of the nine exceptions. If (after talking to the juvenile) the officer found that no exception applied, the officer would take the juvenile home or into custody.

3. Police Staffing

As previously stated, OPD does not currently have the capacity to run daily operations. However, the curfew will be in effect daily and may be used as a tool by officers while in the field.

During monthly operations, existing staff would be deployed to enforce this ordinance based on prevailing crime trends involving juveniles as either victims or suspects. This curfew will also be used as a tool by Area Commanders to address hot spots and prevailing crime trends involving youth. In order to efficiently allocate resources, operations may be postponed during rainy weather or cold months.

4. Training of OPD

The Police Department and the City Attorney's Office will provide training to officers who are assigned enforcement on the violations and legal limitation elements of the ordinance.

Additionally, officers will be trained on community specific concerns raised during a series of public meetings in December 2008 and January 2009, which include:

- Racial profiling
- Harassment by officers
- Resisting arrest
- Resisting detention at the receiving centers
- Communicating with angry or disruptive parents/minors
- Proper procedure where government issued identification is unavailable
- Handling turf disputes for youth at the receiving center
- Handling violations at public establishments

5. Police Time Required to Transport Youth

Each curfew contact would require a minimum of 30-60 minutes of the officer's time. On nights when operations are conducted, officers would take the minors to the receiving centers and return to their beats. On nights when operations are not conducted, officers will provide verbal warnings to first time offenders, cross check the youth's record for juvenile violations (e.g., truancy), call parents/guardians from the field, and when necessary transport them home. Repeat offenders may be cited and released to parents/guardians. In appropriate cases, youth with serious offenses or warrants will be arrested and processed according to established procedures.

6. Project Resolve: Receiving Centers through Oakland Parks & Recreation

In cooperation with Oakland Parks and Recreation (OPR), OPD will transport curfew violators to receiving centers. Through a previously received grant, OPR will operate receiving centers in East Oakland, Central Oakland, and West Oakland.⁹ The centers will provide a structured, six week program for parents/guardians and youth. The structured Project Resolve programs will include job training, family resources, workshops, recreation opportunities, hot meals, information, and referral services. Additionally, the program will emphasize keeping first time offenders safe; while developing, physical, emotional, and academic skills to protect youth from the negative influences of prostitution, drug addiction, drug sales and related criminal activities.

Any youth transported to a receiving center is eligible to participate in the six week program. However, habitual violators and their parents may be *required* to participate in the six-week program as an alternative to prosecution.

PROGRAM DESCRIPTION

A flowchart demonstrating the curfew program process is included in *Attachment A*.

The draft Juvenile Protection Curfew Ordinance would impose a nightly youth curfew by making it an infraction for juveniles (under 18) to be out on public streets and in public places between the hours of 10:00 p.m. to 5:00 a.m. (Sunday through Thursday) and from 11:00 p.m. to 5:00 a.m. on Friday and Saturday nights. The disclosable records of juveniles impacted by this ordinance will not be negatively affected unless the minor also perpetrated a more egregious crime (e.g., possession of a firearm). As such, when a minor applies for a job, the background check will not reveal this infraction. To hold parents accountable, this ordinance makes it a misdemeanor for any parent or legal guardian to allow a juvenile to violate this ordinance. The prosecutor will have discretion to lower the charge to an infraction as warranted by the circumstances of each case.

Owners and operators of entertainment establishments open to the public can be charged with an infraction or misdemeanor if they knowingly allow juveniles to remain on their premises during

⁹ The East Oakland Receiving Center opened in December 2008 at Tassaforanga Recreation Center. The Central and West Oakland Receiving Centers are expected to be open in the Summer and Winter of 2009.

curfew hours. They can avoid prosecution by instructing the youth to leave the premises and calling the police if the youth do not obey.

