

CITY OF OAKLAND  
OFFICE OF THE CITY CLERK  
OAKLAND



2005 MAY 26 AM 7:19

1 FRANK H. OGAWA PLAZA • 3RD FLOOR • OAKLAND, CALIFORNIA 94612

Office of the Mayor  
Jerry Brown  
Mayor

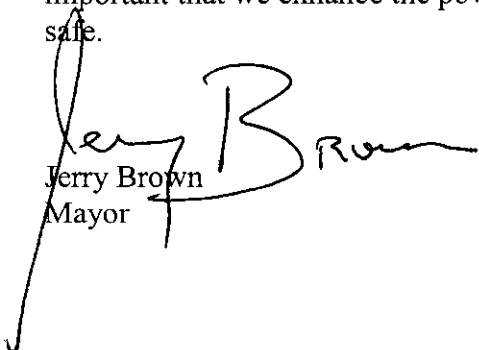
(510) 238-3141  
FAX: (510) 238-4731  
TDD: (510) 839-6451

June 7, 2005

Dear President De La Fuente and Members of the City Council,

I am presenting a report regarding two alternatives to address sideshow activities:  
Alternative No. 1 – an ordinance amending Title 9 of the Oakland Municipal Code to add chapter 9.60 (a) declaring vehicle sideshows a public nuisance and (b) prohibiting the gathering of spectators at such public nuisance events; and Alternative No. 2 – an ordinance that includes the foregoing provisions and also provides for the forfeiture of vehicles involved in sideshow events.

As the summer begins and instances of illegal sideshows and prostitution increase, it is important that we enhance the power of our police department to keep Oakland's streets safe.

  
Jerry Brown  
Mayor

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

OFFICE OF THE CITY CLERK  
CITY OF OAKLAND

2005 MAY 26 AM 7:19

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Police Department  
DATE: June 7, 2005

**RE: A REPORT REGARDING TWO ALTERNATIVES TO ADDRESS SIDESHOW ACTIVITIES: ALTERNATIVE NO. 1 - AN ORDINANCE AMENDING TITLE 9 OF THE OAKLAND MUNICIPAL CODE TO ADD CHAPTER 9.60 (a) DECLARING VEHICLE SIDESHOWS A PUBLIC NUISANCE AND (b) PROHIBITING THE GATHERING OF SPECTATORS AT SUCH PUBLIC NUISANCE EVENTS; AND ALTERNATIVE NO. 2 - AN ORDINANCE THAT INCLUDES THE FOREGOING PROVISIONS AND ALSO PROVIDES FOR THE FORFEITURE OF VEHICLES INVOLVED IN SIDESHOW EVENTS.**

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**SUMMARY**

This report outlines two alternatives to address Sideshow activities. The first option is an ordinance to declare vehicle Sideshows as a public nuisance. It will prohibit Sideshow gatherings, processions, and assemblages on city streets and highways and prohibit spectators who gather to view the events. The law targets a very clear, limited population and gives proper notice to citizens of the activities that are considered a nuisance and therefore prohibited under this ordinance. In prohibiting this activity and discouraging spectators, the City intends to take a significant step toward making its streets and highways safe for pedestrians, motorists and the general public. The ordinance shall further the City's efforts to deter people from participating in illegal Sideshow activity and give law enforcement another valuable tool to address the problem. The second option would include all of the foregoing provisions and also provide for the forfeiture of vehicles involved in Sideshow events.

**FISCAL IMPACT**

The proposed ordinance will result in an unknown amount of revenue from citations, as well as the possible sale of vehicles seized and abated as nuisances. Funds generated from the sale of abated vehicles will be distributed between the contracted tow provider, the Office of the City Attorney, the Police Department, and the General Fund, in that order. The ultimate goal of the ordinance is that people will be deterred from participating in Sideshow activity thus saving the City an estimated \$400,000 annually in overtime costs to police the problem.

Item: \_\_\_\_\_  
City Council  
June 7, 2005

## BACKGROUND

Since 1988, the City of Oakland has worked diligently to control the unlawful activities associated with the “Sideshow.” These problems typically include: violent crime, reckless driving, exhibitions of speed, unlicensed operation, driving under the influence of alcohol and other drugs, vandalism, and a number of other quality of life issues. Sideshow activity promotes a spectator component that exacerbates the problem and contributes to its classification as a significant public nuisance.

