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OFFICE OF THE CITY CLERK
OAKLAND

2020 JAN 16 PM 3: 54

AGENDA REPORT

DATE: 1/16/2020
TO: City Councilmembers
FROM: Councilmember Dan Kalb
SUBJECT: **Exotic Animal Performances Ban Ordinance**

RECOMMENDATION

Councilmember Dan Kalb recommend that the City Council adopt:

AN ORDINANCE AMENDING TITLES 6 and 1 OF THE OAKLAND MUNICIPAL CODE TO ADD PROVISIONS PROHIBITING IN THE CITY OF OAKLAND PERFORMANCES OF WILD OR EXOTIC ANIMALS FOR PUBLIC ENTERTAINMENT

SUMMARY

The enactment of SB 313 (Hueso), which bans the use of wild animals in circuses statewide, illustrate that the humane and abuse-free treatment of animals is an issue of concern and importance to many California residents and policymakers. Councilmember Kalb strongly supports animal protection and animal welfare. To that end, Councilmember Kalb co-authored (with Councilmember Gallo) Ordinance No. 13280 C.M.S. that prohibited the use of bull hooks, baseball bats, axe handles, and pitchforks to train or control elephant behavior. And it is with that goal in mind that Councilmember Kalb introduces this proposed Ordinance.

The attached Ordinance amends Title 6 and Title 1 of the Oakland Municipal Code to prohibit performances of wild or exotic animals for public entertainment purposes.

LEGISLATIVE HISTORY AND BACKGROUND

California Governor Gavin Newsom signed into law SB 313 (Hueso) on October 23, 2019, which prohibits a person from sponsoring, conducting, or operating a circus, as defined, in this state that uses any animal other than a domestic dog, domestic cat, or domesticated horse. SB 313 also prohibits a person from exhibiting or using any animal other than a domestic dog, domestic cat, or domesticated horse in a circus in the state. Rodeos are explicitly exempt.

Item: _____
Community and Economic Development Committee
January 28, 2020

Violators of the new state law are subject to action brought by the Attorney General, the Department of Fish and Wildlife, the Department of Food and Agriculture, a district attorney, a city attorney, or a city prosecutor.

In addition to the state ban, bans on performances of wild or exotic animals have been passed in at least eleven California cities, including San Francisco, Los Angeles, Irvine, Pasadena, West Hollywood, Corona, Huntington Beach, Santa Ana, Encinitas, and Rolling Hills Estates.

In 2013, Oakland City Council voted to adopt an Ordinance prohibiting the use of a bullhook, ankus, baseball bat, axe handle, pitchfork, or other implement or tool designed to inflict pain, for the purpose of training and controlling the behavior of elephants. Ordinance No. 13280 C.M.S is a form of protection for one species of animal subjected to regular and serious abuse by some trainers and performers. The bullhook ban in Oakland and Los Angeles, had the effect of discouraging certain elephant acts in circuses. In fact, many circuses do not use animals any longer.

The proposed Oakland Ordinance is modeled on the San Francisco legislation with some modifications that conform to City of Oakland regulations and the statewide ban under SB 313.

ANALYSIS

Causing exotic animals to perform for the public poses danger to audience members, trainers and the public, desensitizes the public to animals' needs, and is detrimental to the animals themselves. Some animals are even tortured as part of their training.

In March of 2016, a circus performing at O.co Coliseum had two zebras escape and run along Hegenberger Road before employees finally corralled them back to the circus. This was a nuisance for citizens and law enforcement and was terrifying for the animals who found themselves in a confusing place very unlike their natural habitats; matters could have been made worse had the animal been one of the circus's large predators.

The use of wild and exotic animals has desensitized generations of people and taught our children that it is perfectly acceptable to treat wild and exotic animals as objects or toys.

Lack of exercise, pressure to perform, and other physical requirements of performing force animals to act outside of their natural behaviors. Some training techniques which are often used to make animals perform are cruel and/or stressful, causing suffering to the animals. Travel or confinement, as is typical for traveling circuses that use animals for performances, can impair the animals' physical and social needs.

Numerous scientific organizations and governmental entities all believe that certain wild animals are not safe or suitable to be kept as domesticated animals; these include the Association of Zoos

and Aquariums, the American Veterinary Medical Association, American Animal Hospital Association, Centers for Disease Control and Prevention, and United States Department of Agriculture.