There are exceptions to the ordinance that will allow juveniles to be out on public streets and out in public places during curfew hours. These exceptions include:

1. When a minor is accompanied by the minor's parent or guardian, or by a responsible adult;
2. When a minor is on an errand at the direction of the minor's parent or legal guardian, or the responsible adult, without any detour or stop;
3. When a minor is in a motor vehicle involved in interstate travel;
4. When a minor is engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
5. When a minor is involved in an emergency;
6. When a minor is on the sidewalk abutting the minor's residence;
7. When a minor is attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Oakland, a civic organization, or another similar entity that takes responsibility for the minor;
8. When a minor is exercising the First Amendment rights protected by the United States Constitution; or
9. If a minor is emancipated pursuant to law.

During curfew hours, individuals suspected of being underage will be contacted and interviewed by officers. Once the age of the individual(s) is determined, he / she would either be released (over 18 years old) or transported to one of the receiving centers. Subjects with warrants would be transported and booked into the County Juvenile Detention Center.

At the receiving centers, counselors will be on-site to receive offenders from the police. As recommended by Alameda County Social Services and the City Administrator's Office, staff has consulted with the George P. Scotlan Youth Center, the Center for Family Counseling, and Family Paths to identify counselors. The counselors will work with the juvenile, make referrals, contact parents and arrange for them to be picked up and returned home. Programs such as the aforementioned Project Resolve will play a key role in this process by keeping juveniles away from crime, and increasing parental accountability.

According to the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice Bulletin on Teens Curfews, effective curfew programs share several components - all of which are incorporated in this proposed ordinance. These components include:

- ✓ Establishing a curfew center or using recreational, religious, or educational facilities to hold violators while they await their parents.
- ✓ Staffing centers with community social service providers and volunteers; providing intervention services for juveniles and their families.
- ✓ Creating specific procedures for repeat offenders.

- ✓ Providing an opportunity for community input and a means for complaints¹⁰

CONCLUSION

On Friday November 18, 2008, the body of a 16 year old male was found on Sunnymere and VanMourik Avenue at 12:45 a.m. On August 28, 2008 at 11:45 p.m., a 17 year old male was shot to death in East Oakland. On any given night in the City numerous underage girls walk the streets of our major thoroughfares prostituting themselves until the early morning hours. Although there are a myriad of social problems that contribute and may have caused these unfortunate events, one common thread is that the events occur during curfew hours - during a time of night and early morning where there is an increase in certain types of crimes (namely shootings and prostitution). Had a curfew ordinance been in effect when these incidents occurred, there is a possibility that a life could have been saved or a young woman would be spared from the vices of the sex trade. This possibility alone, as well as the aforementioned successes from other cities, and the fact that 29% of juveniles are victims of violent crimes during these hours, demonstrates a nexus between juveniles and violent crime and creates a compelling interest for the City of Oakland to implement a curfew ordinance.

The Oakland Police Department and President Pro-Tempore Larry Reid understand and appreciate that even the most determined children have difficulty overcoming crime and violence as they navigate the difficult path to adulthood. As such, the intent of this ordinance is to protect youth and provide mechanisms for intervention. Specifically, as it relates to sexually exploited minors and human trafficking, this ordinance is crucial to connecting a population (with whom the OPD would normally have limited contact) to services and possibly removing them from the sex industry.

Furthermore, for young people who have parents or responsible guardians in their lives, this ordinance seeks to encourage and provide resources to them, as they have the greatest influence and impact on the lives of their children. Studies demonstrate that the most consistent and effective means of keeping young adults on track is positive parental involvement.¹¹ As such, this ordinance does not seek to replace the family unit by setting standards, nor should it be used to encourage unlawful contact by the police. Instead it is an attempt to provide early intervention, encourage parental involvement, accountability, and to provide parents/families the tools they need to successfully raise their children.

SUSTAINABLE OPPORTUNITIES

Environmental: There are no environmental issues related to this proposal.

¹⁰ Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Juvenile Justice Bulletin, Curfew: An Answer to Juvenile Delinquency and Victimization 4 (April 1996).

¹¹ Blum, RW, Beuhring T, Rinehart PM. *Protecting Teens: Beyond Race, Income, and Family Structure*. Minneapolis ; Center for Adolescent Health, University of Minnesota; 2000.

Economic: Addressing juvenile related crimes will enhance the safety of citizens in the City of Oakland by impacting the perception of crime and increasing the City's ability to attract economic development.

Social Equity: Enforcement of the Juvenile Protection Curfew Ordinance will help protect life and property in the City of Oakland, providing a safer environment.

Disability and Senior Access

There are no ADA or senior citizen access issues identified in this report.

RECOMMENDATION / RATIONALE

Staff recommends acceptance of this report and approval of the proposed ordinance.

ACTION REQUESTED OF THE COUNCIL

Adoption of this ordinance.

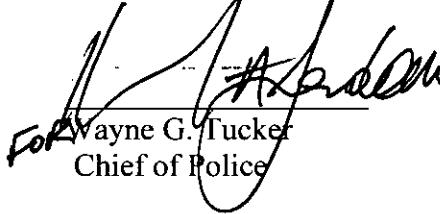
Respectfully Submitted,



Larry Reid
President Pro-Tempore, Councilmember District 7

Prepared by:
Ms. Reygan E. Harmon
Legislative Analyst to the City Council

Respectfully submitted,


For Wayne G. Tucker
Chief of Police

Prepared by:
Lt. Lawrence Green
Bureau of Field Operations

Prepared by:
Mr. Pelayo A. Llamas, Jr.
Deputy City Attorney

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:



Office of the City Administrator

Attachment:
Curfew Program Flowchart

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Exceptions to the Teen Curfew Ordinance

There are exceptions to the ordinance that will allow juveniles to be out on public streets and out in public places during curfew hours. These exceptions include:

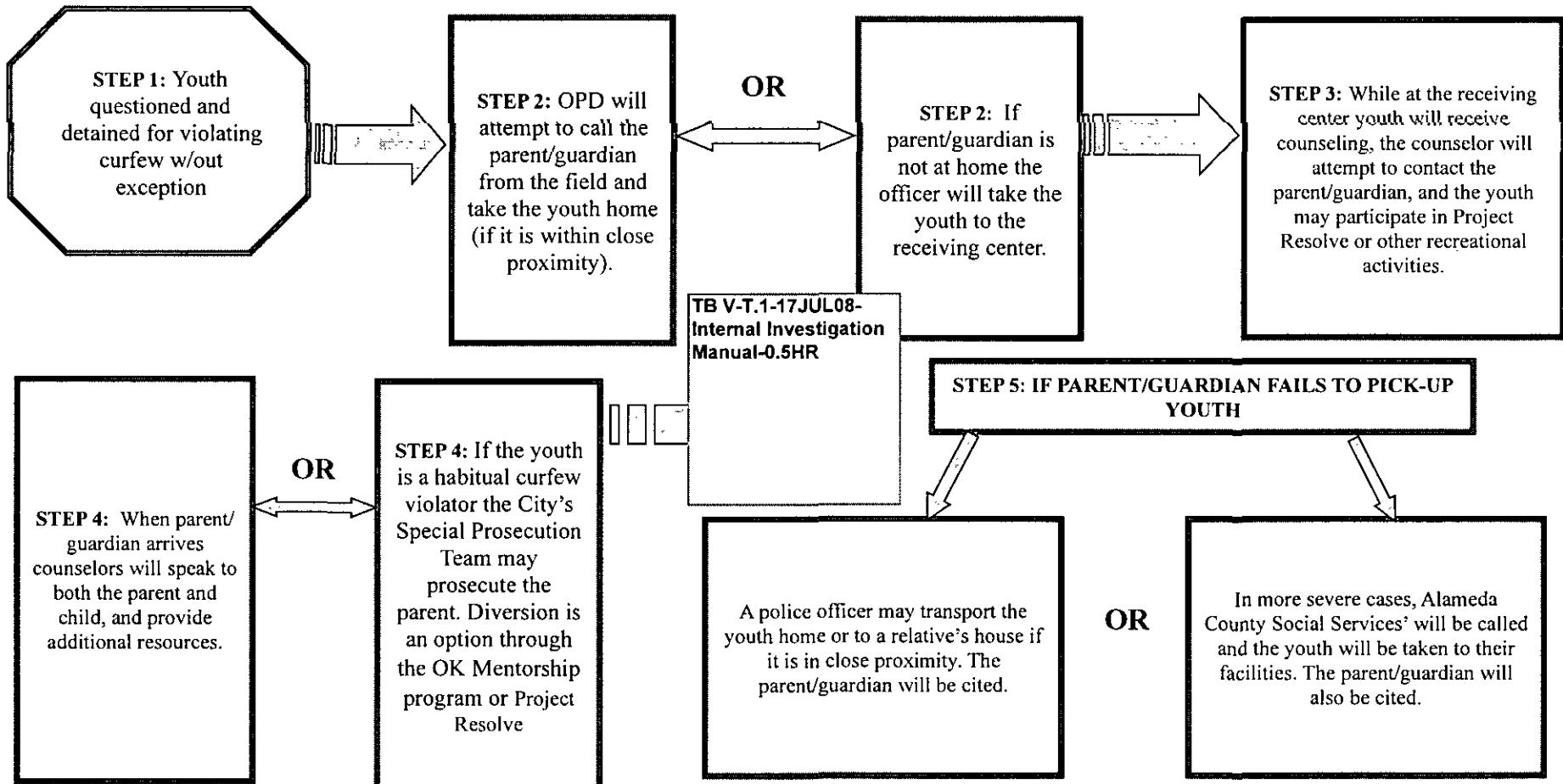
- 1. When a minor is accompanied by the minor's parent or guardian, or by a responsible adult;**
- 2. When a minor is on an errand at the direction of the minor's parent or legal guardian, or the responsible adult, without any detour or stop;**
- 3. When a minor is in a motor vehicle involved in interstate travel;**
- 4. When a minor is engaged in an employment activity , or going to or returning home from an employment activity, without any detour or stop;**
- 5. When a minor is involved in an emergency;**
- 6. When a minor is on the sidewalk abutting the minor's residence;**
- 7. When a minor is attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Oakland, a civic organization, or another similar entity that takes responsibility for the minor;**
- 8. When a minor is exercising the First Amendment rights protected by the United States Constitution; or**
- 9. If a minor is emancipated pursuant to law.**

