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CITY OF OAKLAND



07 SEP -5 PM 3:43

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September 18, 2007

HONORABLE CITY COUNCIL
Oakland, California

Subject: Ordinance to Repeal Ordinance No. 12965 C.M.S. re Sideshow Vehicle Forfeiture

President De La Fuente and Members of the City Council:

The City Attorney has prepared an ordinance repealing Ordinance No. 12965 C.M.S., which declared that sideshow events are a nuisance, prohibited spectator gatherings at such public nuisance events, and provided for the forfeiture of vehicles involved in sideshow events ("Sideshow Ordinance"). After Ordinance No. 12965 C.M.S. was enacted in 2005, plaintiffs Aram Sohigian et al filed a lawsuit in Superior Court challenging the Ordinance on various grounds, including preemption by State law. (Aram Sohigian et al v. City of Oakland et al, Alameda County Superior Court Case No. RG05223674.) On July 27, 2007, the Council passed Resolution No. 80717 C.M.S. authorizing settlement of the litigation. The attached ordinance repeals the Sideshow Ordinance.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "JAR" or similar initials.

JOHN A. RUSSO
City Attorney

Attorney Assigned:
Pelayo A. Llamas, Jr.

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Oakland City Attorney's Office

2007 SEP -6 PM 12:43 **OAKLAND CITY COUNCIL**

ORDINANCE No. _____ C.M.S.

ORDINANCE REPEALING ORDINANCE NO. 12695 C.M.S. WHICH DECLARED VEHICLE SIDESHOWS A PUBLIC NUISANCE, PROHIBITED THE GATHERING OF SPECTATORS AT SUCH PUBLIC NUISANCE EVENTS AND PROVIDED FOR THE FORFEITURE OF VEHICLES INVOLVED IN SIDESHOW EVENTS.

WHEREAS, on July 12, 2005, the Oakland City Council enacted Ordinance No. 12695 C.M.S. declaring Sideshows a public nuisance, prohibiting the gathering of spectators at such public nuisance events, and providing for the forfeiture of vehicles involved in Sideshow events; and

WHEREAS, Aram Sohigian, Sam Horton, and Carolyn Horton filed a taxpayers' lawsuit against the City in the Superior Court of the State of California, challenging the constitutionality of said ordinance; and

WHEREAS, the Superior Court denied the City's two motions to dismiss the lawsuit and ruled that the Sohigian plaintiffs made sufficient legal allegations to maintain the lawsuit against the City; and

WHEREAS, on July 17, 2007, the City Council passed Resolution No. 80717 C.M.S. approving the settlement of the Sohigian lawsuit; and

WHEREAS, the City Council has decided it is in the best interest of the City to repeal Ordinance No. 12695 C.M.S.; now therefore

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

SECTION 1. Repeal of Ordinance No. 12695 C.M.S.

Ordinance No. 12695 C.M.S. entitled "An Ordinance Amending Title 9 Of The Oakland Municipal Code To Add Chapter 9.60 Declaring Vehicle Sideshows a Public Nuisance, Prohibiting The Gathering of Spectators At Such Public Nuisance Events and Providing For The Forfeiture Of Vehicles Involved In Sideshow Events," is hereby repealed.

SECTION 2. Oakland Municipal Code, Title 9, Chapter 9.60, sections 9.60.010 through 9.60.110 hereby are repealed..

SECTION 3. Effective Date.

This Ordinance shall be come 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, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California