The City has engaged in a vigorous campaign to rid Oakland of the problems associated with the Sideshow. The program has been comprehensive in scope and has consisted of a variety of alternatives. There are three major components to this campaign:

- Community Involvement
- Legislative Agenda
- Law Enforcement Action

### *Community Involvement*

The Police Department has always understood that a sequence of “innocent activities” are touted as the root of the “Sideshow.” The Police Department has worked with groups and individuals to explore ways adults could engage in those activities in a safe and legal manner. However, it is also clear that these “innocent activities” are eclipsed by the nefarious illegal and reckless behaviors that typify the Sideshow in its present form. These illicit activities have resulted in a mandate from a significant portion of the affected community, as well as most civic leaders, to have the Police Department develop a law enforcement solution to the problem.

As a result of community concern about the Sideshow, the Police Department has deployed more officers to the areas where illegal Sideshow activity is most problematic. Business owners and residents have also been diligent in reporting illegal Sideshow activity, as well as supporting the law enforcement solution.

The community has also actively participated in committee work groups to develop and support the City’s legislative agenda in relation to the Sideshow. This support has taken the form of letter writing and personal appearances locally and in Sacramento. The community has also been outspoken in their effort to dissuade people from participating in the reckless and illegal behavior that the Sideshow represents. Most recently, members of the community worked with the Police Department and other public agencies on an “*Every 15 Minutes*” presentation staged at the Castlemont campus.<sup>1</sup>

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<sup>1</sup> Every 15 Minutes is a national program designed to dissuade teenagers from engaging in driving under the influence of alcohol and other drugs. The Oakland presentation was specifically centered on reckless and illegal Sideshow activity. Learn more about the program by visiting their website at: [www.every15minutes.com](http://www.every15minutes.com).

***Legislative Agenda***

The City has engaged in an aggressive legislative agenda, drafting and enacting laws primarily designed to deter people from engaging in reckless and illegal Sideshow activity. The first local ordinance established regulations requiring businesses to secure their off-street parking areas (OMC Section 8.04.011). The ordinance enabled the City to implement a partial solution by using Crime Prevention Through Environmental Design (CPTED), eliminating many of the popular Sideshow gathering locations. Some locations had been the scenes of serious violent crime.

The next legislative effort was made at the state level. The Police Department drafted legislation to impound vehicles involved in reckless driving and exhibitions of speed for 30 days. The legislation, authored by Senator Don Perata, was named after U'kendra Johnson, who was killed in a Sideshow related collision in 2002. The law was signed by Governor Gray Davis and became law on September 9, 2002.

The proliferation of noisy “whistle tip” mufflers became a component of the Sideshow problem in 2003. The City drafted legislation that was authored by Assembly Member Wilma Chan as AB377. The bill was signed by Governor Gray Davis and became law on September 22, 2003. The law successfully abated the problem.

Motorized scooters and pocket bikes became a significant problem contributing to Sideshow activity in 2003. The City drafted legislation to require that operators be licensed as well as other regulatory provisions to better define the vehicles and control noise. The Assembly Bill was authored by Assembly Member Wilma Chan, was signed by Governor Arnold Schwarzenegger, and became law on September 24, 2004. The law has been effective at reducing injuries, deaths and citizen complaints resulting from the illegal operation of these vehicles.

Most recently, the City passed a local resolution to reinstitute the Serious Traffic Offender Program (STOP) and amend the Master Fee Schedule to charge an increased tow fee (\$250) to people whose vehicles are impounded for participating in traffic violations while involved in the Sideshow.

***Law Enforcement Action***

Since receiving a mandate from former City Manager Robert Bobb to develop a law enforcement solution to the Sideshow problem, the Police Department coordinated the above efforts, as well as exploring and deploying various staffing configurations. Under the direction of the Police Department's Traffic Section, an emphasis has been placed on prevention as opposed to reaction. For example, the Department's policy to impound cars for violations recognized as precursors to more serious and dangerous Sideshow stunts.<sup>2</sup> Most of the Police Department's work in this area has been charted in periodic reports submitted to the City Council over the past six years.

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<sup>2</sup> The Police Department's Special Order 6031 outlines the specific violations and authorities officers may use to impound vehicles involved in Sideshow activity.

