



Kate Harrison
Councilmember, District 4

ACTION CALENDAR
January 16, 2024

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to Horses Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment or Profit

RECOMMENDATION

Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to Horses Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment or Profit.

POLICY COMMITTEE RECOMMENDATION

On November 13, 2023, the Health, Life Enrichment, Equity, and Community Committee adopted the following action: M/S/C (Hahn/Humbert) to send the item to Council with a qualified positive recommendation to approve the Ordinance with substantial edits and as may be necessary for legal and administrative purposes. Vote: All Ayes.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Golden Gate Fields is one of the last remaining tracks in the Bay Area and has wide-reaching economic and institutional power. Unfortunately, Golden Gate Fields (GGF), spanning both Berkeley and Albany, remains a disturbing display of sanctioned animal abuse in our City. So far in 2023 alone, 16 horses have died at its facility.¹ The horses at GGF have succumbed to a range of causes of death including broken legs, abdominal issues, head injuries, sepsis, and neurological problems. Many fatalities in the horseracing industry are euthanizations after horses suffer non-fatal injuries, cutting their lives unnaturally short. When CBS Bay Area reported on the most recent horse death at GGF in May of this year it cited the fact that “domesticated horses live into their 30s, but the average age of active racehorses is [only] three to five years old”.² Some

¹ This is a 100% increase since this ordinance was introduced in June of 2023.

² Bay City News Service. “Injured Horse Euthanized at Golden Gate Fields; 8th Horse to Die at Track in 2023.” *CBS News*, 22 May 2023, www.cbsnews.com/sanfrancisco/news/injured-horse-euthanized-at-golden-gate-fields-8th-horse-to-die-at-track-in-2023/.

data, however, shows that domesticated horses can live until their mid 40s if they have access to healthy living conditions.³

As horse deaths continue to rise at the horse racing tracks within City limits, it is overdue that the community ensure the well-being and safety of racehorses. Half of Golden Gate Fields deaths happen on the Berkeley side of the facilities. As a charter city, Berkeley has the authority to establish regulations and the jurisdiction to protect and promote the public health, safety and welfare by establishing safeguards for horses as long as they do not conflict with or duplicate state and federal law. It is in the public interest to adopt an ordinance prohibiting inhumane or abusive treatment of horses held, owned, used, exhibited or otherwise kept for sport, entertainment or profit within the City limits.

BACKGROUND

In just the last three months, two nationally recognized racetracks have shut down because of the increasing number of horse deaths at their tracks. Churchill Downs, home to the Kentucky Derby, is suspending racing at its primary location following an investigation by the Kentucky Horse Racing Commission⁴ after twelve horses died in two months. Just one month before Churchill Downs halted racing, a trainer was barred from participating in any further events at Churchill Downs or related tracks after two of his horses suddenly collapsed. At GGF, three horses have died under the same trainer this year, but Golden Gate Fields remains business as usual.

Baltimore's Laurel Racetrack also suspended horse racing indefinitely. In 2023, 13 horses died at Laurel Racetrack in 2023 and the two most recent euthanizations occurred after racing injuries.

Of the physical problems that lead to regular stable deaths, the three most common causes are (1) colic, (2) laminitis, and (3) pleuropneumonia, all of which are worsened by excessive confinement. According to Dr. Nathaniel White, Professor of Surgery at Marion DuPont Scott Equine Medical Center, one of the three primary situations that present a higher-than-normal risk factor for colic in horses is being confined to a stall for more than 12 hours per day.⁵ VCA Veterinary Hospitals reports that "severe colic pain can cause a horse to roll and throw itself about in an uncontrolled and dangerous manner."⁶ In extreme cases, the confined horse can violently lunge its body or head into

³ University of California, Davis. "Humane Disposition of Horse Carcasses." Center for Equine Health, https://ceh.vetmed.ucdavis.edu/sites/g/files/dgvnsk4536/files/local_resources/pdfs/pubs-HR24-3-bkm-sec.pdf.

⁴ Fuente, Homero De la, and Zoe Sottile. "Churchill Downs to Suspend All Racing Operations to Further Evaluate Safety Measures amid Increase in Horse Deaths." *CNN*, 2 June 2023, www.cnn.com/2023/06/02/sport/churchill-downs-suspension-horse-deaths/index.html.

