



**BERKELEY CITY COUNCIL HEALTH, LIFE ENRICHMENT, EQUITY &
COMMUNITY COMMITTEE
REGULAR MEETING**

**Monday, November 13, 2023
10:00 AM**

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Ben Bartlett, Sophie Hahn, and Mark Humbert
Alternate: Councilmember Terry Taplin

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. If you are feeling sick, please do not attend the meeting in person.

Remote participation by the public is available through Zoom. To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://cityofberkeley-info.zoomgov.com/j/1612187768>. To request to speak, use the “raise hand” icon on the screen. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and Enter Meeting ID: **161 218 7768**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair. Please be mindful that the meeting will be recorded.

To submit a written communication for the Committee’s consideration and inclusion in the public record, email policycommittee@berkeleyca.gov.

Written communications submitted by mail or e-mail to the Health, Life Enrichment, Equity, & Community Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - June 12, 2023

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. **Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to Animals Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment or Profit** *(Item contains revised material)*

From: Councilmember Harrison (Author)

Referred: June 26, 2023

Due: December 12, 2023

Recommendation: Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to Animals Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment or Profit.

Financial Implications: See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

- None

Items for Future Agendas

- Requests by Committee Members to add items to the next agenda
- Discussion of future hearings and open forums

Adjournment

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*Written communications addressed to the Health, Life Enrichment, Equity & Community Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900.*



