



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE _____ C.M.S.

ORDINANCE ADDING CHAPTER 10.74 TO THE OAKLAND MUNICIPAL CODE IMPOSING FINES AND PENALTIES AGAINST ORGANIZERS AND FACILITATORS OF SIDESHOWS

WHEREAS, “sideshow” means an event in which two or more persons block or impede traffic on a highway or other public place open to vehicle traffic, or access private property without the consent of the owner, operator, or agent thereof, for the purpose of performing motor vehicle stunts, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators; and

WHEREAS, participants in a sideshow include drivers or passengers of the involved vehicles, and any pedestrians, drivers, or passengers who barricade or prevent access to a highway or other property where the motor vehicle sideshow is being performed, and an aider or abettor to a motor vehicle sideshow includes any person who organizes, facilitates, or promotes a sideshow; and

WHEREAS, existing law makes it a crime to engage in a motor vehicle speed contest on a highway, reckless driving on a highway, reckless driving in an off-street parking facility, or an exhibition of speed on a highway, and existing law allows a peace officer to arrest a person and seize the motor vehicle of the person if the peace officer determines that the person was engaged in these activities, and existing law allows a vehicle seized for these purposes to be impounded for up to 30 days; and

WHEREAS, drivers participating in sideshows can be arrested and prosecuted for reckless driving under Section 23103 of the California Vehicle Code; and

WHEREAS, persons willfully delaying or obstructing any peace officer or police investigation can be arrested and prosecuted pursuant to state and local law; and

WHEREAS, sideshows cause significant damage to city infrastructure by destroying intersection markings, street signs, poles, and other equipment that requires replacement after a sideshow event that diverts resources from other critical safety improvements; and

WHEREAS, sideshows require extraordinary police response costs that divert officers from responding to other emergencies at a time when violent crime rates are high and typically occur during times when the police department is already addressing high call volumes; and

WHEREAS, sideshows create an unsafe environment for the communities in which they occur due to participants driving recklessly, often under the influence of drugs and alcohol, and have often been associated with the discharge of firearms, resulting in a higher violent crime rates; and

WHEREAS, sideshows drastically impact the quality of life in the communities where they occur by causing damage to vehicles and private property, reduced air quality due to the smoke released by burning rubber tires, noise pollution, and unmanageable crowds that leave behind garbage; and

WHEREAS, promoters of sideshows attract hundreds of people from outside of Oakland that have no stake in the community and typically plan events in frontline neighborhoods that already suffer from poverty, higher crime rates, historic disinvestment and the resulting poor equity indicators; and

WHEREAS, the City seeks to be able to impose both civil and criminal penalties in order to minimize the effects of sideshows; and

WHEREAS, the City has a responsibility to prioritize its resources to serve those communities, to reduce the trauma associated with historic injustice that is further inflamed by sideshow events,

THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1: Title 10, Chapter 10.74 of the Oakland Municipal Code is hereby added to read as follows (additions are shown in underline; deletions are shown as ~~striketrough~~):

Sections:

10.74.010 Title.

This chapter shall be known as the Oakland Sideshow Ordinance.

10.74.020 Purpose.

This chapter establishes the elements necessary for organizers and facilitators of Sideshows, Street Races and Reckless Driving Exhibitions to be held accountable.

10.74.030 Definitions.

As used in this chapter:

- A. “Street Race” means any motor vehicle speed contest or motor vehicle exhibition of speed referred to in subdivisions (a) and (c) of California Vehicle Code Section 23109, as may be amended.
- B. “Reckless Driving Exhibition” shall mean any exhibition of reckless driving referred to in California Vehicle Code Section 23103, as may be amended.
- C. “Sideshow” means an event in which two or more persons block or impede traffic on a highway or other public place open to vehicle traffic, or access private property without the consent of the owner, operator, or agent thereof, for the purpose of performing motor vehicle stunts, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators
- D. “Offstreet Parking Facility” is defined in subdivision (c) of California Vehicle Code Section 12500, as may be amended.

- E. A person is “present” at the Sideshow, Street Race or Reckless Driving Exhibition if that person is within two hundred (200) feet of the location of the Sideshow, Street Race or Reckless Driving Exhibition, or within two hundred (200) feet of the site of the Preparations for either of these activities.
- F. “Preparations for,” “Organizing, or “Facilitating” any Sideshow, Street Race or Reckless Driving Exhibition include, but are not limited to, any of the following acts done for the purpose of a Sideshow, Street Race or Reckless Driving Exhibition:
1. One (1) or more motor vehicles and persons have arrived at a predetermined location on a public street or highway or in an Offstreet Parking Facility;
 2. Two (2) or more persons have gathered on, or adjacent to, a public street or highway;
 3. Two (2) or more persons have gathered in an Offstreet Parking Facility;
 4. One (1) or more persons have impeded the free public use of a public street, highway, or Offstreet Parking Facility by acts, words or physical barriers;
 5. One (1) or more motor vehicles have lined up on a public street, highway, or Offstreet Parking Facility with motors running;
 6. One (1) or more drivers is revving a motor vehicle’s engine or causing the motor vehicle’s tires to spin; or
 7. One (1) or more drivers is demonstrating or performing automotive stunts including but not limited to spinning doughnuts, vehicles swerving back and forth, burning rubber, spinning cars, racing or obstructing any public street, highway or in an Offstreet Parking Facility.
 8. A person is standing or sitting in a location to act as a race starter.

