

**CITY OF OAKLAND**  
**AGENDA REPORT**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2004 MAY 13 PM 4:16

**To:** Office of the City Administrator  
**Attn:** Ms. Deborah Edgerly  
**From:** Police Department  
**Date:** May 25, 2004

**Subject: A Report and Proposed 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**

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**SUMMARY**

Following a decision from the State Court of Appeal, which found Oakland Municipal Code (OMC) Section 10.24.040, "Standing in Roadways," to be preempted by state law (People v. McNeil, March 21, 2002, 1<sup>st</sup> Ap. 3D, A093287) [Note: The section was repealed by City of Oakland Ordinance No. 12465 C.M.S. in February of 2003], staff conducted a complete review OMC Title 10 - "Vehicles and Traffic". The proposed ordinance lists other sections of Title 10 of the Oakland Municipal Code which could also subject to a challenge of preemption. Said sections are therefore being recommended for repeal and/or language modification. In addition, staff is proposing to reduce violations of the remaining sections of Title 10 from misdemeanors to infractions.

**FISCAL IMPACT**

Repeal of the OMC sections enumerated above will not have an adverse fiscal impact to the City. The percentage that the City receives of the base fine is the same for violations of the OMC and California Vehicle Code (CVC).<sup>1</sup> Base fines for violations of the CVC are generally higher than base fines for the OMC.<sup>2</sup> Where similar sections exist in the OMC and CVC, the vast majority of police officers issue citations for violations of the CVC. Failure to remove these sections of the OMC could expose the City of Oakland to monetary damages if said OMC sections are not deleted and are used as the basis for a future citation / arrest.

Decriminalization of the OMC sections mentioned in this report would not have an impact on the established bail schedule. Allowing minor violations of law to have the status of "misdemeanor" could also result in unnecessary court costs related to jury trials and other judicial remedies. The judiciary of the Traffic Court has stated that they would likely dismiss a case as opposed to allowing it to be contested as a misdemeanor. Dismissal would result in lost fine revenue.

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<sup>1</sup> According to the Alameda County Superior Court, the City receives 76% of the base fine regardless of the code cited.

<sup>2</sup> According to the City's Treasury Office, OMC fines are less than CVC fines. OMC fines average \$25, while typical CVC base fines start at \$35.

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**KEY ISSUES AND IMPACTS**

**Repealed Sections**

Staff from OPD and the Office of the City Attorney have scrutinized Title 10 - "Vehicles and Traffic" of the OMC and recommend the following sections be repealed:

**CHAPTER 10.08 ADMINISTRATION AND ENFORCEMENT**

10.08.090 Traffic control at school crossing	21100.3 CVC
10.08.150 Vehicle Obstructing Traffic Flow	22400 CVC

**CHAPTER 10.12 TRAFFIC CONTROL DEVICES**

10.12.030 Obedience to traffic control devices	21461(a) CVC
10.12.100 One-way streets and alleys	21657 CVC

**CHAPTER 10.16 MISCELLANEOUS TRAFFIC CONTROL REGULATIONS**

10.16.030 Clinging to moving vehicles	21203/21712 CVC
10.16.040 Driving on sidewalks	21663 CVC
10.16.050 New pavement	21367 CVC
10.16.070 Vehicles on private property	22523(b) CVC
10.16.080 Left turns between intersections	21461(a) CVC
10.16.120 Stop when traffic obstructed	22526 CVC
10.16.210 Interception of police broadcast	636.5 PC

**CHAPTER 10.24 PEDESTRIANS**

10.24.020 Pedestrians use crosswalks	21955 CVC
10.24.050 Pedestrian signals	21461.5/21456 CVC

**CHAPTER 10.56 AIRPORT GROUND TRAFFIC REGULATIONS**

10.56 050 Speeding prohibited	22350 CVC
10.56.070 Stopping at stop signs	22450 CVC
10.56.100 U-turns	22102-22103 CVC
10.56110 Driving over double yellow lines	21460 CVC
10.56.120 Reckless driving	23103 CVC
10.56.130 Driving under the influence	23152 CVC
10.56.140 Driver's license	12500 CVC
10.56.160 Authorized emergency vehicle	21806 CVC
10.56.200 Obedience to officers	2800 CVC

10.56.220 Driving on right	21650 CVC
10.56.230 Turning movements	22100 CVC
10.56.240 Yield to pedestrian in crosswalks	21950 CVC
10.56.250 Passing stopped car at crosswalk	21951 CVC
10.56.460 Tampering with parking meters	594 PC

NOTE: The California Vehicle Code (CVC) and Penal Code (PC) noted in the right hand column are the sections that supercede Oakland's OMC sections.

**Modified Sections**

The proposed ordinance also modifies the language to several other sections of OMC Title 10, to avoid the possible filing of challenges based on preemption. The sections and modifications (language deletions indicated by strike-out) are noted below:

**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

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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)~~

**Misdemeanor v. Infraction**

The status of "misdemeanor" allows a defendant certain due process rights (e.g., jury trial) not afforded to an infraction of law. A misdemeanor also exposes a defendant to the possibility of incarceration in the county jail for up to one year. The stigma associated with a misdemeanor violation of law is more significant than those associated with an infraction. Violations of the sections remaining in Title 10 constitute minor violations which fall far below the status of a true misdemeanor. The proposed ordinance will make all remaining violations of Title 10, formerly known as the Oakland Traffic Code, infraction violations of law.

**SUSTAINABLE OPPORTUNITIES**

There are no economic, environmental or social equity opportunities contained in this report.

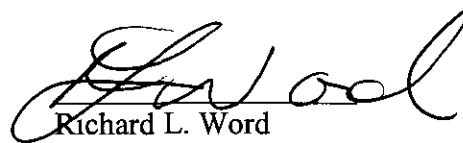
**DISABILITY AND SENIOR CITIZEN ACCESS**

There are no ADA or senior citizen access issues contained in this report.

**RECOMMENDATION**

Approve the proposed ordinance to repeal and/or modify and reclassify the above listed sections of the Oakland Municipal Code.

Respectfully submitted,



Richard L. Word  
Chief of Police

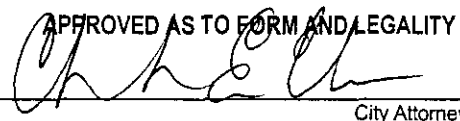
Prepared by: Lieutenant David Kozicki  
Traffic Operations Section  
Bureau of Field Operations

APPROVED AND FORWARDED TO  
THE PUBLIC SAFETY COMMITTEE:

  
Office of the City Administrator

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INTRODUCED BY COUNCILMEMBER \_\_\_\_\_  
OFFICE OF THE CITY CLERK  
OAKLAND

APPROVED AS TO FORM AND LEGALITY  
  
City Attorney

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.**

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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)

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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

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## Notice & Digest

**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**

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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**PUBLIC SAFETY CMTE.**

**MAY 25 2004**