PROJECT RESOLVE: In cooperation with Oakland Parks and Recreation (OPR), OPD will transport curfew violators to receiving centers. Through a previously received grant, OPR will operate receiving centers in East Oakland, Central Oakland, and West Oakland.¹ The centers will provide a structured, six week program for parents/guardians and youth. The structured Project Resolve programs will include job training, family resources, workshops, recreation opportunities, hot meals, information, and referral services. Additionally, the program will emphasize keeping first time offenders safe, while developing, physical, emotional, and academic skills to protect youth from the negative influences of prostitution, drug addiction, drug sales and related criminal activities.

Any youth transported to a receiving center is eligible to participate in the six week program. However, habitual violators and their parents may be *required* to participate in the six-week program as an alternative to prosecution.

¹ The East Oakland Receiving Center opened in December 2008 at Tassaforanga Recreation Center. The Central and West Oakland Receiving Centers are expected to be open in the Summer and Winter of 2009.

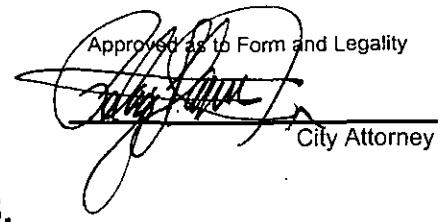
PROPOSED Teen Curfew Flow Chart



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OAKLAND CITY COUNCIL

Approved as to Form and Legality


City Attorney

2009 JAN 29 PM 4:37

RESOLUTION No. _____ C.M.S.