**COMMUNICATION ACCESS INFORMATION:**

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

~~~~~  
I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on November 9, 2023.

A handwritten signature in black ink that reads "Mark Numainville".

Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@berkeleyca.gov.

**BERKELEY CITY COUNCIL HEALTH, LIFE ENRICHMENT, EQUITY &
COMMUNITY COMMITTEE
REGULAR MEETING**

**Monday, June 12, 2023
10:00 AM**

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Ben Bartlett, Sophie Hahn, and Mark Humbert
Alternate: Councilmember Terry Taplin

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MINUTES

Roll Call: 10:03 a.m.

Present: Humbert, Hahn

Absent: Taplin

Councilmember Taplin present at 10:11 a.m.

Public Comment on Non-Agenda Matters: 2 Speakers

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. **Minutes - May 8, 2023**

Action: M/S/C (Hahn/Humbert) to approve the May 8, 2023 minutes.

Vote: All Ayes.

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

**2. Referral Response: Responsible Psychedelic Drug Policy Reform in Berkeley
From: Community Health Commission**

Referred: April 10, 2023

Due Date: September 28, 2023

Recommendation: Adopt a Resolution that refers to the City Manager a program to:
a) work with external organizations providing psychedelic harm reduction, education, and support resources to the Berkeley Community, b) work with City Departments and external organizations to create, and return to the City Council with a policy for collecting public health data on psychedelic drug use in the City, and c) deprioritizes the enforcement of laws that impose criminal penalties for the possession of psychedelic drugs for personal use (with the exception of Peyote), and laws that impose criminal penalties for the cultivation, processing, and preparation of psychedelic-containing plants and fungi for personal use (with the exception of Peyote).

Financial Implications: See report

Contact: Roberto Terrones, Commission Secretary, (510) 981-5400

Action: 3 Speakers. M/S/C (Humbert/Taplin) to send the item to Council with a qualified positive recommendation to approve the Resolution in the form and as amended by the committee. There is no “mark-up” of the CHC resolution because the Committee decided to pass a full rewrite.

Vote: All Ayes.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

None

Items for Future Agendas

- **Agenda item for the fall to hear from Public Health Division on their Community Health Assessment.**

Adjournment

Action: M/S/C (Taplin/Humbert) to adjourn the meeting.

Vote: All Ayes.

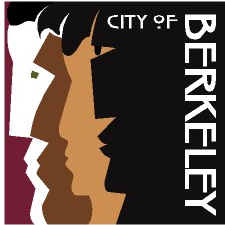
Adjourned at 11:19 a.m.

I hereby certify that the foregoing is a true and correct record of the Health, Life Enrichment, Equity, & Community Committee meeting held on June 12, 2023.

Neetu Salwan, Assistant City Clerk

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Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL

Meeting Date: November 13, 2023

Item Number: 1

Item Description: **Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to Racehorses Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment or Profit**

Submitted by: Councilmember Harrison

Revised transmittal and ordinance to reflect City Attorney suggestions. Added data to transmittal to reflect the latest racehorse death toll since the item was submitted in Summer 2023.



Kate Harrison
Councilmember, District 4

ACTION CALENDAR

July 11, 2023

To: Honorable Mayor and Members of the City Council
From: Councilmember Harrison
Subject: Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to ~~Animals-Racehorses~~ Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment or Profit

RECOMMENDATION

Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to ~~Animals-Racehorses~~ Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment or Profit.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Golden Gate Fields is one of the last remaining tracks in the Bay Area and has wide-reaching economic and institutional power. Unfortunately, Golden Gate Fields (GGF), spanning both Berkeley and Albany, remains a disturbing display of sanctioned animal abuse in ~~our~~ the City. ~~So far in~~ 2023 alone, ~~sixteeneight~~ horses ~~have~~ died at its track.¹ Many fatalities in horseracing are euthanizations after horses suffer catastrophic injuries, cutting their lives unnaturally short. When CBS Bay Area reported on the most recent horse death at GGF in May of this year it cited the fact that “domesticated horses live into their 30s, but the average age of active racehorses is [only] three to five years old”.²

As horse deaths continue to rise at the horse racing tracks within City limits, it is overdue that the community ensure the well-being and safety of racehorses. As a charter city, Berkeley has the authority to establish regulations and the jurisdiction to protect and promote the public health, safety and welfare by establishing safeguards for ~~animals-racehorses~~ as long as they do not ~~duplicate or~~ conflict with state and federal law. It is in the public interest to adopt an ordinance prohibiting inhumane or abusive treatment of ~~animals-racehorses~~ held, owned, used, exhibited or otherwise kept for sport, entertainment or profit within the City limits.

¹ ~~This is a 100% increase since this ordinance was introduced-submitted in June of 2023.~~

² Bay City News Service. “Injured Horse Euthanized at Golden Gate Fields; 8th Horse to Die at Track in 2023.” CBS News, 22 May 2023, www.cbsnews.com/sanfrancisco/news/injured-horse-euthanized-at-golden-gate-fields-8th-horse-to-die-at-track-in-2023/.

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Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to ~~Animals-Racehorses~~ Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment, or Profit

ACTION CALENDAR
July 11, 2023

BACKGROUND

In just the last three months, two nationally recognized racetracks have shut down because of the increasing number of horse deaths at their tracks. Churchill Downs, home to the Kentucky Derby, is suspending racing at its primary location following an investigation by the Kentucky Horse Racing Commission³ after twelve horses died in two months. Just one month before Churchill Downs halted racing, a trainer was barred from participating in any further events at Churchill Downs or related tracks after two of his horses suddenly collapsed.

Baltimore's Laurel Racetrack also suspended horse racing indefinitely. In 2023, 13 horses died at Laurel Racetrack in 2023 and the two most recent euthanizations occurred after racing injuries.

