

2004 MAY 13 PM 4:16 ORDINANCE No. \_\_\_\_\_ C.M.S.

**ORDINANCE REPEALING AND/OR MODIFYING CERTAIN SECTIONS OF TITLE 10 - "VEHICLES AND TRAFFIC" OF THE OAKLAND MUNICIPAL CODE (OMC) THAT COULD BE SUBJECT TO A CHALLENGE OF PREEMPTION AND AMENDING THE VIOLATION CATEGORY OF THE REMAINING SECTIONS OF TITLE 10 OF THE OMC FROM MISDEMEANORS TO INFRACTIONS**

**WHEREAS**, Title 10 - "Vehicles and Traffic" of the Oakland Municipal Code was formally known as the Oakland Traffic Code; and

**WHEREAS**, code violations contained in sections of Chapter 10 are minor and should not therefore attach the stigma of "misdemeanant" to offenders; and

**WHEREAS**, these violations of the OMC are better adjudicated with the due process rights afforded to infractions of law; and

**WHEREAS**, California Vehicle Code Section 21 prohibits any local authority from enacting or enforcing any ordinance on matters covered by the Vehicle Code unless expressly authorized; and

**WHEREAS**, Section 10.24.040 of the Oakland Municipal Code was found to be preempted by California Vehicle Code Section 21954(a) in the court case of People v. McNeil, decided March 21, 2002; and

**WHEREAS**, the Oakland Municipal Code Sections could be subject to challenge on preemption grounds under the California Vehicle Code; now, therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

Section 1.

The Oakland Municipal Code sections listed below are hereby repealed:

- 10.08.090 Traffic control at school crossing
- 10.08.150 Vehicle Obstructing Traffic Flow
- 10.12.030 Obedience to traffic control devices
- 10.12.100 One-way streets and alleys
- 10.16.030 Clinging to moving vehicles
- 10.16.040 Driving on sidewalks
- 10.16.050 New pavement
- 10.16.070 Vehicles on private property
- 10.16.080 Left turns between intersections

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- 10.16.120 Stop when traffic obstructed
- 10.16.210 Interception of police broadcast
- 10.24.020 Pedestrians use crosswalks
- 10.24.050 Pedestrian signals
- 10.56.050 Speeding prohibited
- 10.56.070 Stopping at stop signs
- 10.56.100 U-turns
- 10.56.110 Driving over double yellow lines
- 10.56.120 Reckless driving
- 10.56.130 Driving under the influence
- 10.56.140 Driver's license
- 10.56.160 Authorized emergency vehicle
- 10.56.200 Obedience to officers
- 10.56.220 Driving on right
- 10.56.230 Turning movements
- 10.56.240 Yield to pedestrian in crosswalks
- 10.56.250 Passing stopped car at crosswalk
- 10.56.460 Tampering with parking meters

Section 2.

The Oakland Municipal Code sections listed below are modified to read as follows (strikeouts indicate deleted text):

**10.08.100 Obedience to ~~Police and~~ Fire Department officials.**

No person shall willfully fail or refuse to comply with any lawful order of a ~~police officer or~~ member of the Fire Department when directing traffic. (Prior traffic code § 52)

**10.12.050 Lane markings.**

The Traffic Engineer is authorized to mark center lines and lane lines upon the surface of the roadway to indicate the course to be traveled by vehicles and may place signs temporarily designating lanes to be used by traffic moving in a particular direction, regardless of the center line of the highway. ~~When authorized signs have been placed designating off-center traffic lanes, no person shall disobey the instructions given by such signs.~~ (Prior traffic code § 64)

**10.12.090 Turning movements.**

A. Authority to Place and Obedience to Turning Markers.

1. The Traffic Engineer is authorized to place markers, buttons, or signs within or adjacent to intersections indicating the course to be traveled by vehicles turning at such intersections, and the

Traffic Engineer is authorized to allocate and indicate more than one lane of traffic from which drivers of vehicles may make right- or left-hand turns, and such course to be traveled as so indicated may conform to or be other than as prescribed by law or this title.

~~2. When authorized markers, buttons, or other indications are placed within an intersection indicating the course to be traveled by vehicles turning thereat, no driver of a vehicle shall disobey the directions of such indications.~~

- B. Authority to Place Restricted Turn Signs. The Traffic Engineer is authorized to determine those intersections at which drivers of vehicles shall not make a right, left or U-turn, and shall place proper signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at other hours, in which event the same shall be plainly indicated on the signs or they may be removed when such turns are permitted.
- C. Obedience to No-Turn Signs. ~~Whenever authorized signs are erected indicating that no right or left or U-turn is permitted, no driver of a vehicle shall disobey the directions of any such sign.~~
- D. Authority to Prohibit Right Turns Against Traffic Stop Signal. The Traffic Engineer is authorized to determine those intersections at which drivers of vehicles shall not make a right turn against a red or stop signal and shall erect proper signs giving notice of such prohibition. ~~No driver of a vehicle shall disobey the directions of any such sign.~~ (Prior traffic code §§ 70--73)

#### **10.12.110 Special stops required.**

- A. Traffic Engineer to Erect Stop Signs. Whenever any resolution of this city designates and describes any street or portion thereof as a through street, or any intersection at which vehicles are required to stop at one or more entrances thereto, or any railroad grade crossing at which vehicles are required to stop, the Traffic Engineer shall erect and maintain stop signs as follows:
- A stop sign shall be erected on each and every street intersecting such through street or portion thereof so designated and at those entrances of other intersections where a stop is required and at any railroad grade crossing so designated. Every such sign shall conform with and shall be placed as provided in Section 471 of the Vehicle Code.
- B. Stop at Through Street or Stop Sign.
1. Those streets and parts of streets described in such resolution, and those streets and parts of streets heretofore designated and signed by this city as through streets until other designations are made, are declared to be through streets for the purposes of this section.

- 2. The provisions of this section shall also apply at one or more entrances to the intersections as such entrances and intersections have been heretofore designated and signed by this city until other designations are made or as may be hereafter described in such resolution.
- 3. The provisions of this section shall also apply at those railroad grade crossings as such railroad grade crossings have been heretofore designated and signed by this city until other designations are made or as may be hereafter described in such resolution.
- 4. ~~When stop signs are erected, as herein provided, at the entrance to any intersection or at any railroad grade crossing, every driver of a vehicle shall stop, as required by the Vehicle Code.~~  
(Prior traffic code §§ 90, 91)

Section 3.

The following sub-section is hereby added to Section 1.28.020 - "Violations as Infractions"

1.28.020 (A) (1) (f) Title 10, "Vehicles and Traffic".

Section 4. Severability

If any paragraph, sentence, phrase, clause, or word is found unconstitutional or unenforceable by any court of competent jurisdiction, said decision shall not affect any other portion of the ordinance. The City Council finds and declares that it would have adopted this ordinance even without said paragraph, sentence, phrase, clause, or word.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California

CA

## Notice & Digest

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This ordinance will repeal and or modify the language of certain sections of Oakland Municipal Code, Title 10 – "Vehicles and Traffic," which could be subject to a challenge of preemption. Enactment of this ordinance will also decriminalize all remaining sections of Title 10 by making violations infractions of law, as opposed to the current misdemeanor penalty.

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