INTRODUCED BY PRESIDENT PRO-TEMPORE REID

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO IDENTIFY AND APPROPRIATE FUNDS IN THE AMOUNT OF \$75,290.36 TO COVER THE FIRST YEAR (2009) EXPENSES OF THE JUVENILE PROTECTION CURFEW ORDINANCE

WHEREAS, the City Council has newly enacted Chapter 9.12 of the Oakland Municipal Code which establishes a night-time youth curfew to help remedy the victimization, exploitation, and criminal activities that adversely impact youth in the City of Oakland; and

WHEREAS, the most effective enforcement of the Juvenile Protection Curfew Ordinance can be affected by conducting periodic special operations which involve additional expenses for police officers, youth and victim counselors, and late night recreation center operations to serve as receiving centers for detained youth; and

WHEREAS, staff has estimated that the cost of 12 special operations throughout the City will require funding in the amount of \$75,290.36; and

WHEREAS, the approval of this resolution will authorize the City Administrator to identify and appropriate \$75,290.36 to cover the cost of 12 special operations of the Juvenile Protection Curfew Ordinance for the 2009 calendar year, now, therefore be it

RESOLVED: That the amount of \$75,290.36 shall be identified and appropriated by the City Administrator for the purpose of covering expenses for running 12 special operations of the Juvenile Protection Curfew Ordinance during the 2009 calendar year.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 200____

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

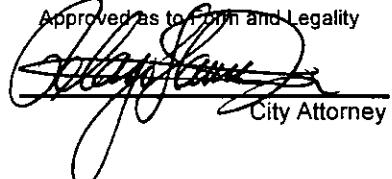
ATTEST:

LATONDA SIMMONS

City Clerk and Clerk of the Council
of the City of Oakland, California

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Approved as to Form and Legality


City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

INTRODUCED BY PRESIDENT PRO-TEMPORE LARRY REID

AN ORDINANCE (1) ADDING ARTICLE II TO CHAPTER 9.12 OF THE OAKLAND MUNICIPAL CODE (OMC) TO ESTABLISH A YOUTH PROTECTION CURFEW PROGRAM AND (2) AMENDING OMC SECTIONS 1.28.015 AND 1.28.020 TO CODIFY THE PENALTIES FOR VIOLATIONS OF THE CURFEW ORDINANCE, AND (3) REPEALING OAKLAND MUNICIPAL CODE SECTIONS 9.12.020 AND 9.12.030 PROHIBITING MINORS FROM LOITERING IN PUBLIC PLACES

WHEREAS, the City Council has determined that there has been an increase in juvenile violence, juvenile gang activity, and crime by persons under the age of eighteen (18) years ("Minors") in the City of Oakland; and

WHEREAS, Oakland Municipal Code sections 9.12.020 and 9.12.030 which intended to address loitering offenses committed by minors, were passed circa 1947 and since then have been outdated by new case law and should therefore be repealed; and

WHEREAS, minors are particularly susceptible by their lack of maturity and experience to participate in unlawful, gang-related activities and to become victims of adult perpetrators of crime, including child prostitution; and

WHEREAS, a significant amount of serious crime (burglaries, robberies, assaults, rapes, etc.) is committed by and against minors during late night/early morning hours in the City of Oakland; and

WHEREAS, there has been an increase in roving groups of minors committing street robberies and other crimes during late night/early morning hours in the City of Oakland; and

WHEREAS, the involvement of minors – as perpetrators and victims – in offenses dealing with human trafficking and prostitution continues to increase; and

WHEREAS, a significant amount of serious crime is also committed by adults during the late night hours in the City of Oakland thereby compromising the public's safety and in particular the safety of minors, and

WHEREAS, the California Legislature has found that a significant number of injury vehicle accidents involving minors occur at night and, for the safety of minors and others on the streets, has restricted driving privileges so that for the first 12 months of issuance

of a driver's license, a minor may not transport passengers under age 20, and may not drive between the hours of 11:00 p.m. and 5:00 a.m. without a parent or other adult driver, as specified in Section 12814.6 of the California Vehicle Code; and

WHEREAS, reducing the number of minors in public places in the City of Oakland during late/early morning night hours will reduce instances where minors are at risk of committing serious crimes or becoming the victims of serious crimes, and reduce the opportunity for minors to be involved in narcotics, prostitution and gang activity involving other youth or adults; and

WHEREAS reducing the number of minors in public places in the City of Oakland during late night/early morning hours will allow the Oakland Police Department to deploy its personnel to focus on investigating and preventing serious crimes committed by adults during the late night/early morning hours; and