Of the physical problems that lead to regular stable deaths, the three most common causes are (1) colic, (2) laminitis, and (3) pleuropneumonia, all of which are worsened by excessive confinement. According to Dr. Nathaniel White, Professor of Surgery at Marion DuPont Scott Equine Medical Center, one of the three primary situations that present a higher-than-normal risk factor for colic in horses is being confined to a stall for more than 12 hours per day.⁴ VCA Veterinary Hospitals reports that "severe colic pain can cause a horse to roll and throw itself about in an uncontrolled and dangerous manner."⁵ In extreme cases, the confined horse can violently lunge its body or head into a wall or other solid object...the horse might also "throw itself" to the ground."⁶ Horses likely will incur serious self-injury during these explosive episodes, leading to the severe injury and blunt force trauma that cause many of the stable deaths.

In contrast, providing a turnout in which a horse can graze helps reduce the chance of colic, reduces stress and stable vices/behavioral issues, and reduces the chance of respiratory system illness among other benefits.⁷

Beyond the severe physical problems that stabling causes, are the severe psychological problems. When a horse's special, dietary, and social needs are thwarted, so-called stereotypies, or repetitive behaviors that do not have an apparent goal or function, occur. In horses, the classic stereotypies are including cribbing, wind-sucking, bobbing, weaving, pacing, stall-circling, digging, kicking, bucking, spinning, headshaking, or self-

³ Fuente, Homero De la, and Zoe Sottile. "Churchill Downs to Suspend All Racing Operations to Further Evaluate Safety Measures amid Increase in Horse Deaths." *CNN*, 2 June 2023, www.cnn.com/2023/06/02/sport/churchill-downs-suspension-horse-deaths/index.html.

⁴ Dr. Nathaniel A. White II DVM, MS. "Prevalence, Demographics, and Risk Factors for Colic." *Presented at: AAPE Focus on Colic, Quebec City, Quebec, 2005*.

⁵ *Colic in Horses*, vcahospitals.com/know-your-pet/colic-in-horses. Accessed 20 June 2023. See also, Jennifer Rice, DVM. "Colic in Horses." *PetMD*, 27 Apr. 2022, www.petmd.com/horse/conditions/digestive/c_hr_equine_colic.

⁶ *Id.*

⁷ "Turnout Areas." *All Horse Care*, allhorsecare.weebly.com/turnout-areas.html. Accessed 20 June 2023.

Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to ~~Animals-Racehorses~~ Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment, or Profit

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mutilation.⁸ Through these repetitive activities, endorphins are released which reinforce the behavior as a habit. These are the same symptoms of deep psychological distress commonly seen in other animals in captivity, such as circus elephants and bears.

According to Dr. Nicholas Dodman, Animal Behaviorist and Professor Emeritus at Tufts University:

"[t]he longer horses are confined per day the more stall vices/stereotypies they will exhibit. Racehorses are the prime example of that with long periods of confinement (up to 23 hours per day), so they exhibit an unusually high prevalence of stereotypies. The suffering can be described by referencing the suffering of people in solitary confinement. A recently released man who had spent years in solitary said he sometimes felt anxiety, paranoia, panic, hallucinations etc. The only way he could help suppress the dysphoria was to walk back and forth in his cell until the line he walked was soaked in his sweat. That's what equine stall walkers do - walk endlessly in circles (or in the case of weavers, walk to and fro)."⁹

Confining a 1200-pound animal to a 12x12 stall is akin to confining an elephant to a box car or a killer whale to a swimming pool. Equine veterinarian, Dr. Kraig Kulikowski, compared this to locking a child in a 4x4 closet for 23 hours a day, abuse punishable by law.¹⁰ The United Nations deems solitary confinement as "cruel and unusual punishment." Prison reserves solitary confinement for the most violent criminal as the worst punishment.

Ordinance Overview

This proposed ordinance makes it illegal to confine a horse to a stable for more than 10 hours per day and requires every horse with a full turnout with access to a minimum of one-half acre of pasture, where the horse can freely roam, unrestricted and untethered.

Except as may otherwise be expressly authorized, prohibited, regulated under, or consistent with state or federal law, the ordinance prohibits:

1. forms of ~~animal-racehorse, mental or physical abuse, drive, overwork, overload, injury, harm, hurt, or torment~~; and
2. manual, electrical, mechanical, or other devices, implements, instruments or any method or modality that can cause injury, pain, suffering, overwork, and death, abuse

~~-recognized under state and federal law, including crimes designated as misdemeanor or felony behavior pursuant to California's Animal Abuse and Cruelty Penal Code 597, et seq. The latter law covers anyone who intentionally maims, tortures, wounds, or kills a living animal. This ordinance helps apply the state penal code and other laws to the~~

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⁸ Fernanda C. Camargo. *University of Kentucky College of Agriculture, Stereotypic Behavior In ...*, www2.ca.uky.edu/agcomm/pubs/ASC/ASC212/ASC212.pdf. Accessed 20 June 2023.

⁹ Sue McDonnell. *Equine Self-Mutilation*, 28 Feb. 2019, thehorse.com/16597/equine-self-mutilation/.

¹⁰ Battuello, Patrick. "Equine Vet: 'What Impact Would 23 1/2 Hours of Standing in a Closet Have on the Mental Health of a Child?'" *Horseracing Wrongs*, 6 Aug. 2019, horseracingwrongs.org/2019/08/06/equine-vet-what-impact-would-23-1-2-hours-of-standing-in-a-closet-have-on-the-mental-health-of-a-child/.

Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to ~~Animals Racehorses~~ Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment, or Profit

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~~unique context of horse racing and other activities that may contribute to abuse of animals for entertainment or profit~~

~~This legislation is designed to govern only those areas not already directly covered by State and Federal laws. It specifically focuses on a limited set of conditions to complement supplement the existing regulatory framework. For example in terms of equipment, the proposed law policy, consistent with state or federal law, defines the following use of instruments/devices as unlawful: "manual, chemical, electrical or mechanical devices, implements, instruments, including without limitation, prods, shocking devices, jiggers, twitches, stud chains, bullhooks, ankuses, whips, crops, piercings, blinders, flank or bucking straps, chains, wire or rope tie downs, tongue ties, metal bits, spurs, or any method or modality that can cause injury, pain, suffering, overwork, and death."~~