⁵ Dr. Nathaniel A. White II DVM, MS. "Prevalence, Demographics, and Risk Factors for Colic." *Presented at: AAPE Focus on Colic, Quebec City, Quebec, 2005*.

⁶ *Colic in Horses*, vcahospitals.com/know-your-pet/colic-in-horses. Accessed 20 June 2023. See also, Jennifer Rice, DVM. "Colic in Horses." *PetMD*, 27 Apr. 2022, www.petmd.com/horse/conditions/digestive/c_hr_equine_colic.

a wall or other solid object...the horse might also ‘throw itself’ to the ground.”⁷ Horses likely will incur serious self-injury during these explosive episodes, leading to the severe injury and blunt force trauma that cause many of the stable deaths.

In contrast, providing a turnout in which a horse can graze helps reduce the chance of colic, reduces stress and stable vices/behavioral issues, and reduces the chance of respiratory system illness among other benefits.⁸

Beyond the severe physical problems that stabling causes, are the severe psychological problems. When a horse's special, dietary, and social needs are thwarted, so-called stereotypies, or repetitive behaviors that do not have an apparent goal or function, occur. In horses, the classic stereotypies are including cribbing, wind-sucking, bobbing, weaving, pacing, stall-circling, digging, kicking, bucking, spinning, headshaking, or self-mutilation.⁹ Through these repetitive activities, endorphins are released which reinforce the behavior as a habit. These are the same symptoms of deep psychological distress commonly seen in other animals in captivity, such as circus elephants and bears.

According to Dr. Nicholas Dodman, Animal Behaviorist and Professor Emeritus at Tufts University:

"[t]he longer horses are confined per day the more stall vices/stereotypies they will exhibit. Racehorses are the prime example of that with long periods of confinement (up to 23 hours per day), so they exhibit an unusually high prevalence of stereotypies. The suffering can be described by referencing the suffering of people in solitary confinement. A recently released man who had spent years in solitary said he sometimes felt anxiety, paranoia, panic, hallucinations etc. The only way he could help suppress the dysphoria was to walk back and forth in his cell until the line he walked was soaked in his sweat. That's what equine stall walkers do - walk endlessly in circles (or in the case of weavers, walk to and fro)."¹⁰

Confining a 1200-pound animal to a 12x12 stall is akin to confining an elephant to a box car or a killer whale to a swimming pool. Equine veterinarian, Dr. Kraig Kulikowski, compared this to locking a child in a 4x4 closet for 23 hours a day, abuse punishable by law.¹¹ The United Nations deems solitary confinement as “cruel and unusual punishment.” Prison reserves solitary confinement for the most violent criminal as the worst punishment.

Our office has edited the ordinance to be in accordance with the recommended edits from the November 13 HLEEC Committee Meeting.

⁷ *Id.*

⁸ “Turnout Areas.” *All Horse Care*, allhorsecare.weebly.com/turnout-areas.html. Accessed 20 June 2023.

⁹ Fernanda C. Camargo. *University of Kentucky College of Agriculture, Stereotypic Behavior In ...*, www2.ca.uky.edu/agcomm/pubs/ASC/ASC212/ASC212.pdf. Accessed 20 June 2023.

¹⁰ Sue McDonnell. *Equine Self-Mutilation*, 28 Feb. 2019, thehorse.com/16597/equine-self-mutilation/.

¹¹ Battuello, Patrick. “Equine Vet: ‘What Impact Would 23 1/2 Hours of Standing in a Closet Have on the Mental Health of a Child?’” *Horseracing Wrongs*, 6 Aug. 2019, horseracingwrongs.org/2019/08/06/equine-vet-what-impact-would-23-1-2-hours-of-standing-in-a-closet-have-on-the-mental-health-of-a-child/.

- Changed the term racehorse to horse to encompass a wider breadth of animals
- Included a definitions section to specify the meanings of: “Full turnout,” “Horse,” and “Overwork”
- Included all grammar revisions
- Deleted the felony stipulation under the “Penalties” section
- Changed the enforcement role of the City Manager to only be responsible for enforcing provisions under section 12.75.030 C
- Deleted the language around regulating all animal abuse to protect from state and federal preemption and duplication.
- Deleted “mental and physical abuse” to just say, “abuse”
- To ensure the penalties do not unjustly do legal harm to low-wage workers, who may also be subject to unhealthy work and housing conditions. The Ordinance penalizes the owner of the horse and/or the facility where the violation occurred, not the stable-hands, jockeys, or trainers.