WHEREAS, by addressing the presence of youth in public places during late night/early morning hours the City of Oakland seeks to provide for the protection of minors from violence committed by minors and adults, to enforce parental control over and responsibility for children, to protect the general public, to reduce the incidence of juvenile criminal activities and the victimization of juveniles, and to reduce the incidence of night/early morning time juvenile injury motor vehicle accidents; and

WHEREAS, the City Council finds and determines that passage of a youth curfew ordinance will protect the welfare of minors by:

1. Reducing the likelihood that minors will be victims of criminal acts during the curfew hours;
 2. Reducing the likelihood that minors will become involved in committing criminal acts; and
 3. Reducing the likelihood that minors will be exposed to narcotics trafficking and gang activity involving adults during the curfew hours; and
 4. Reducing the likelihood that minors will be involved in night time injury motor vehicle collisions; and
 5. Aiding parents and legal guardians in carrying out their responsibility to exercise reasonable supervision of minors entrusted to their care;
- and

WHEREAS, OMC Chapter 1.28 sets forth the classification of OMC violations as misdemeanors or infractions; and

WHEREAS, the Juvenile Protection Curfew Ordinance grants discretion to the prosecuting attorney to charge certain misdemeanor violations as infractions and creates a new infraction offense; and

WHEREAS, OMC Chapter 1.28 should be amended to codify the discretion granted to the prosecuting attorney, 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. Oakland Municipal Code Chapter 9.12, Article II is added to read as follows:

Article II Youth Protection Curfew**§9.12.100 Definitions for Curfew Provisions**

For purposes of this Article:

- A. "Curfew hours" means:
 - 1. 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 5:00 a.m. of the following day; and
 - 2. 11:00 p.m. on any Friday or Saturday until 5:00 a.m. the following day.
- B. "Emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, natural disaster, an automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.
- C. "Establishment" means any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.
- D. "Legal Guardian" means (1) a person who, under court order, is the guardian of the person of a minor; or (2) a public or private agency with whom a minor has been placed by the court.
- E. "Minor" means any person under eighteen (18) years of age.
- F. "Operator" means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.
- G. "Parent" means a person who is a natural parent, adoptive parent, or step-parent of another person.
- H. "Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, parks, plazas, playgrounds, sidewalks, alleys, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.
- I. "Responsible adult" means a person at least eighteen (18) years of age, temporarily authorized by a parent or legal guardian to have the care and custody of a minor.
- J. "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement

or protracted loss or impairment of the function of any bodily member or organ.

§9.12.110 Curfew Offenses

- A. It is unlawful for any minor to be present in any public place or on the premises of any establishment within the City of Oakland during curfew hours.
- B. It is unlawful for any parent or legal guardian of a minor knowingly to permit, or by insufficient control to allow the minor to be present in any public place or on the premises of any establishment within the City of Oakland during curfew hours.
- C. It is unlawful for the operator or any employee of an establishment to knowingly allow a minor to remain upon the premises of the establishment during curfew hours.
- D. It is a defense to prosecution under Subsections 9.12.110.A, 9.12.110.B, or 9.12.110.C that the minor was:
 - 1. accompanied by the minor's parent or guardian, or by a responsible adult;
 - 2. on an errand at the direction of the minor's parent or legal guardian, or the responsible adult, without any detour or stop;
 - 3. in a motor vehicle or public conveyance involved in interstate travel;
 - 4. engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 - 5. involved in an emergency;
 - 6. on the sidewalk abutting the minor's residence;
 - 7. attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Oakland, a civic organization, or another similar entity that takes responsibility for the minor;
 - 8. exercising First Amendment rights protected by the United States Constitution; or
 - 9. emancipated pursuant to law.
- E. It is a defense to prosecution under Subsection 9.12.110.C. that the operator or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.
- F. Before taking any enforcement action under this Section, a police officer shall ask the apparent offender's age and reason for being in the public place or on the premises of the establishment during curfew hours. The officer shall not issue a citation or make an arrest under this Section unless the officer reasonably believes that an offense has occurred and that, based on any responses and other circumstances, no defense under Subsection 9.12.110.D or 9.12.110.E is present or applicable.