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~~Finally, the ordinance prohibits defines as illegal specific horse training and racing where there is a reasonable expectation that it could substantially injure or harm the animal. Such reasonable belief would be based upon substantial evidence, which may include, without limitation, the animal's physical condition, indicia of pain or suffering, musculoskeletal limitations, age or other relevant factors.~~

Enforcement of the ordinance would be carried out by City officials, including police officers and the City's Animal control officers. The City Attorney is also empowered to conduct inquiries or investigate complaints of violations of this Ordinance, and may seek ~~judicial~~, injunctive relief in the courts or otherwise, ~~to enjoin violations of or to compel compliance with this Ordinance~~. Private parties may bring a private action for injunctive relief, penalties, or both, to prevent or remedy a violation of this Ordinance after the prospective plaintiff has (1) provided the City and the prospective defendant at least 30 days prior written notice of the alleged violation; and (2) the City has failed to initiate enforcement proceedings, or after initiation, has failed to diligently prosecute. In any action prosecuted under this Ordinance a court may award attorneys fees to a prevailing plaintiff may recover reasonable attorneys' fees party.

Penalties for violation of the Ordinance include misdemeanors and fines not less than \$5,000 per animal, per violation, per day or by imprisonment for a period not less than 30 days and not exceeding 1 year (or by both fine and imprisonment). Any person found to be in violation of this section after previously being convicted of such is guilty of a felony and shall be fined not less than \$5,000 but not more than \$20,000 per animal, per violation, per day or by imprisonment in the city or county jail for a period not less than 60 days and not exceeding 2 years (or by both fine and imprisonment).

The ordinance is intended to apply only to horseracing and excludes the following entities: (1) any institution accredited by the Global Federation of Animal Sanctuaries, the American Zoological Association, and the Association of Sanctuaries, (2) animal adoptions by a City-approved, non-profit animal rescue and adoption agencies, and (3)

Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to ~~Animals-Racehorses~~ Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment, or Profit

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licensed emotional and physical service animals who assist medically authenticated handicapped persons in daily, necessary, life supporting tasks.

FISCAL IMPACTS OF RECOMMENDATION

Staff time will be necessary for implementation and enforcement.

ENVIRONMENTAL SUSTAINABILITY

Horse breeding is extremely resource (including food, water, and medicine) and environmentally intensive. The senseless waste of precious animal life currently associated with horse racing also results in needless waste of limited and precious environmental resources.

CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140

ATTACHMENTS

1. Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to ~~Animals-Racehorses~~ Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment or Profit

ORDINANCE NO. –N.S.

ADDING CHAPTER 12.75 TO THE BERKELEY MUNICIPAL CODE
TO ESTABLISH PROTECTIONS RELATING TO ~~ANIMALS~~ RACEHORSES HELD,
OWNED, USED, EXHIBITED OR OTHERWISE KEPT FOR RACING OR OTHER
SPORT, ENTERTAINMENT OR PROFIT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Chapter 12.75 of the Berkeley Municipal Code is added to read as follows:

Chapter 12.75

RACEHORSE PROTECTION POLICY

Sections:

12.75.010 Findings and Purpose

~~12.75.020 Definitions~~

12.75.030-020 Racehorse Protection Policy

~~12.75.040-030 Enforcement, Private Right of Action~~

~~12.75.050-040 Penalties~~

~~12.75.060 Exemptions~~

~~12.75.070-050 Severability~~

~~12.75.080-060 Effective Date~~

12.75.010 Findings and Purpose.

The Council of the City of Berkeley finds and declares as follows:

A. Article XI, section 7 of the California Constitution recognizes the police power of cities to “make and enforce within [their] limits, all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”

B. The home rule provision of the California Constitution authorizes a charter city to exercise plenary authority over municipal affairs, free from any constraint imposed by the general law and subject only to constitutional limitations.

C. The City of Berkeley, as a Charter City, has authority to make and enforce all ordinances and regulations in respect to municipal affairs.

D. California provides laws and regulations for the licensing and associated operations of horse racing tracks, which preempt the City’s authority to impose laws and regulations that conflict with such state laws and regulations or intrude into the state’s regulatory scheme.

E. The humane protection and care for ~~animals~~ racehorses is a matter of local concern essential to the public health, safety and general welfare of Berkeley residents and is a proper subject of regulation by the City acting pursuant to its police powers separate and apart from issues of licensing and racetrack operations preempted by the state or federal government. To the extent that state and federal laws and regulations implicate the health and safety of racehorses, those provisions are limited in scope and overly narrow, necessitating additional safeguards adopted pursuant to the City of Berkeley's police power.

F. According to the American Association of Equine Practitioners, as pasture provides additional health benefits to horses, allowing them to move and exercise as they normally do, and regular pasture turnout should be part of a horse's daily routine.

G. The UC Davis Center for Equine Health indicates that horses should not be “-confine[d] ... to a stall unless absolutely necessary for medical reasons.” The UC Davis Center for Equine Health defines “Abuse and Cruelty” to include “use of excessive restraint such as tethering or confining movement for long periods of time” and/or “failure to provide adequate feed, water, care or protection.”

H. The City of Berkeley desires to establish regulations that protect the health, safety, and welfare by prohibiting inhumane or abusive treatment of ~~animals~~ racehorses held, owned, used, exhibited or otherwise kept for sport, entertainment or profit within its jurisdiction and authority.

I. This Ordinance aims to protect and promote the public health, safety and welfare by establishing safeguards, protections and assurances for ~~animals~~ racehorses held, owned, used, exhibited or otherwise kept for sport, entertainment or profit within the City's jurisdiction and authority and, to the fullest extent feasible, to prevent and deter infliction of any and all harm, abuse, pain, suffering, cruelty, inhumane treatment, unnatural confinement, overwork, and unnecessary injury and death consistent with federal, state, and local laws.