Ordinance Overview

This proposed ordinance:

1. Makes it illegal to confine a horse to a stable for more than 10 hours per day and;
2. Requires every horse access to a full turnout with access to a minimum of 1,000 square feet of pasture, where the horse can freely roam, unrestricted and untethered.
3. Prohibits manual, electrical, mechanical, or other devices, implements, instruments or any method or modality that can cause injury, pain, suffering, overwork, and death, except as otherwise authorized by state or federal law.

This legislation is designed to govern only those areas not already directly covered by State and Federal laws. It specifically focuses on a limited set of conditions to supplement the existing regulatory framework.

Enforcement of the ordinance would be carried out by City officials, including police officers and the City’s Animal control officers. The City Attorney is also empowered to conduct inquiries or investigate complaints of violations of this Ordinance, and may seek injunctive relief in the courts or otherwise. Private parties may bring a private action for injunctive relief, penalties, or both, to prevent or remedy a violation of this Ordinance after the prospective plaintiff has (1) provided the City and the prospective defendant at least 30 days prior written notice of the alleged violation; and (2) the City has failed to initiate enforcement proceedings, or after initiation, has failed to diligently prosecute. In any action prosecuted under this Ordinance a court may award attorney’s fees to a prevailing party.

FISCAL IMPACTS OF RECOMMENDATION

Staff time will be necessary for implementation and enforcement.

ENVIRONMENTAL SUSTAINABILITY

Horse breeding is extremely resource (including food, water, and medicine) and environmentally intensive. The senseless waste of precious animal life currently associated with horse racing also results in needless waste of limited and precious environmental resources.

CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140

ATTACHMENTS

1. Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to Horses Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment or Profit

ORDINANCE NO. –N.S.

ADDING CHAPTER 12.75 TO THE BERKELEY MUNICIPAL CODE
TO ESTABLISH PROTECTIONS RELATING TO HORSES HELD, OWNED, USED,
EXHIBITED OR OTHERWISE KEPT FOR RACING OR OTHER SPORT,
ENTERTAINMENT OR PROFIT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Chapter 12.75 of the Berkeley Municipal Code is added to read as follows:

Chapter 12.75

HORSE PROTECTION POLICY

Sections:

- 12.75.010 Findings and Purpose**
- 12.75.020 Horse Protection Policy**
- 12.75.030 Enforcement, Private Right of Action**
- 12.75.040 Penalties**
- 12.75.050 Severability**
- 12.75.060 Effective Date**

12.75.010 Findings and Purpose.

The Council of the City of Berkeley finds and declares as follows:

A. Article XI, section 7 of the California Constitution recognizes the police power of cities to “make and enforce within [their] limits, all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”

B. The home rule provision of the California Constitution authorizes a charter city to exercise plenary authority over municipal affairs, free from any constraint imposed by the general law and subject only to constitutional limitations.

C. The City of Berkeley, as a Charter City, has authority to make and enforce all ordinances and regulations in respect to municipal affairs.

D. California provides laws and regulations for the licensing and associated operations of horse racing tracks, which preempt the City’s authority to impose laws and regulations that conflict with such state laws and regulations or intrude into the state’s regulatory scheme.

E. The humane protection and care for horses is a matter of local concern essential to the public health, safety and general welfare of Berkeley residents and is a proper

subject of regulation by the City acting pursuant to its police powers separate and apart from issues of licensing and racetrack operations preempted by the state or federal government. To the extent that state and federal laws and regulations implicate the health and safety of horses, those provisions are limited in scope and overly narrow, necessitating additional safeguards adopted pursuant to the City of Berkeley's police power.

F. According to the American Association of Equine Practitioners, as pasture provides additional health benefits to horses, allowing them to move and exercise and regular pasture turnout should be part of a horse's daily routine.

G. The UC Davis Center for Equine Health indicates that horses should not be "confine[d] ... to a stall unless absolutely necessary for medical reasons." The UC Davis Center for Equine Health defines "Abuse and Cruelty" to include "use of excessive restraint such as tethering or confining movement for long periods of time" and/or "failure to provide adequate feed, water, care or protection."

