

ORDINANCE NO. 7,581-N.S.

ADDING SECTION 10.12.235 TO THE BERKELEY MUNICIPAL CODE TO PROHIBIT THE USE OF LIVE FISH AS PRIZES IN FAIRS AND CARNIVALS

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

Section 1. Legislative Findings

The City Council hereby finds that:

1. California Penal Code Section 599 prohibits giving away, any live chicks, rabbits, ducklings, or other fowl as a prize for, or as an inducement to enter, any contest, game or other competition or as an inducement to enter a place of amusement or place of business.
2. Fish, who are commonly used as prizes and awards are not subject to the same legal protections as other companion animals such as dogs, cats and rabbits.
3. Operators of game booths at festivals or carnivals use fish as prizes or incentives for participation. In these cases fish are placed in plastic bags or coolers without means of waste filtration or temperature management vital to their well-being.
4. Investigations by animal rights organizations have exposed inhumane breeding practices for fish, in which they are kept in giant tubs, often times resulting in a high death rate for fish breed in captivity.
5. When fish are given as prizes or incentives, no instructions are required to be provided for how to care for them properly. This may result in inexperienced owners keeping fish in untreated tap water, or failing to provide the correct type or amount of food, resulting in risk of death.
6. Berkeley has a long history of advocacy for the humane treatment of animals. Prohibiting the use of fish as prizes, similar to the state prohibition on the giving of rabbits or fowl as prizes, would discourage inhumane breeding and improper care of fish.

Section 2. That Berkeley Municipal Code Section 10.12.235 is hereby added to read as follows:

10.12.235 Prohibition on Use of Live Fish as Prizes or Awards

A. It is unlawful for any person, persons, or businesses to employ the use of live fish as prizes or awards in order to incentivize the participation for games or competitions at fairs.

B. Definitions

The definitions set forth in this Section shall govern the application and interpretation of this Section:

1. "Prize" means a thing given as a reward to the winner or player of a competition or race or in recognition of participation.

2. "Contest" means a promotional scheme in which (unlike in a sweepstake) participants compete for prizes by accomplishing something that requires skill.

3. "Games" means a form of play or sport, especially a competitive one played according to rules and decided by skill, strength, or luck.

4. "Competitions" means an event in which people compete.

C. Any person who shall be convicted of a violation of any of the provisions of this chapter shall be deemed guilty of an infraction and shall be punishable as set forth in Chapter 1.20 of this code.

Section 3. Posting

Copies of this Ordinance shall be posted for two days prior to adoption the display case located near the walkway in front of Council Chambers, 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.

At a regular meeting of the Council of the City of Berkeley held on October 17, 2017, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.