

FILED
OFFICE OF THE CITY CLERK
OAKLAND

18 OCT -4 PM 4:02

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara J. Parker
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-3254

TO: The Oakland City Council

FROM: Barbara J. Parker
City Attorney

SUBJECT: Repeal of Oakland Housing
Authority Loitering Ordinance

DATE: October 4, 2018

RECOMMENDATION

Adopt an ordinance repealing Ordinance No. 10342 C.M.S. entitled *loitering about property owned by the Housing Authority of the city* (Oakland Municipal Code Title 9, Chapter 9.08, Section 9.08.250), which makes it an infraction to loiter on Oakland Housing Authority property without lawful business and fail to leave upon the request of a peace officer. The Ordinance provides that persons who loiter, prowl or wander on Oakland Housing Authority property without lawful business and who fail to leave upon the request of a peace officer may be cited for an infraction.

EXECUTIVE SUMMARY

In 1983 the City Council adopted Ordinance No. 10342 C.M.S., subsequently amended the same year by Ordinance No. 10389 C.M.S., entitled Loitering about Property Owned by the Housing Authority of the City of Oakland (the "Loitering Ordinance"). The Loitering Ordinance is codified at Oakland Municipal Code Chapter 9.08, section 9,08.250, and provides:

Every person who loiters, prowls, wanders or is present without lawful business on the property of the Housing Authority of the city and who fails to leave upon request of a peace officer or authorized agent of the Housing Authority of the city or returns within seventy-two (72) hours after being asked to leave by a peace officer or authorized agent of the Housing Authority of the city, is guilty of an infraction.

As used in this section "loiter" means to delay, to linger, or to idle about any such Housing Authority of the city property without a lawful purpose for being present.

The attached Ordinance will repeal section 9.08.250 in its entirety.

ACTION REQUESTED OF CITY COUNCIL

This Office requests that the Council adopt the proposed Ordinance repealing Ordinance No. 10342 C.M.S. entitled *loitering about property owned by the Housing Authority of the city* (Oakland Municipal Code Title 9, Chapter 9.08, section 9.08.250).

Very truly yours,



BARBARA J. PARKER
City Attorney

Attorney Assigned:
Maria Bee

2572433v1

18 OCT -4 PM 4:00



CITY ATTORNEY'S OFFICE

INTRODUCED BY CITY ATTORNEY BARBARA J. PARKER
AND COUNCILMEMBER LYNETTE GIBSON MCELHANEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

**ORDINANCE REPEALING ORDINANCE NO. 10342 C.M.S. ENTITLED
LOITERING ABOUT PROPERTY OWNED BY THE HOUSING AUTHORITY
OF THE CITY (OAKLAND MUNICIPAL CODE TITLE 9, CHAPTER 9.08,
SECTION 9.08.250), WHICH MAKES IT AN INFRACTION TO LOITER ON
OAKLAND HOUSING AUTHORITY PROPERTY WITHOUT LAWFUL
BUSINESS AND FAIL TO LEAVE UPON THE REQUEST OF A PEACE
OFFICER**

WHEREAS, in 1983 the City Council adopted Ordinance No. 10342 C.M.S., entitled Loitering about Property Owned by the Housing Authority of the City of Oakland. (the "Loitering Ordinance"); and

WHEREAS, the City Council subsequently adopted Ordinance No. 10389 C.M.S. which amended the Loitering Ordinance; and

WHEREAS, the Loitering Ordinance is codified at Oakland Municipal Code Chapter 9.08, section 9,08.250; and

WHEREAS, the Loitering Ordinance provides that "[a]s used in this section 'loiter' means to delay, to linger, or to idle about any such Housing Authority of the city property without a lawful purpose for being present;" and

WHEREAS, the Loitering Ordinance further provides: "Every person who loiters, prowls, wanders or is present without lawful business on the property of the Housing Authority of the city and who fails to leave upon request of a peace officer or authorized agent of the Housing Authority of the city or returns within seventy-two (72) hours after being asked to leave by a peace officer or authorized agent of the Housing Authority of the city, is guilty of an infraction; and

WHEREAS, the City Council wishes to repeal the Loitering Ordinance in its entirety;

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

SECTION 1. Oakland Municipal Code Title 9, Chapter 9.08 is amended to repeal section 9.08.250, entitled, *Loitering about property owned by the Housing Authority of the city*, as follows:

~~Every person who loiters, prowls, wanders or is present without lawful business on the property of the Housing Authority of the city and who fails to leave upon request of a peace officer or authorized agent of the Housing Authority of the city or returns within seventy two (72) hours after being asked to leave by a peace officer or authorized agent of the Housing Authority of the city, is guilty of an infraction.~~

~~As used in this section "loiter" means to delay, to linger, or to idle about any such Housing Authority of the city property without a lawful purpose for being present.~~

SECTION 2. 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 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.

IN COUNCIL, OAKLAND, CALIFORNIA

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB,
KAPLAN, AND PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE REPEALING ORDINANCE NO. 10342 C.M.S. ENTITLED *LOITERING ABOUT PROPERTY OWNED BY THE HOUSING AUTHORITY OF THE CITY* (OAKLAND MUNICIPAL CODE TITLE 9, CHAPTER 9.08, SECTION 9.08.250), WHICH MAKES IT AN INFRACTION TO LOITER ON OAKLAND HOUSING AUTHORITY PROPERTY WITHOUT LAWFUL BUSINESS AND FAIL TO LEAVE UPON THE REQUEST OF A PEACE OFFICER

This Ordinance would amend Oakland Municipal Code title 9, Chapter 9.08 to repeal section 9.08.250, entitled *Loitering about property owned by the Housing Authority of the city*.