10.74.040 Organizing or Facilitating Sideshows, Street Races and Reckless Driving Exhibitions Prohibited

- A. It shall be unlawful for any person to (1) knowingly organize, promote, instigate, assist, facilitate, aid, or abet, or (2) knowingly impede, obstruct or delay peace officers in performance of their duties before, at or immediately following:
- i. A Sideshow or Street Race or the gathering of persons at a Sideshow or Street Race conducted on a public street or highway; or
 - ii. A Sideshow or Reckless Driving Exhibition or the gathering of persons at a Sideshow or Reckless Driving Exhibition conducted on a public street or highway or in an Offstreet Parking Facility.
- B. It shall be unlawful for any person to (1) knowingly organize, promote, instigate, assist, facilitate, aid, or abet or (2) knowingly impede, obstruct or delay peace officers in performance of their duties before, at or immediately following:

- i. Preparations for a Sideshow or Street Race or the gathering of persons where Preparations are being made for a Sideshow or Street Race conducted on a public street or highway; or
- ii. Preparations for a Sideshow or Reckless Driving Exhibition or the gathering of persons where Preparations are being made for a Sideshow or Reckless Driving Exhibition conducted on a public street or highway or in an Offstreet Parking Facility.

C. Geographic proximity to a Sideshow, Street Race or Reckless Driving Exhibitions alone is insufficient evidence to meet the criteria to be found guilty of organizing or facilitating.

10.74.050 Relevant Circumstances to Prove a Violation

A. Notwithstanding any other provision of law, to prove a violation of this Chapter, admissible evidence may include, but is not limited to, any of the following:

1. That the person charged has previously participated in or organized, promoted, instigated, assisted, facilitated, aided, or abetted at a Sideshow, Street Race or Reckless Driving Exhibition;
2. That the person charged has previously aided and abetted Street Racing;
3. That the person charged was previously present at a location where Preparations were being made for a Sideshow, Street Race or Reckless Driving Exhibition, or where a Sideshow, Street Race or Reckless Driving Exhibition was in progress.
4. Evidence of these prior acts may be admissible, to the fullest extent permissible by law, to show the opportunity, intent, plan, knowledge, identity, or the absence of a mistake or accident, if the prior act or acts occurred within three (3) years of the presently charged offense. These prior acts may always be admissible to show knowledge on the part of the defendant that a Street Race or a Reckless Driving Exhibition was taking place.

B. In addition to the circumstances set out in subsection A. above, and notwithstanding any other provision of law, to prove a violation of this Chapter, admissible evidence may also include, but is not limited to, any of the following:

1. The nature and description of the Scene, including the number and configuration of traffic lanes;
2. The number of people at the Scene;
3. The number and descriptions of motor vehicles at the Scene;

C. For purposes subsection B., above, “Scene” refers to the location of the Sideshow, Street Race or Reckless Driving Exhibition or the location of the Preparations for the Sideshow, Street Race or Reckless Driving Exhibition.

10.74.060 **Penalties and Violations**

A. A violation of this section shall be subject to enforcement through criminal prosecution and/or civil penalties, as provided herein.

1. Violation a Misdemeanor. A person who violates this chapter shall be guilty of a misdemeanor punishable by imprisonment in the County Jail not exceeding six months or by fine not exceeding one thousand dollars (\$1,000.00), or by both. Each violation shall be deemed a distinct and separate offense that may be charged by the District Attorney.

B. Civil Penalties. The City may seek civil injunctions or assess penalties for violations of this chapter pursuant to state and local law.

1. The City may assess the following penalties for violations of this chapter: (a) one thousand dollars (\$1,000.00) for the first violation; (b) two thousand five hundred (\$2,500.00) for the second violation; and (c) five thousand dollars (\$5,000.00) for the third violation and for each subsequent violation committed within a calendar year.

2. The City may recover damages caused by any violation of this section.

10.74.70 **Severability**

If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions, which shall remain in full force and effect.

10.74.080 **Preemption**

Nothing in this Chapter 10.74 shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

10.74.090 Effective Date

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.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND PRESIDENT
FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST:

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

NOTICE AND DIGEST

ORDINANCE ADDING CHAPTER 10.74 TO THE OAKLAND MUNICIPAL CODE IMPOSING FINES AND PENALTIES AGAINST ORGANIZERS AND FACILITATORS OF SIDESHOWS

This Ordinance will add Oakland Municipal Code Chapter 10.74 (the Sideshow Ordinance) to attach penalties to anyone who organizes, promotes, participates or facilitates, willfully resists, delays or obstructs curtailment of sideshows in Oakland, California. This Ordinance would allow the City to impose either civil or criminal fines, penalties or equitable relief for violations of these provisions.