This legislation would restrict animal performances not addressed by the state or previous local legislative or administrative actions.

PUBLIC OUTREACH/INTEREST

This ordinance was created through collaboration with members of the public, animal welfare experts, and city staff. Specifically, activists concerned about the welfare of animals have reached out in support of this ordinance.

In addition, meetings were held with representatives from the Oakland Black Cowboy Association, the Bill Pickett Invitational Rodeo, and the UniverSOUL Circus to receive their feedback. The feedback from those organizations was that their performances would not be impacted by this ordinance because of the requirements already in effect from the passage of SB 313.

This ordinance sparked considerable interest and enthusiasm from Oakland residents who want to see humane treatment of animals in our city.

COORDINATION

This report and legislation have been reviewed by the Office of the City Attorney.

FISCAL IMPACT

The anticipated cost of this ordinance would likely be very minor if any.

SUSTAINABLE OPPORTUNITIES

Economic: There are no known fiscal impacts associated with this report.

Environmental: There are no impacts to environmental opportunities associated with this report.

Social Equity: Banning wild animal performances in the city of Oakland would enhance the quality of life of wild animals, both physically and psychologically. Additionally, it would reduce the potential hazards of dangerous animal escapees in and around neighborhoods where such are likely to perform. This is an opportunity to take a stand against the potential for abuse of these animals.

CEQA

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.

For questions regarding this report, please contact Deidra Moss at dmoss@oaklandca.gov.

Respectfully submitted,



Councilmember Dan Kalb, District 1

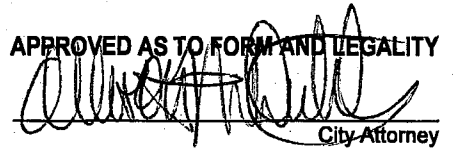
Prepared by:
Deidra Moss and past intern Jay Quigley, Office of
Councilmember Dan Kalb, District 1

Attachments:
A – Proposed Ordinance

FILED
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OAKLAND

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APPROVED AS TO FORM AND LEGALITY


City Attorney

ORDINANCE No. _____ C.M.S.

INTRODUCED BY Council Member Kalb

AN ORDINANCE AMENDING TITLES 1 and 6 OF THE OAKLAND MUNICIPAL CODE TO ADD PROVISIONS PROHIBITING IN THE CITY OF OAKLAND PERFORMANCES OF ANIMALS FOR PUBLIC ENTERTAINMENT

WHEREAS, animal protection and animal welfare is of great public concern; and

WHEREAS, bans on performances of wild or exotic animals have been passed in at least eleven California cities, including San Francisco, Los Angeles, Irvine, Pasadena, West Hollywood, and more, as well as the state of New Jersey; and

WHEREAS, California Senate Bill 313, titled "Circus Cruelty Prevention Act," was passed by the California Assembly on September 9, 2019 and by the California Senate on September 11, 2019, and was signed into law by the Governor on October 12, 2019; and

WHEREAS, the use of non-domesticated animals, particularly in circuses, has desensitized generations of people and perpetuates the idea that it is acceptable to treat wild and exotic animals as objects or toys; and

WHEREAS, lack of exercise, pressure to perform, and other physical requirements of performing force animals to act outside of their natural behaviors, sometimes in ways that make them a danger to themselves and others; and

WHEREAS, some so-called training techniques which are often used to make animals perform are cruel and/or stressful, causing suffering to the animals; and

WHEREAS, travel or confinement, as is typical for traveling circuses that use animals for performances, can impair the animals' physical and social needs; and

WHEREAS, numerous scientific organizations and governmental entities all assert that certain wild or exotic animals are not safe or suitable to be kept as domesticated animals, including the Association of Zoos and Aquariums, the American Veterinary Medical Association, American Animal Hospital Association, Centers for Disease Control and Prevention, and United States Department of Agriculture; and

WHEREAS, non-domesticated animal performances in Oakland are inconsistent with the City's ethos of treating all living beings, humans and animals alike, with kindness; and

WHEREAS, the wide array of circus acts not involving animal performers provides numerous opportunities for entertainment without the unnecessary cruel treatment of animals; and

WHEREAS, eliminating non-domesticated animal performances in Oakland will promote community awareness of animal welfare, bolster the City's stance against animal cruelty, and, in turn, foster a more humane environment in Oakland; now, therefore,

THE OAKLAND CITY COUNCIL DOES ORDAIN AS FOLLOWS:

Section 1 – The City Council does hereby find and declare that above recitals are true and correct and hereby makes them part of this Ordinance.