All Police Department efforts include community and media outreach in the form of public service announcements and press releases. These efforts have also included moderate and large enforcement operations that target areas of the city where Sideshow has been most problematic. These efforts have been paid for through the General Fund. The Police Department has been successful in offsetting some of the costs by obtaining grant funds from the California State Office of Traffic Safety. The Police Department recently deployed a dedicated group of officers (as a regular assignment) to address Sideshow problems during the times and in the areas where they are most prevalent. It is expected that this group will be able to maintain the successes outlined in this report as well as the enforcement of the proposed ordinances.

The Police Department has also been successful in gathering support from allied law enforcement agencies who have addressed the problems associated with the Sideshow at no direct cost to Oakland taxpayers. The California Highway Patrol and Alameda County Sheriff's Department have been particularly helpful in this effort. The combined effort has resulted in hundreds of vehicles being impounded, thousands of citations issued, and numerous arrests.

The end result has been that the law enforcement action undertaken by the Police Department has resulted in a substantial abatement of the Sideshow problem. Large Sideshow gatherings occur much less frequently and law enforcement has most of the tools it needs to address them. The proposed ordinances will add to options available to local law enforcement by addressing the public nuisance posed by spectators and vehicle operators not deterred by other legal action.

## **KEY ISSUES AND IMPACTS**

While the efforts above have been successful in deterring some people from participating in Sideshows and reduced the frequency of large scale disruptive Sideshows, the problems of reckless driving, exhibitions of speed, unlicensed operation, driving under influence, vandalism, and other minor crimes continue to be a mainstay of Sideshow activity. In the last year, there has been a sharp increase in serious violent crime associated with the Sideshow.<sup>3</sup> Two contributing factors to the continuation of the problem are the public nuisance posed by spectators, and the vehicles used as an instrument of many of the public offenses. The proposed ordinance will address these issues.

Sideshow activity is easily recognized and typified by a number of factors. Those factors include, but are not limited to, the following:

- Time of day: Weekend nights.
- The scene: Arterial roadways, intersections, off-street parking facilities.

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<sup>3</sup> According to OPD Homicide investigators, Sideshow related homicides include the following since 2004: Charles Cerda (Seminary and Foothill); Terrence Hegler and Kalie Davis (Foothill and High St); Jamar Strong (200 block of 104<sup>th</sup> Ave); and Eric Daeza (Havenscourt and Foothill)

**OPD – Sideshow Public Nuisance Spectator Ordinance and Vehicle Forfeiture**

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- Number of people: 20-200 assembled and actively engaged in encouraging the activity, videotaping, obstructing foot and/or vehicle traffic, placing barricades or other obstruction upon the highway
- Location of spectators: Within 100' of vehicles performing dangerous stunts; frequently in the street or in vehicles stopped in the street while the illegal and dangerous vehicle maneuvers and stunts are being performed.
- Number and description of the vehicles at the scene: 5-50, traveling in a procession from location to location, stopped in off-street parking facilities, or otherwise assembled for the purpose of watching or participating in illegal and dangerous vehicle maneuvers and stunts.
- History of persons involved: Attendees are frequently recognized by officers from prior police contacts in relation to previous sideshows.

The proposed ordinance will allow a police commander to assess the totality of circumstances outlined above and declare the activity as a "Sideshow," and therefore a public nuisance.<sup>4</sup> Under the ordinance, the declaration will give officers the authority to arrest spectators (within 100 feet) for a misdemeanor. The declaration will also give officers the authority to seize vehicles present for abatement as a public nuisance, pursuant to California Vehicle Code Sections 22655.5 and 21100(a).

The fines for being arrested as a spectator will follow a graduated system, typical of other Municipal Code violations. The system for fines for being arrested as a spectator at a Sideshow is:

- First offense: \$500
- Second offense: \$750
- Third and subsequent offenses: \$1000

Vehicles seized and abated as a public nuisance will be auctioned in accordance with the procedures established in the ordinance. Registered owners and legal owners shall have due process rights in accordance with the ordinance and California Code of Civil Procedure.

Prior to enforcement, the Police Department will develop internal policies and procedures for effective enforcement. Training will be provided to effected staff on the fundamental purpose of the ordinance as well as the policies and procedures. Statistics will be maintained relative to the enforcement of the ordinances and reported to the Council as part of the existing schedule of reports on the cruising/sideshow abatement program.

