

City Attorney

14 MAR 13 PM 3:31

OAKLAND CITY COUNCIL

ORDINANCE No. 13223 C.M.S.

INTRODUCED BY COUNCILMEMBER SCHAFF

ORDINANCE ADDING CHAPTER 12.61 TO ARTICLE 12 ("STREETS, SIDEWALKS, AND PUBLIC PLACES") OF THE OAKLAND MUNICIPAL CODE TO PROHIBIT ENDANGERMENT OF VULNERABLE ROADWAY AND SIDEWALK USERS (PEDESTRIANS AND BICYCLISTS)

WHEREAS, the City of Oakland encourages people to walk and ride bicycles in order to promote the health and quality of life of its residents and visitors; and

WHEREAS, in order to facilitate and encourage bicycle use, the City of Oakland has recently expended significant sums of money to designate and mark 142 miles of bicycle lanes in City streets, with another 100 miles expected in the future; and

WHEREAS, conflicts between motorists, bicyclists and pedestrians have increased in Oakland, as more people have chosen to bicycle and walk to reach important destinations such as jobs, retail stores, entertainment, recreation, and home; and

WHEREAS, in confrontations between motorists and bicyclists or pedestrians, bicyclists and pedestrians have the least physical protection from injury; and

WHEREAS, harassment of bicyclists and pedestrians on the basis of their status as bicyclists and pedestrians has occurred in Oakland; and

WHEREAS, riding a bicycle or walking on City streets and sidewalks poses hazards to bicyclists and pedestrians, and these hazards are amplified by the actions of persons who choose to intentionally harass and endanger bicyclists and pedestrians because of their status as bicyclists and pedestrians; and

WHEREAS, existing criminal and civil laws do not effectively prevent the intentional endangerment of pedestrians and people using non-motorized vehicles by persons operating motor vehicles because private individuals cannot bring actions for violation of criminal or vehicle code laws, and existing civil causes of action have not proven to be a deterrent to dangerous conduct against bicyclists and pedestrians; and

WHEREAS, the Oakland City Council desires to create private rights of action and enhanced damages for the benefit of bicyclists and pedestrians who are the victims of dangerous conduct directed toward them because of their status as a bicyclist or pedestrian; now therefore

THE OAKLAND CITY COUNCIL DOES ORDAIN AS FOLLOWS:

Section 1 – Chapter 12.61 is added to Article 12 of the Oakland Municipal Code to read as follows:

Chapter 12.61 - VULNERABLE ROAD AND SIDEWALK USER PROTECTION

12.61.010 DEFINITIONS. - The following words and phrases, whenever used in this Chapter, shall be defined as follows:

- A. “Bicyclist” is a person riding on a Bicycle or Electric Motorized Bicycle.
- B. “Bicycle” shall have the same meaning as that term is defined in California Vehicle Code section 231 as it exists or may be amended hereafter.
- C. “Electric Motorized Bicycle” shall have the same meaning as the term “motorized bicycle” or “low-speed electric bicycle” is defined in California Vehicle Code section 406(b) as it exists or may be amended hereafter.
- D. “Electrically Motorized Quadricycle” and “Electrically Motorized Tricycle” shall have the same meaning as those terms are defined in California Vehicle Code section 407 as it exists or may be amended hereafter.
- E. “Highway” shall have the same meaning as California Vehicle Code section 360 as it exists or may be amended hereafter.
- F. “Motor Vehicle” shall have the same meaning as California Vehicle Code section 415 as it exists or may be amended hereafter.
- G. “Pedestrian” is a person who is afoot, or who by reason of physical disability, is otherwise unable to ambulate by foot and is operating a human powered wheel chair, an electrically self-propelled wheelchair, an Electrically Motorized Quadricycle, or an Electrically Motorized Tricycle.
- H. “Roadway” shall have the same meaning as California Vehicle Code section 530 as it exists or may be amended hereafter.
- I. “Sidewalk” shall have the same meaning as California Vehicle Code section 555 as it exists or may be amended hereafter.
- J. “Street” shall have the same meaning as California Vehicle Code section 590 as it exists or may be amended hereafter.”
- K. “Vehicle” shall have the same meaning as California Vehicle Code section 670 as it exists or may be amended hereafter.
- L. “Vulnerable User” is a Pedestrian or Bicyclist using a public Sidewalk, Roadway, Street and/or Highway that allows use by Bicyclists or

Pedestrians. This subsection does not abrogate existing laws governing the use of Bicycles, Electrically Motorized Quadricycles or Electrically Motorized Tricycles on Sidewalks.

12.61.020 PROHIBITED ACTIVITIES - All persons shall comply with the following restrictions in Oakland, on a public Sidewalk, Roadway, Street and/or Highway that allows use by Bicyclists or Pedestrians, and where Division 11 of the California Vehicle Code is enforceable:

- A. A person operating a Motor Vehicle shall not assault a Vulnerable User because of, in whole or in part, a Vulnerable User's status as a Pedestrian or Bicyclist.
- B. A person operating a Motor Vehicle shall not intentionally inflict emotional distress upon a Vulnerable User because of, in whole or in part, a Vulnerable User's status as a Pedestrian or Bicyclist.
- C. A person operating a Motor Vehicle shall not commit a battery upon a Vulnerable User because of, in whole or in part, a Vulnerable User's status as a Pedestrian or Bicyclist.
- D. A person operating a Motor Vehicle shall not intentionally pass a Vulnerable User in an unsafe manner (as defined in California Vehicle Code section 21760).
- E. A person operating a Motor Vehicle or Bicycle shall not intentionally fail to yield the right of way to a Pedestrian because of, in whole or in part, a Vulnerable User's status as a Pedestrian, in a manner which is contrary to California Vehicle Code Chapter 5 of Division 11 (Pedestrians' Rights and Duties).

10.61.030 CIVIL REMEDIES.

- A. Any aggrieved Vulnerable User may enforce the provisions of this Chapter by means of a civil lawsuit.
- B. Any person who violates the provisions of this Chapter shall be liable for treble the actual damages with regard to each and every such violation, or \$1,000, whichever is greater, and shall be liable for reasonable attorneys' fees and costs of litigation. In addition, a jury or a court may award punitive damages.
- C. Violations of any of the provisions of this Chapter shall not be construed to constitute a misdemeanor or infraction under this Code, notwithstanding Chapter 1.28 (General Penalty). But such conduct may constitute a public offence, misdemeanor or infraction independent of this Code.

- D. The remedies provided by the provisions of this Chapter are in addition to all other remedies provided by law, and nothing in this Chapter shall preclude any aggrieved person from pursuing any other remedy provided by law.

Section 2 – The City Council finds and determines that the adoption of this Ordinance is exempt from the California Environmental Quality Act (“CEQA”), including under section 15061(b)(3) of the State CEQA Guidelines, and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

Section 3 – 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 this Ordinance. 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 4 – 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.

Section 5 – This Ordinance is enacted pursuant to the City of Oakland’s general police powers, Section 106 of the Charter of the City of Oakland, and Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA, APR 22 2014, 2014

PASSED BY THE FOLLOWING VOTE:

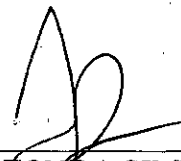
AYES – BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN, 8

NOES – Ø

ABSENT – Ø

ABSTENTION – Ø

ATTEST:



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

Introduction Date APR 01 2014

Date of Attestation: 4/29/14