~~12.75.020 Definitions.~~

~~For the purpose of this Ordinance only, the following words and terms shall be deemed to mean and to be construed as follows:~~

12.75.030 Racehorse Protection Policy

A. ~~Except as may otherwise be expressly authorized, prohibited, regulated under, or consistent with state or federal law, it shall be unlawful for any person to engage in, host, sponsor, or promote, any animal abuse, animal exhibition, activity, or sport on any property located within, owned by, or in the reasonable control the City of Berkeley in connection with for public entertainment, amusement, benefit, or profit in a manner~~

~~inconsistent with any state or federal law, including, without limitation, Penal Code § 597 et seq. In addition to any violation specified under state or federal law, it shall be unlawful a separate and independent violation of this Ordinance to for any person, owner, sponsor, or supporter of any activity to mentally or physically abuse, drive, overwork, overload, injure, harm, hurt, or torment, traumatizeracehorses, or cause any type of animal to suffer in any way, or to own, sponsor, host or support any activity to mentally or physically abuse, drive, overwork, overload, injure, harm, hurt, torment, traumatize, or cause any type of animal to suffer in any way.~~

B. Except as may otherwise be expressly authorized, prohibited, regulated under, and or consistent with, state or federal law, it shall be unlawful to use on any animalracehorse, manual, ~~chemical,~~ electrical, or mechanical, or other devices, implements, instruments, ~~including without limitation, prods, shocking devices, jiggers, twitches, stud chains, bullhooks, ankuses, whips, crops, piercings, blinders, flank or bucking straps, chains, wire or rope tie-downs, tongue ties, metal bits, spurs,~~ or any method or modality that can cause injury, pain, suffering, overwork, and death.

~~C. Except as may otherwise be expressly authorized under, and consistent with, state or federal law, it shall be unlawful to train, race or otherwise require a horse or other animal to perform for sport or entertainment purposes where there is a reasonable belief that such training, racing or performance could substantially injure or harm the animal. Such reasonable belief shall be based upon substantial evidence, which may include, without limitation, the animal's physical condition, indicia of pain or suffering, musculoskeletal limitations, age or other relevant factors.~~

CD. It shall be unlawful to confine a horse to a stable for more than 10 hours per day.

~~DE.~~ During the remaining hours of the day, it shall be unlawful not to provide every horse with a full turnout with access to a minimum of ½ acre of pasture, where the horse can freely roam, unrestricted and untethered.

12.75.040 Enforcement, Private Right of Action

A. City officials, including without limitation, police officers, and the City's Animal Control Officer ~~and~~ shall have the power and authority to enforce the provisions of this Ordinance and perform all duties imposed by, or as reasonably necessary to implement, the provisions of this Ordinance.

B. The City Attorney may conduct inquiries or investigate complaints of violations of this Ordinance. The City Attorney may seek judicial, injunctive relief in the courts or otherwise, ~~to enjoin violations of or to compel compliance with this Ordinance.~~

C. Any resident of the City may bring a private action for injunctive relief, penalties, or both, to prevent or remedy a violation of this Ordinance. No action may be brought under this Subsection C. unless and until the prospective plaintiff has (1) provided the City and the prospective defendant at least 30 days prior written notice of the alleged

violation; and (2) the City has failed to initiate enforcement proceedings under this Ordinance within that period, or after initiation, has failed to diligently prosecute. In any action prosecuted under this subdivision, the court may award reasonable attorneys' fees to any - a prevailing plaintiff party may recover reasonable attorneys' fees.

D. Nothing in this chapter shall be interpreted as authorizing a right of action against the City.

12.75.050 Penalties

Whoever violates this Chapter ~~is~~ shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than \$5,000 per animal, per violation, per day or by imprisonment for a period of time not less than 30 days and not exceeding 1 year (or by both fine and imprisonment). Any person found to be in violation of this section after previously being convicted of such is guilty of a felony and shall be fined not less than \$5,000 but not more than \$20,000 per animal, per violation, per day or by imprisonment in the city or county jail for a period of time not less than 60 days and not exceeding 2 years (or by both fine and imprisonment).

12.75.060 Exemptions

~~The following are exceptions from the provisions of this Ordinance:~~

~~A. Any institution accredited by the Global Federation of Animal Sanctuaries, the American Zoological Association, and the Association of Sanctuaries.~~

~~B. Animal adoptions by a City-approved, non-profit animal rescue and adoption agencies.~~

~~C. Licensed emotional and physical service animals who assist medically authenticated handicapped persons in daily, necessary, life supporting tasks.~~

12.75.070-060 Severability

If any section, subsection, paragraph, or word of this Ordinance, or any application thereof to any person or circumstance, either on its face or as applied, is held to be invalid, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences or words of this act, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences, and words of this act shall be deemed to be severable. The City Council of the City of Berkeley hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid without regard to whether any other portion of this Ordinance or application would be subsequently declared invalid.

12.75.080 Effective Date

This Ordinance shall become effective immediately for immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency and is passed by a four-fifths vote of the City Council. Otherwise, this ordinance shall become effective 30-days after its final passage.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Kate Harrison
Councilmember, District 4

ACTION CALENDAR
July 11, 2023

To: Honorable Mayor and Members of the City Council
From: Councilmember Harrison
Subject: Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to Animals Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment or Profit

RECOMMENDATION

Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to Animals Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment or Profit.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Golden Gate Fields is one of the last remaining tracks in the Bay Area and has wide-reaching economic and institutional power. Unfortunately, Golden Gate Fields (GGF), spanning both Berkeley and Albany, remains a disturbing display of sanctioned animal abuse in the City. In 2023 alone, eight horses died at its track. Many fatalities in horseracing are euthanizations after horses suffer catastrophic injuries, cutting their lives unnaturally short. When CBS Bay Area reported on the most recent horse death at GGF in May of this year it cited the fact that “domesticated horses live into their 30s, but the average age of active racehorses is [only] three to five years old”.¹

As horse deaths continue to rise at the horse racing tracks within City limits, it is overdue that the community ensure the well-being and safety of racehorses. As a charter city, Berkeley has the authority to establish regulations and the jurisdiction to protect and promote the public health, safety and welfare by establishing safeguards for animals as long as they do not conflict with state and federal law. It is in the public interest to adopt an ordinance prohibiting inhumane or abusive treatment of animals held, owned, used, exhibited or otherwise kept for sport, entertainment or profit within the City limits.

BACKGROUND

In just the last three months, two nationally recognized racetracks have shut down

¹ Bay City News Service. “Injured Horse Euthanized at Golden Gate Fields; 8th Horse to Die at Track in 2023.” *CBS News*, 22 May 2023, www.cbsnews.com/sanfrancisco/news/injured-horse-euthanized-at-golden-gate-fields-8th-horse-to-die-at-track-in-2023/.

because of the increasing number of horse deaths at their tracks. Churchill Downs, home to the Kentucky Derby, is suspending racing at its primary location following an investigation by the Kentucky Horse Racing Commission² after twelve horses died in two months. Just one month before Churchill Downs halted racing, a trainer was barred from participating in any further events at Churchill Downs or related tracks after two of his horses suddenly collapsed.

Baltimore's Laurel Racetrack also suspended horse racing indefinitely. In 2023, 13 horses died at Laurel Racetrack in 2023 and the two most recent euthanizations occurred after racing injuries.

Of the physical problems that lead to regular stable deaths, the three most common causes are (1) colic, (2) laminitis, and (3) pleuropneumonia, all of which are worsened by excessive confinement. According to Dr. Nathaniel White, Professor of Surgery at Marion DuPont Scott Equine Medical Center, one of the three primary situations that present a higher-than-normal risk factor for colic in horses is being confined to a stall for more than 12 hours per day.³ VCA Veterinary Hospitals reports that "severe colic pain can cause a horse to roll and throw itself about in an uncontrolled and dangerous manner."⁴ In extreme cases, the confined horse can violently lunge its body or head into a wall or other solid object...the horse might also "throw itself" to the ground."⁵ Horses likely will incur serious self-injury during these explosive episodes, leading to the severe injury and blunt force trauma that cause many of the stable deaths.

In contrast, providing a turnout in which a horse can graze helps reduce the chance of colic, reduces stress and stable vices/behavioral issues, and reduces the chance of respiratory system illness among other benefits.⁶

Beyond the severe physical problems that stabling causes, are the severe psychological problems. When a horse's special, dietary, and social needs are thwarted, so-called stereotypies, or repetitive behaviors that do not have an apparent goal or function, occur. In horses, the classic stereotypies are including cribbing, wind-sucking, bobbing, weaving, pacing, stall-circling, digging, kicking, bucking, spinning, headshaking, or self-mutilation.⁷ Through these repetitive activities, endorphins are released which reinforce the behavior as a habit. These are the same symptoms of deep psychological distress commonly seen in other animals in captivity, such as circus elephants and bears.

² Fuente, Homero De la, and Zoe Sottile. "Churchill Downs to Suspend All Racing Operations to Further Evaluate Safety Measures amid Increase in Horse Deaths." *CNN*, 2 June 2023, www.cnn.com/2023/06/02/sport/churchill-downs-suspension-horse-deaths/index.html.

³ Dr. Nathaniel A. White II DVM, MS. "Prevalence, Demographics, and Risk Factors for Colic." *Presented at: AAPE Focus on Colic, Quebec City, Quebec, 2005*.

⁴ *Colic in Horses*, vcahospitals.com/know-your-pet/colic-in-horses. Accessed 20 June 2023. See also, Jennifer Rice, DVM. "Colic in Horses." *PetMD*, 27 Apr. 2022, www.petmd.com/horse/conditions/digestive/c_hr_equine_colic.

⁵ *Id.*

⁶ "Turnout Areas." *All Horse Care*, allhorsecare.weebly.com/turnout-areas.html. Accessed 20 June 2023.

⁷ Fernanda C. Camargo. *University of Kentucky College of Agriculture, Stereotypic Behavior In ...*, www2.ca.uky.edu/agcomm/pubs/ASC/ASC212/ASC212.pdf. Accessed 20 June 2023.

According to Dr. Nicholas Dodman, Animal Behaviorist and Professor Emeritus at Tufts University:

"[t]he longer horses are confined per day the more stall vices/stereotypies they will exhibit. Racehorses are the prime example of that with long periods of confinement (up to 23 hours per day), so they exhibit an unusually high prevalence of stereotypies. The suffering can be described by referencing the suffering of people in solitary confinement. A recently released man who had spent years in solitary said he sometimes felt anxiety, paranoia, panic, hallucinations etc. The only way he could help suppress the dysphoria was to walk back and forth in his cell until the line he walked was soaked in his sweat. That's what equine stall walkers do - walk endlessly in circles (or in the case of weavers, walk to and fro)."⁸

Confining a 1200-pound animal to a 12x12 stall is akin to confining an elephant to a box car or a killer whale to a swimming pool. Equine veterinarian, Dr. Kraig Kulikowski, compared this to locking a child in a 4x4 closet for 23 hours a day, abuse punishable by law.⁹ The United Nations deems solitary confinement as "cruel and unusual punishment." Prison reserves solitary confinement for the most violent criminal as the worst punishment.

Ordinance Overview

This proposed ordinance makes it illegal to confine a horse to a stable for more than 10 hours per day and requires every horse with a full turnout with access to a minimum of one-half acre of pasture, where the horse can freely roam, unrestricted and untethered. The ordinance further prohibits forms of animal abuse recognized under state and federal law, including crimes designated as misdemeanor or felony behavior pursuant to California's Animal Abuse and Cruelty Penal Code 597, et seq. The latter law covers anyone who intentionally maims, tortures, wounds, or kills a living animal. This ordinance helps apply the state penal code and other laws to the unique context of horse racing and other activities that may contribute to abuse of animals for entertainment or profit.

