

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

2014 MAR 13 PM 4: 12

TO: **Public Safety Report**  
ATTN: **Chair Gallo and committee members**  
FROM: **Councilmember Libby Schaaf**  
DATE: **March 13, 2014**

RE: **AN 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)**

---

**SUMMARY**

This anti-endangerment of vulnerable roadway users ordinance will create legal prohibitions against specific activities where a motorist may intentionally attempt to assault or injure a bicyclist or pedestrian. This ordinance defines each type of roadway user, public roadway and vehicle. This ordinance will create Chapter 12.61 of Article 12 of the Oakland Municipal Code, and will provide a law for vulnerable roadway user victims to seek civil remedies of up to \$1,000 as well as reasonable attorney and litigation fees for each incident. This ordinance will not create any new criminal infraction, misdemeanor or felony law in the City of Oakland, nor will this ordinance encumber the City of Oakland with any implementation or prosecutorial responsibilities.

**FISCAL IMPACT**

This ordinance will not create a fiscal impact for the City of Oakland.

**BACKGROUND**

The City of Oakland actively encourages people to use and enjoy its public roadways. The California Vehicle Code establishes rules of conduct for all motorists and roadway users and California Criminal Law provides legal remedy for public prosecution in the event that a motorist or bicyclist causes a bicyclist or pedestrian to be injured because of negligence or intentional malice. But as more bicyclists begin to share roadways with motorists, and as pedestrians must also cross roadways, the City of Oakland should provide civil remedies to bicyclists and pedestrians if and when a motorist intentionally tries to endanger them.

Item: \_\_\_\_\_  
Public Safety Committee  
March 25, 2014

Pedestrians, bicyclists and motorists must all practice public safety, but motorists pose a unique danger to bicyclists and pedestrians because of the potential for injury and death created by the force of moving motor vehicles.

The City of Oakland encourages bicycling and walking. Bicycling and walking promote health and pleasure, public interaction, as well as reductions in greenhouse gases caused by internal combustion engines. To promote bicycling in particular, the City's Public Works Agency has implemented 142 miles of official bikeways as of the time of this report, with another 100 miles of proposed bikeways. Oakland's bikeways also enable bicyclists to ride to connections in the adjoining cities of Berkeley, Emeryville, Alameda, Piedmont and San Leandro. Oakland is consistently ranked as one of the top ten cities in the United States because of its bicycle infrastructure.

The California Vehicle Code now requires motorists to give bicyclists at least 3 feet of clearance when passing. This new law affirms the rights of bicyclists as roadway users. However, regardless of new policies designed to provide safety and rules for sharing the road, the increase in bicycling activity in Oakland as well as elsewhere in the country has led to a corresponding increase in intentional endangerment of bicyclists by motorists. On April 29, 2013 on 14th St in Oakland, four bicyclists were endangered by a motorist who intentionally tried to deprive the bicyclists of needed road space, intentionally driving into their defensible space and throwing a beverage in their direction. The motorist allegedly ran over one of the four bicyclists and the District Attorney is currently preparing a case for prosecution. In August 2013, twenty-four year old Amelie Le Moullac was struck and killed by a truck driver in San Francisco. The driver was found to be at fault only after camera footage revealed that what had occurred. In May 2013 a NYC bicyclist with a helmet camera captured a motorist intentionally trying to cut him off the road with his van repeatedly before he stopped to call the police. Many bicyclists in Oakland and the Bay Area have shared anecdotal stories of intentional endangerment by motorists.

Bicyclists at times also ride recklessly and endanger pedestrians, other bicyclists, and even motorists. There is no excuse for driving or riding recklessly on public roadways. But bicyclists and pedestrians are far more vulnerable as road users compared to motorists, because of their exposure to the weight and force of moving vehicles. Therefore this ordinance seeks to specifically provide a legal method for bicyclists and pedestrians to seek legal redress through civil damages when they can prove in the court of law that a motorist intentionally caused endangerment.

Several municipalities have recently passed anti-endangerment or anti-harassment laws very similar to this ordinance. The City Council of Los Angeles, California unanimously passed a bicyclist anti-harassment law in 2011, becoming the first city in the United States to recognize the need for further bicyclist protections. In February 2012, Berkeley, California, passed its own version of the law. The County of Sonoma has also recently passed such a law. Like this

Item: \_\_\_\_\_  
Public Safety Committee  
March 25, 2014

ordinance proposed for the City of Oakland, these very similar laws all allow for up to \$1,000 in civil damages as well as attorneys' fees and costs of litigation reimbursement.

## ANALYSIS

This ordinance articulates vehicle, roadway and roadway user definitions as well as prohibited activities. A bicyclist, bicycle, pedestrian, vulnerable user, electric motorized bicycle, electrically motorized tricycle and quadricycle, motor vehicle, vehicle, highway, roadway, sidewalk, and street are all explicitly defined, based on current California Vehicle Codes or as these codes may be amended in the future. In terms of prohibitions, this ordinance declares that:

- 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 H1 (Pedestrians' Rights and Duties).

This anti-endangerment of vulnerable roadway user ordinance in no way encumbers the City of Oakland with additional enforcement obligations. This ordinance does provide a new legal structure for bicyclists and pedestrians to seek civil damages from motorists who intentionally attempt to endanger them from through one of the above (A-E) activities. By passing this ordinance, the City of Oakland will join with other cities in publicly demonstrating a strong commitment to the safety of bicyclists and pedestrians who choose to share our public roadways.

Item: \_\_\_\_\_  
Public Safety Committee  
March 25, 2014

## **SUSTAINABLE OPPORTUNITIES**

**Economic:** This ordinance will not directly lead to any economic impacts. However, a body of economic and urban planning research shows correlations between bike-friendly, walkable places and commercial and retail revitalization.

**Environmental:** The proposed ordinance supports Oakland's officially adopted Climate Action Plan, which lists biking and walking as key strategies for reducing greenhouse gases.

**Social Equity:** Bicycling and walking are inherently socially equitable activities. Oakland furthers its commitment to social equity by promoting the safety of bicyclists and pedestrians.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

This anti-endangerment of vulnerable roadway users ordinance explicitly promotes the safety of disabled persons by including people with physical disabilities and people who use wheelchairs in the definition of "pedestrian." The rights and safety interests of disabled persons and all pedestrians who use our public roadways are furthered by this ordinance.

## **ACTION REQUESTED OF THE CITY COUNCIL**

Councilmember Schaaf recommends that the City Council receives the report and approves the ordinance.

Respectfully submitted,

---

Libby Schaaf

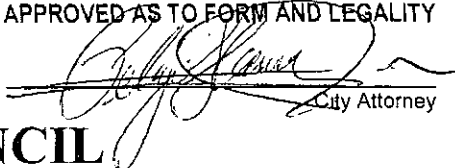
Oakland City Councilmember, District 4

Prepared by:

Bruce Stoffmacher, Policy Analyst

Office of Oakland Councilmember Libby Schaaf

Item: \_\_\_\_\_  
Public Safety Committee  
March 25, 2014



City Attorney

14 MAR 13 PM 3:31

# OAKLAND CITY COUNCIL

ORDINANCE No. \_\_\_\_\_ 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, \_\_\_\_\_, 2014

**PASSED BY THE FOLLOWING VOTE:**

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

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
Of the City of Oakland, California

Date of Attestation: