



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

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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.

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.