**SUSTAINABLE OPPORTUNITIES**

*Economic* – Occurrences of Sideshow activity in the area of MacArthur and Foothill Boulevards negatively impact traffic in and out of the East Oakland Area. It also has a negative impact on area businesses, some of which have been victimized by looting or find it necessary to close

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<sup>4</sup> A police commander is defined as a OPD officer above the rank of Sergeant of Police.

early because of the cruising activity. Efforts to reduce the Sideshow and its associated criminal activities will strengthen other City efforts to revitalize Oakland and improve local area economic opportunities

**Environmental** - A reduction in cruising activity would reduce the number of cars on City streets, thereby reducing exhaust emissions, the consumption of gasoline, and the noxious toxic smoke generated by spinning tires. Reduced cruising would have a positive impact on the amount of litter on Oakland’s streets, which accumulates when trash is thrown from vehicles and by observing spectators.

**Social Equity** - The City’s efforts to reduce the crime, grime, and the noise associated with the Sideshow are done with the ultimate desire to return order to the streets in the affected areas, which will bring an immediate improvement to the neighborhood’s quality of life.

**DISABILITY AND SENIOR CITIZEN ACCESS**

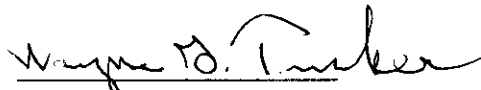
There are no disability or senior citizen access issues contained in this report.

**RECOMMENDATION**

Staff recommends to accept this report and adopt one of the two options presented for review, **Alternative No. 1** - an ordinance amending Title 9 of the Municipal Code to add Chapter 9.60 (a) Declaring vehicle Sideshows a public nuisance; and (b) prohibiting the gathering of spectators at such public nuisance events.

**Alternative No. 2** – an ordinance amending Title 9 of the Municipal Code to add Chapter 9.60 (a) Declaring vehicle Sideshows a public nuisance; and (b) prohibiting the gathering of spectators at such public nuisance events; and (c) **forfeiture of vehicles involved in Sideshow events.**

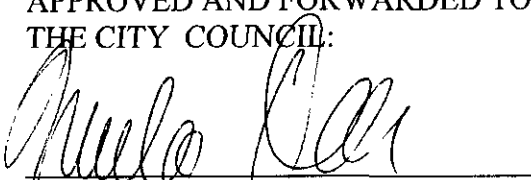
Respectfully submitted,



Wayne G. Tucker  
Chief of Police

Prepared by: David Kozicki, Lieutenant of Police  
Special Operations Division, Traffic Section  
Bureau of Field Operations

APPROVED AND FORWARDED TO  
THE CITY COUNCIL:



Office of the City Administrator

Item: \_\_\_\_\_  
City Council  
June 7, 2005

FILED  
OFFICE OF THE CITY CLERK  
**NOTICE AND DIGEST**

RK

2005 MAY 26 AM 7:19

**AN ORDINANCE AMENDING TITLE 9 OF THE OAKLAND MUNICIPAL CODE TO ADD CHAPTER 9.60 DECLARING VEHICLE SIDESHOWS A PUBLIC NUISANCE AND PROHIBITING THE GATHERING OF SPECTATORS AT SUCH PUBLIC NUISANCE EVENTS.**

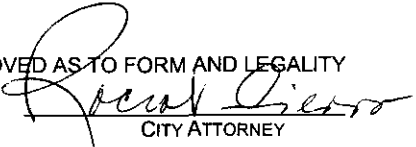
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The Ordinance declares vehicle sideshows on highways a public nuisance and authorizes the City to prohibit these public nuisance events. The Ordinance also authorizes the City to prohibit spectators at these public nuisance events. The Ordinance provides a description of a sideshow event and the criteria to be used by law enforcement to determine whether a violation of the Ordinance has occurred. Violations of the Ordinance may be prosecuted as infractions or misdemeanors.



INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

  
CITY ATTORNEY

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE AMENDING TITLE 9 OF THE OAKLAND MUNICIPAL CODE  
TO ADD CHAPTER 9.60 DECLARING VEHICLE SIDESHOWS A PUBLIC  
NUISANCE AND PROHIBITING THE GATHERING OF SPECTATORS AT  
SUCH PUBLIC NUISANCE EVENTS**

**WHEREAS**, sideshows are gatherings, processions or assemblages where persons in vehicles engage in reckless stunts and maneuvers on city streets, sidewalks and other public places in the presence of spectators; and

**WHEREAS**, the history of sideshows in Oakland indicate that these activities place residents, other drivers and spectators in danger of injury or death; promote and cause disorderly conduct, vandalism and unruly behavior; incite violence and create an imminent threat to public safety and order; and

**WHEREAS**, since 1988 Oakland has been the location of numerous sideshows where a pattern of violence and threats of imminent violence has been established in connection with these activities, including numerous shootings, robberies, sexual assaults and even some incidents involving fatalities; and

**WHEREAS**, the reckless behavior that typifies the sideshows has been the subject of for-profit videos such as: Ballertown, 23109, High Side'n, and Sidewayz, and these videos portray the City in a negative light, encourage the proliferation of the activity and allow the promoters to popularize and profit from sideshows; and

**WHEREAS**, sideshows and the spectators who are attracted to them cause chaos and confusion in the neighborhoods by interfering with pedestrian and vehicular traffic and by creating a situation where residents and members of the public feel threatened and intimidated; and

**WHEREAS**, the participation of spectators in sideshows fuels these activities and create an environment which allows these activities to flourish and, furthermore, spectators facilitate and aid and abet in these activities by standing in the streets, blocking sidewalks, shouting, playing loud music and engaging in unruly behavior; and

**WHEREAS**, the operators of vehicles involved in sideshows disturb the tranquility of Oakland residents and threaten their safety by screeching their tires, revving their engines, playing

loud music, engaging in reckless stunts and maneuvers, driving over sidewalks and at times crashing into other vehicles, private and public property, and innocent persons; and

**WHEREAS**, sideshow activity creates serious traffic problems; interfere with the safe use of streets and sidewalks; and has resulted in gridlock conditions on arterial roadways leading to the Oakland International Airport; road closures impacting emergency vehicles; the closure of freeway off-ramps and instances where legitimate vehicles and pedestrians are trapped in the middle of these activities; and

**WHEREAS**, these activities are injurious to the health and offensive to the senses; interfere with the peace and quiet of Oakland residents and with their right to enjoy their homes; interfere with the right of business owners to enjoy their property; and interfere with the comfortable enjoyment of life and property of entire communities and neighborhoods in Oakland and, as such, constitute a public nuisance; and

**WHEREAS**, over the past five years the City has spent over \$2 million dollars in an effort to abate sideshows and the attendant public nuisance problems associated with them; and

**WHEREAS**, the City Council seeks to prohibit sideshows on city highways and the gathering of spectators at these events.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND  
HEREBY ORDAINS AS FOLLOWS:**

The Municipal Code is hereby amended to add Chapter 9.60 as follows.

**CHAPTER 9.60 PROHIBITION AGAINST VEHICLE SIDESHOW ACTIVITIES AND  
PENALTIES AGAINST SPECTATORS WHO GATHER AT THESE EVENTS.**

**9.60.010 PURPOSE.**

This chapter is adopted to prohibit sideshow gatherings, processions and assemblages on city streets and highways and to prohibit the gathering of spectators at these events. The purpose of this law is to significantly curb this illegal and nuisance activity. The law targets a very clear, limited population and gives proper notice to citizens of the activities that are considered a nuisance and prohibited under this ordinance. In prohibiting this activity and discouraging spectators, the city intends to take a significant step toward making its streets and highways safe to pedestrians, motorists and the general public.

**9.60.020. FINDINGS.**

The City Council adopts the recitals contained in this ordinance as true and correct and makes these findings an integral part of the Council's decision.

**9.60.030. DEFINITIONS.**

**A. Definitions.**

**“Driver”** means any person who drives or is in physical control of a vehicle.

**“Highway”** means a way or place of whatever nature, which is used by the public for vehicular travel in the City. The definition of highway under this ordinance shall also include off-street parking facilities. It does not include a facility which is specifically designed and legally maintained for the purpose of vehicle exhibitions.

**“Vehicle”** means any transportation device that requires the driver to have in his or her immediate possession a valid driver’s license for the appropriate class of vehicle being driven.