For example, the law, consistent with state or federal law, defines the following use of instruments/devices as unlawful: "manual, chemical, electrical or mechanical devices, implements, instruments, including without limitation, prods, shocking devices, jiggers, twitches, stud chains, bullhooks, ankuses, whips, crops, piercings, blinders, flank or bucking straps, chains, wire or rope tie-downs, tongue ties, metal bits, spurs, or any method or modality that can cause injury, pain, suffering, overwork, and death."

⁸ Sue McDonnell. *Equine Self-Mutilation*, 28 Feb. 2019, thehorse.com/16597/equine-self-mutilation/.

⁹ Battuello, Patrick. "Equine Vet: 'What Impact Would 23 1/2 Hours of Standing in a Closet Have on the Mental Health of a Child?'" *Horseracing Wrongs*, 6 Aug. 2019, horseracingwrongs.org/2019/08/06/equine-vet-what-impact-would-23-1-2-hours-of-standing-in-a-closet-have-on-the-mental-health-of-a-child/.

Finally, the ordinance defines as illegal specific horse training and racing where there is a reasonable expectation that it could substantially injure or harm the animal. Such reasonable belief would be based upon substantial evidence, which may include, without limitation, the animal's physical condition, indicia of pain or suffering, musculoskeletal limitations, age or other relevant factors.

Enforcement of the ordinance would be carried out by City officials, including police officers and the City's Animal control officers. The City Attorney is also empowered to conduct inquiries or investigate complaints of violations of this Ordinance, and may seek judicial, injunctive relief in the courts or otherwise, to enjoin violations of or to compel compliance with this Ordinance. Private parties may bring a private action for injunctive relief, penalties, or both, to prevent or remedy a violation of this Ordinance after the prospective plaintiff has (1) provided the City and the prospective defendant at least 30 days prior written notice of the alleged violation; and (2) the City has failed to initiate enforcement proceedings, or after initiation, has failed to diligently prosecute. In any action prosecuted under this Ordinance a prevailing plaintiff may recover reasonable attorneys' fees.

Penalties for violation of the Ordinance include misdemeanors and fines not less than \$5,000 per animal, per violation, per day or by imprisonment for a period not less than 30 days and not exceeding 1 year (or by both fine and imprisonment). Any person found to be in violation of this section after previously being convicted of such is guilty of a felony and shall be fined not less than \$5,000 but not more than \$20,000 per animal, per violation, per day or by imprisonment in the city or county jail for a period not less than 60 days and not exceeding 2 years (or by both fine and imprisonment).

The ordinance is intended to apply only to horseracing and excludes the following entities: (1) any institution accredited by the Global Federation of Animal Sanctuaries, the American Zoological Association, and the Association of Sanctuaries, (2) animal adoptions by a City-approved, non-profit animal rescue and adoption agencies, and (3) licensed emotional and physical service animals who assist medically authenticated handicapped persons in daily, necessary, life supporting tasks.

FISCAL IMPACTS OF RECOMMENDATION

Staff time will be necessary for implementation and enforcement.

ENVIRONMENTAL SUSTAINABILITY

Horse breeding is extremely resource (including food, water, and medicine) and environmentally intensive. The senseless waste of precious animal life currently associated with horse racing also results in needless waste of limited and precious environmental resources.

CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140

Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to
Establish Protections Relating to Animals Held, Owned, Used, Exhibited, or Otherwise
Kept for Racing or Other Sport, Entertainment, or Profit

ACTION CALENDAR
July 11, 2023

ATTACHMENTS

1. Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish
Protections Relating to Animals Held, Owned, Used, Exhibited, or Otherwise Kept for
Racing or Other Sport, Entertainment or Profit

ORDINANCE NO. –N.S.

ADDING CHAPTER 12.75 TO THE BERKELEY MUNICIPAL CODE
TO ESTABLISH PROTECTIONS RELATING TO ANIMALS HELD, OWNED, USED,
EXHIBITED OR OTHERWISE KEPT FOR RACING OR OTHER SPORT,
ENTERTAINMENT OR PROFIT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Chapter 12.75 of the Berkeley Municipal Code is added to read as follows:

Chapter 12.75

RACEHORSE PROTECTION POLICY

Sections:

- 12.75.010 Findings and Purpose**
- 12.75.020 Definitions**
- 12.75.030 Racehorse Protection Policy**
- 12.75.040 Enforcement, Private Right of Action**
- 12.75.050 Penalties**
- 12.75.060 Exemptions**
- 12.75.070 Severability**
- 12.75.080 Effective Date**

12.75.010 Findings and Purpose.

The Council of the City of Berkeley finds and declares as follows:

A. Article XI, section 7 of the California Constitution recognizes the police power of cities to “make and enforce within [their] limits, all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”

B. The home rule provision of the California Constitution authorizes a charter city to exercise plenary authority over municipal affairs, free from any constraint imposed by the general law and subject only to constitutional limitations.

C. The City of Berkeley, as a Charter City, has authority to make and enforce all ordinances and regulations in respect to municipal affairs.

D. California provides laws and regulations for the licensing and associated operations of horse racing tracks, which preempt the City’s authority to impose laws and regulations that conflict with such state laws and regulations or intrude into the state’s regulatory scheme.

E. The humane protection and care for animals is a matter of local concern essential to the public health, safety and general welfare of Berkeley residents and is a proper subject of regulation by the City acting pursuant to its police powers separate and apart from issues of licensing and racetrack operations preempted by the state or federal government.

F. According to the American Association of Equine Practitioners, as pasture provides additional health benefits to horses, allowing them to move and exercise as they normally do, and regular pasture turnout should be part of a horse's daily routine.

G. The UC Davis Center for Equine Health indicates that horses should not be “-confine[d] ... to a stall unless absolutely necessary for medical reasons.” The UC Davis Center for Equine Health defines “Abuse and Cruelty” to include “use of excessive restraint such as tethering or confining movement for long periods of time” and/or “failure to provide adequate feed, water, care or protection.”

H. The City of Berkeley desires to establish regulations that protect the health, safety, and welfare by prohibiting inhumane or abusive treatment of animals held, owned, used, exhibited or otherwise kept for sport, entertainment or profit within its jurisdiction and authority.

I. This Ordinance aims to protect and promote the public health, safety and welfare by establishing safeguards, protections and assurances for animals held, owned, used, exhibited or otherwise kept for sport, entertainment or profit within the City's jurisdiction and authority and, to the fullest extent feasible, to prevent and deter infliction of any and all harm, abuse, pain, suffering, cruelty, inhumane treatment, unnatural confinement, overwork, and unnecessary injury and death consistent with federal, state, and local laws.

12.75.020 Definitions.

For the purpose of this Ordinance only, the following words and terms shall be deemed to mean and to be construed as follows:

12.75.030 Racehorse Protection Policy

A. It shall be unlawful for any person to engage in, host, sponsor, or promote, any animal abuse, animal exhibition, activity, or sport on any property located within, owned by, or in the reasonable control the City of Berkeley in connection with for public entertainment, amusement, benefit, or profit in a manner inconsistent with any state or federal law, including, without limitation, Penal Code § 597 *et seq.* In addition to any violation specified under state or federal law, it shall be a separate and independent violation of this Ordinance to for any person to mentally or physically abuse, drive, overwork, overload, injure, harm, hurt, torment, traumatize, or cause any type of animal to suffer in any way, or to own, sponsor, host or support any activity to mentally or

physically abuse, drive, overwork, overload, injure, harm, hurt, torment, traumatize, or cause any type of animal to suffer in any way.

B. Except as may otherwise be expressly authorized under, and consistent with, state or federal law, it shall be unlawful to use on any animal, manual, chemical, electrical or mechanical devices, implements, instruments, including without limitation, prods, shocking devices, jiggers, twitches, stud chains, bullhooks, ankuses, whips, crops, piercings, blinders, flank or bucking straps, chains, wire or rope tie-downs, tongue ties, metal bits, spurs, or any method or modality that can cause injury, pain, suffering, overwork, and death.

C. Except as may otherwise be expressly authorized under, and consistent with, state or federal law, it shall be unlawful to train, race or otherwise require a horse or other animal to perform for sport or entertainment purposes where there is a reasonable belief that such training, racing or performance could substantially injure or harm the animal. Such reasonable belief shall be based upon substantial evidence, which may include, without limitation, the animal's physical condition, indicia of pain or suffering, musculoskeletal limitations, age or other relevant factors.

D. It shall be unlawful to confine a horse to a stable for more than 10 hours per day.

E. During the remaining hours of the day, it shall be unlawful not to provide every horse with a full turnout with access to a minimum of ½ acre of pasture, where the horse can freely roam, unrestricted and untethered.

12.75.040 Enforcement, Private Right of Action

A. City officials, including without limitation, police officers, and the City's Animal Control Officer and shall have the power and authority to enforce the provisions of this Ordinance and perform all duties imposed by, or as reasonably necessary to implement, the provisions of this Ordinance.

B. The City Attorney may conduct inquiries or investigate complaints of violations of this Ordinance. The City Attorney may seek judicial, injunctive relief in the courts or otherwise, to enjoin violations of or to compel compliance with this Ordinance.

C. Any resident of the City may bring a private action for injunctive relief, penalties, or both, to prevent or remedy a violation of this Ordinance. No action may be brought under this Subsection C. unless and until the prospective plaintiff has (1) provided the City and the prospective defendant at least 30 days prior written notice of the alleged violation; and (2) the City has failed to initiate enforcement proceedings under this Ordinance within that period, or after initiation, has failed to diligently prosecute. In any action prosecuted under this subdivision a prevailing plaintiff may recover reasonable attorneys' fees.

12.75.050 Penalties

Whoever violates this Chapter is guilty of a misdemeanor and shall be fined not less than \$5,000 per animal, per violation, per day or by imprisonment for a period of time not less than 30 days and not exceeding 1 year (or by both fine and imprisonment). Any person found to be in violation of this section after previously being convicted of such is guilty of a felony and shall be fined not less than \$5,000 but not more than \$20,000 per animal, per violation, per day or by imprisonment in the city or county jail for a period of time not less than 60 days and not exceeding 2 years (or by both fine and imprisonment).

12.75.060 Exemptions

The following are exceptions from the provisions of this Ordinance:

- A. Any institution accredited by the Global Federation of Animal Sanctuaries, the American Zoological Association, and the Association of Sanctuaries.
- B. Animal adoptions by a City-approved, non-profit animal rescue and adoption agencies.
- C. Licensed emotional and physical service animals who assist medically authenticated handicapped persons in daily, necessary, life supporting tasks.

12.75.070 Severability

If any section, subsection, paragraph, or word of this Ordinance, or any application thereof to any person or circumstance, either on its face or as applied, is held to be invalid, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences or words of this act, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences, and words of this act shall be deemed to be severable. The City Council of the City of Berkeley hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid without regard to whether any other portion of this Ordinance or application would be subsequently declared invalid.

12.75.080 Effective Date

This Ordinance shall become effective immediately for immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency and is passed by a four-fifths vote of the City Council. Otherwise, this ordinance shall become effective 30-days after its final passage.

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