Section 2 – Chapter 6.04 (Animal Control Regulations Generally) of the Oakland Municipal Code is amended as set forth below. Additions are indicated by underscored type, while deletions are indicated by ~~strikethrough~~ type:

6.04.020 – Definitions

For the purpose of this title, unless it is plainly evident from the context that a different meaning is intended, certain terms used herein are defined as follows:

"Adoption group" means an organized, licensed, insured, non-profit organization whose primary function is the adoption and placement of shelter animals.

"Animal" means any mammal, poultry, bird, reptile, fish, or any other dumb creature, including, but not limited to, horse, cow, goat, sheep, pig, pigeon, chicken, goose, rabbit, dog, cat. Animals are classified by weight: large animal, over fifty (50) pounds; medium animal, between twenty-five (25) and fifty (50) pounds; small animal, under twenty-five (25) pounds.

"Animal quarters" means the premises and all buildings, hutches, pens, coops, yards, and their appurtenances used for the keeping of animals, commercial fur-bearing animals, poultry including pigeons, game and show birds, fowl and birds, or any other kind not specifically mentioned, and dogs, and cats not kept in kennels and pet shops as herein defined; including, but not limited to, stables, poultry farms, pigeon farms, and rabbit farms.

"At large" means a dog off the premises of its owner and not under restraint by leash, or chain, or not otherwise controlled by a competent person.

"Bullhook" or "Ankus" means any instrument or device consisting of a spike, hook, or any combination thereof, attached to a shaft or handle made of wood, fiberglass, metal, or other solid or flexible material.

"Cause a Performance" means to be responsible for the management of a Performance even if such management does not result in financial benefit to any Person, to financially benefit as an owner or operator from a Performance, or to sponsor a Performance even if no financial benefits are derived from such sponsorship.

"Chipping" means the injection of a microchip below the skin of an animal by a veterinarian, registered vet technician or other qualified shelter staff.

"Circus" means a performance before a live audience in which entertainment consisting of a variety of acts, such as acrobats, aerialists, clowns, jugglers, or stunts, is the primary attraction or principal business.

"Dog" means and includes female as well as male dogs. Dogs are classified by weight: large dog: over fifty (50) pounds, medium dog: between twenty-five (25) and fifty (50) pounds, small dog: under twenty-five (25) pounds.

"Foster" means a person who is willing to temporarily take and care for an animal until the time that animal becomes suitable for adoption as recognized by an adoption group and/or animal shelter management.

"Horse" means and includes mule, burro, pony, jack hinny, or jenny.

"Kennel" means any person, firm or corporation engaged in breeding, buying, selling, distributing or boarding dogs and/or cats.

Owner.

1. "Owner" means any person, firm or corporation owning, having an interest in, or having control or custody or possession of, any animal.
2. Any person keeping or harboring a dog for fifteen (15) consecutive days shall be deemed to be the owner thereof, within the meaning of this title.

"Performance" means any showing, presentation, display, exposition, fair, act, Circus, ride, trade show, carnival, parade, race, photographic opportunity, exhibition, or similar undertaking in which Animals are required to perform tricks, fight, or participate as accompaniments. "Performance" shall not include:

1. "Rodeo" as defined in California Penal Code section 596.7; and
2. Nonprofit educational or scientific events, such as academic conferences, children's wildlife outreach events sponsored by a school or museum, and petting zoos.

"Person" means and includes any person, partnership, corporation, trust, and association of persons.

"Pet shop" means any person, firm, or corporation operating an establishment where live animals and/or birds are kept for sale, for hire, or sold.

"Unlicensed dog" as used in this title means a dog for which the license for the current year has not been paid, or to which the tag provided for in this title is not attached.

“Wild Animal” means any animal not ordinarily and customarily domesticated, including, but not limited to, skunk, raccoon, opossum, squirrel, fox.

Whenever any reference is made to any portion of this title, such reference applies to all amendments and additions thereto now or hereinafter made.

The present tense includes the past and future tenses and the future, the present. Each gender includes the other two genders.

The singular number includes the plural and the plural, the singular.

Whenever a power is granted to, or a duty is imposed upon the Animal Control Center, the power shall be exercised or the duty shall be performed by the Senior Animal Control Officer and/or the Animal Control Officer, or by any person or organization, its officers, agents, and employees, designated by contract or otherwise to enforce this title

6.04.500 – Performances of Animals for Public Entertainment Prohibited.

- A. It shall be unlawful for any Person to Cause the Performance of any Animal, except a domestic Dog, a domestic cat or a domesticated horse, for public entertainment, amusement or benefit on any public or private property within the City of Oakland.
- B. Any Person who violates this section shall be guilty of a misdemeanor pursuant to Chapter 1.28 of this Code. The remedies set forth by this section are not intended to limit the application of federal and state law.

6.04.510 – Exemptions.

- A. Veterinarians in the ordinary course of a Veterinarian’s practice of business.
- B. The Oakland City Zoo,
- C. The otherwise lawful use of Animals for therapeutic purposes by Persons who are physical or mentally disabled, or
- D. Any institution accredited by the Global Federation of Animal Sanctuaries, American Zoological Association, or Association of Sanctuaries.

6.04.520 – Veterinarians at Rodeos

- A. Any person promoting, conducting, or holding a Rodeo or Rodeo-like Animal event in the City of Oakland shall have a licensed Veterinarian physically present throughout the duration of each event using Animals.
- B. The Veterinarian in attendance shall be licensed by the state and shall be experienced in the treatment of the types of Animals used in these Animal events.

- C. The Veterinarian in attendance shall not be a contestant or otherwise participate in any Animal events, and the Veterinarian and any City animal control officer in attendance shall be allowed access to all areas of the Rodeo facility.
- D. Any Person who violates this section shall be guilty of a misdemeanor pursuant to Chapter 1.28 of this Code. The remedies set forth by this section are not intended to limit the application of federal and state law.

Section 3 – Chapter 1.28 (General Penalty) of the Oakland Municipal Code is amended as set forth below. Additions are indicated by underscored type, while deletions are indicated by ~~strikethrough~~ type:

1.28.020 Violations as infraction.

- A. Any person violating any of the provisions or failing to comply with any of the regulatory requirements of the following code sections shall be guilty of an infraction:

2. Public Welfare, Morals and Policy

- a. Chapter 8.18. Public Nuisances
- b. Chapter 5.18. Charities and Relief
- c. Sections 9.04.030—9.04.060, 9.08.210. Fraud and Deceit: Section 9.04.050: Defacing Notices. Violations of other provisions of Sections 9.04.030—9.04.060, 9.08.210 shall be a misdemeanor.
- d. Chapters 6.04, 6.08. The Animal Control Ordinance, with the exception of Sections 6.04.365 (Use of Bullhooks Prohibited), 6.04.500 (Performances Of Animals for Public Entertainment), 6.04.520 (Veterinarians at Rodeos), 6.08.120, 6.08.130, 6.08.150—6.08.180, and 6.08.200, (Potentially Dangerous and Vicious Dogs), the violation of which shall be a misdemeanor.

Section 4 – 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 5 – 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 6 – This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes as provided by Section 216 of the City Charter, Otherwise, this ordinance shall become effective upon the seventh day after final adoption.

Section 7 – 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, _____, 2020

PASSED BY THE FOLLOWING VOTE:

AYES-

NOES –

ABSENT –

ABSTENTION –

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

Date of Attestation:

NOTICE AND DIGEST

ORDINANCE AMENDING TITLES 1 and 6 OF THE OAKLAND MUNICIPAL CODE TO ADD PROVISIONS PROHIBITING IN THE CITY OF OAKLAND, PERFORMANCES OF ANIMALS FOR PUBLIC ENTERTAINMENT

This ordinance adds provisions to the Oakland Municipal Code to prohibit the performance of Animals, except a domestic dog, a domestic cat or a domesticated horse, for public entertainment in the City of Oakland, and to require the attendance of a licensed Veterinarian at any Rodeo or Rodeo-like event. A violation of these provisions is punishable as a misdemeanor.