H. The City of Berkeley desires, within its jurisdiction and authority, to establish regulations that protect health, safety, and welfare by prohibiting abusive treatment of horses held, owned, used, exhibited or otherwise kept for sport, entertainment or profit within its jurisdiction and authority.

I. This Ordinance aims to protect and promote public health, safety and welfare by establishing safeguards, protections and assurances for horses held, owned, used, exhibited or otherwise kept for sport, entertainment or profit within the City's jurisdiction and authority and, to the fullest extent feasible and consistent with federal, state and local law, to prevent and deter infliction of any and all abuse, overwork, and injury and death.

12.75.020 Definitions

A. "Full turnout" means the practice of giving a horse unfettered access to a dedicated paddock, pasture, or other safe and fully fenced outdoor space in which it can roam freely, graze, and socialize with other horses.

B. "Horse" has the same meaning as in California Code of Regulations Title 4 Part 1420(g), i.e. "horse" means an equine and includes a stallion, gelding, mare, colt, filly or ridgling and includes mule, jack, jenny, ginnnet, and hinney.

C. "Overwork" means to push a horse uncomfortably past its physical capacity such that it becomes exhausted, overheated, or otherwise distressed. Indica of overwork can include but are not limited to a strained or slowing gait, a lolling tongue, strained breathing, a slowing pace, decreased responsiveness to aids, and reduced coordination.

12.75.030 Horse Protection Policy

A. Except as otherwise authorized by state or federal law, it shall be unlawful to use on any horse, manual, electrical, mechanical, or other devices, implements, instruments, or any method or modality that can cause injury, pain, suffering, overwork, and death.

B. It shall be unlawful to confine a horse to a stable for more than 10 hours per day.

C. During the remaining hours of the day, it shall be required to provide every horse with a full turnout with access to a minimum of 1,000 square feet per horse of pasture where the horses can freely roam, unrestricted and untethered. Where a facility houses more than one horse, pasture shall be shared amongst all horses at the facility via one contiguous shared pasture equal to 1,000 square feet or greater per horse.

12.75.040 Enforcement, Private Right of Action

A. City officials shall have the power and authority to enforce the provisions of 12.75.030 C and perform all duties imposed by, or as reasonably necessary to implement, the provisions of this Section.

B. The City Attorney may conduct inquiries or investigate complaints of violations of this Ordinance. The City Attorney may seek injunctive relief, penalties, or both, or any other type of relief, in the courts or otherwise to enforce the provisions of this Ordinance. In any action prosecuted under this subdivision, the court may award reasonable attorneys' fees to the City.

C. Any resident of the City may bring a private action for injunctive relief, penalties, or both, to prevent or remedy a violation of this Ordinance. No action may be brought under this Subsection C. unless and until the prospective plaintiff has provided the City and the prospective defendant at least 30 days prior written notice of the alleged violation. In any action prosecuted under this subdivision, the court may award reasonable attorneys' fees to any prevailing party.

D. Nothing in this chapter shall be interpreted as authorizing a right of action against the City.

12.75.050 Penalties

Any violation of this Chapter shall be deemed a violation by the owner of the horse and/or the facility where the violation occurred. Agents or employees of the owner of the horse or the facility where the violation occurred, such as but not limited to stablehands, jockeys, or trainers, shall not be deemed to have violated this Chapter. A violation of this Chapter is a misdemeanor punishable by imprisonment for a period of not less than 30 days and not exceeding six months or a fine of not less than \$1,000 per animal, per violation, per day. Any subsequent violation of this Chapter by the same actor is a misdemeanor punishable by imprisonment for a period of not less than 60

days and not exceeding six months or a fine of not less than \$1,000 per animal, per violation, per day.

12.75.060 Severability

If any section, subsection, paragraph, or word of this Ordinance, or any application thereof to any person or circumstance, either on its face or as applied, is held to be invalid, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences or words of this act, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences, and words of this act shall be deemed to be severable. The City Council of the City of Berkeley hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid without regard to whether any other portion of this Ordinance or application would be subsequently declared invalid.

12.75.080 Effective Date

This Ordinance shall become effective immediately for immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency and is passed by a two-thirds vote of the City Council. Otherwise, this ordinance shall become effective 30-days after its final passage.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