- G. A person who violates a provision of this Article is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted.

§9.12.120 Penalty

- A. Any minor violating the provisions of Subsection 9.12.110.A shall be guilty of an infraction, and shall be dealt with in accordance with juvenile court law and procedure.
- B. Any adult violating the provisions of Subsection 9.12.110.B or C shall be guilty of a misdemeanor or an infraction pursuant to the provisions of Section 1.28.015 of this Code.
- C. The applicable fines for violations of this Chapter shall be imposed in accordance with Chapter 1.28 of this Code.

Section 3. Severability

This Ordinance shall be enforced to the full extent of the authority of the City of Oakland. The subsections, paragraphs, sentences and words of this Section are deemed severable, so that, if any subsection, paragraph, sentence or word of this Ordinance is found to be invalid or beyond the authority of the City of Oakland, such finding shall not affect the applicability and enforcement of the remaining portions of this Ordinance.

Section 4. Oakland Municipal Code Section 1.28.015 (Prosecutor Discretion to Charge Certain Misdemeanors as Infractions) is amended to read as follows to codify the penalty for certain violations of the Youth Protection Curfew Ordinance:

1.28.015 Prosecutor Discretion to Charge Certain Misdemeanors as Infractions.

- A. Any person violating any of the provisions of, or failing to comply with any of the regulatory requirements of, the following code sections shall be guilty of a misdemeanor or an infraction. The complaint charging such violation shall specify whether the violation is a misdemeanor or infraction, which decision shall be that of the prosecuting attorney.

1. Section 9.12.110.B and 9.12.110.C – Youth Protection Curfew.

Section 5. Oakland Municipal Code Chapter 1.28.020 (Violations as Infractions) is amended to codify the penalty for certain violations of the Youth Protection Curfew Ordinance as infraction offenses:

§1.28.020.A.2.k. Section 9.12.110.A – Youth Protection Curfew.

Section 6. Oakland Municipal Code section 9.12.20 and 9.12.030 are repealed to remove the following:

9.12.020 Minors in public places.

~~Every person under the age of eighteen (18) years who loiters in or about any public street or other public place or any place open to the public in the city, between the hour of ten p.m. and the time of sunrise of the following day when not accompanied by his or her parent, guardian or other adult person having the legal care, custody or control of such person, or spouse of such person over twenty one (21) years of age, is guilty of a misdemeanor.~~

9.12.030 Responsibility of parents, guardians and other persons.

~~Every parent, guardian, or other person having the legal care, custody, or control of any person under the age of eighteen (18) years who permits such person to violate the provisions of Section 9.12.020, is guilty of a misdemeanor.~~

Section 7. 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, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

AN ORDINANCE (1) ADDING ARTICLE II TO CHAPTER 9.12 OF THE OAKLAND MUNICIPAL CODE (OMC) TO ESTABLISH A YOUTH PROTECTION CURFEW, (2) AMENDING OMC SECTIONS 1.28.015 AND 1.28.020 TO CODIFY THE PENALTIES FOR VIOLATIONS OF THE CURFEW ORDINANCE, AND (3) REPEALING OMC SECTIONS 9.12.020 AND 9.12.030 (MINORS LOITERING IN PUBLIC PLACES)

NOTICE AND DIGEST

This Ordinance adds Oakland Municipal Code Chapter 9.12, Article II, and establishes a Youth Protection Curfew. The curfew prohibits persons under 18 years of age from being in any public place or establishment in the City of Oakland, between the hours of 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 5:00 a.m. of the following day, and 11:00 p.m. on any Friday or Saturday until 5:00 a.m. the following day. It also prohibits parents or legal guardians from allowing minors under their control to violate this Ordinance. Additionally, it prohibits a business establishment from knowingly allowing minors to remain on its premises during curfew hours. Additionally, this ordinance amends OMC section 1.24.015 to codify the penalty for certain violations of the curfew. Finally, this ordinance repeals sections 9.12.020 and 9.12.030 of the Oakland Municipal Code (minors loitering in public).