**“Sideshow”** means a gathering, procession or assemblage of vehicles on highways where vehicles in motion are used to exhibit stunts and maneuvers in the presence of spectators.

**“Spectator”** means a person who is knowingly present at the location of a sideshow for the purpose of encouraging, facilitating or aiding and abetting in the sideshow activity. To be present means a person who is within 100 feet of a sideshow activity.

**“Prosecuting Agency”** means the District Attorney or the City Attorney.

**9.60.040. DECLARATION OF PUBLIC NUISANCE.**

- A. A sideshow on a highway is a public nuisance.
- B. Any person who operates or controls a vehicle used as part of a sideshow on a highway is responsible for creating a public nuisance.
- C. Any person who is in a vehicle that is used as part of a sideshow and performs a reckless stunt or maneuver on a highway is responsible for creating a public nuisance.
- D. Any person who is a spectator at a sideshow is responsible for creating a public nuisance.

**9.60.50. PROHIBITED ACTIVITY.**

- A. It is unlawful for any person to operate or control a vehicle used as part of a sideshow event.
- B. It is unlawful for any person who is in a vehicle that is used as part of a sideshow event to perform a reckless stunt or maneuver.
- C. It is unlawful for any person to be a spectator at a sideshow event.

**9.60.60. NON-APPLICABILITY.**

This ordinance does not prohibit members of law enforcement, the medical profession or any other legitimate service provider from being present at a sideshow while in the course of their official duties.

**9.60.70. RELEVANT CIRCUMSTANCES TO PROVE A VIOLATION.**

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

- time of day and nature and description of the scene;
- number of people and vehicles gathered at the scene;
- location of the individual charged in relation to the location of the sideshow activity;
- whether vehicles gathered at the scene are engaged in vehicular stunts and maneuvers;
- whether the individual charged has previously participated in, attended, been present at or aided and abetted in a sideshow;
- how long the individual remains at the scene of a sideshow;
- whether the individual arrived at the scene by driving a vehicle, riding as a passenger in a vehicle, walking, or arriving by some other means;
- whether the individual is facilitating the illegal activity in any manner, such as by encouraging the event, obstructing foot or vehicular traffic or placing barricades or other obstructions upon any highway.

**9.60.80. ADMISSIBILITY OF PRIOR ACTS.**

The list of circumstances set forth in section 9.60.070 is not exclusive. Evidence of prior acts may be admissible to show the propensity of a person to participate in, be present at or attend a sideshow activity, if the prior act or acts occurred within three years of the presently charged offense. These prior acts may be admissible to show that a person had knowledge that a sideshow activity was taking place at the time of the presently charged offense.

**9.60.90. ENFORCEMENT -- PENALTY.**

In addition to any other penalties authorized by law, the prosecuting agency may charge a violation of this ordinance as an infraction or a misdemeanor. A misdemeanor may be punishable by a fine not to exceed \$500 for the first offense, \$750 for the second, and \$1000 for any subsequent offense. A misdemeanor may also be punishable by imprisonment not to exceed six months or, by both, a fine and imprisonment.

**9.60.100. SEVERABILITY.**

The provisions of this ordinance are severable, and if any word, clause, sentence, paragraph, provision, or part of this ordinance, or the application of this ordinance to any person, is declared

invalid, preempted or unconstitutional by any court, said holding shall not invalidate any other portion of this ordinance. The City Council finds and determines that it would have adopted this ordinance without said word, clause, sentence, paragraph, provision or part.

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

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
**NOTICE AND DIGEST**



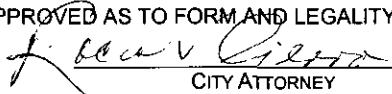
2008 MAY 26 AM 7:19

**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.**

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The Ordinance declares vehicle sideshows on highways a public nuisance and authorizes the City to prohibit these public nuisance events. The Ordinance also authorizes the City to prohibit spectators at these public nuisance events and to seize and forfeit the vehicles used as part of a sideshow event. The Ordinance provides a description of a sideshow event and the criteria to be used by law enforcement to determine whether a violation of the Ordinance has occurred. The Ordinance further approves and authorizes the City Administrator to adopt regulations for the administration of this Ordinance.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY  
  
CITY ATTORNEY

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**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**

**WHEREAS**, sideshows are gatherings, processions or assemblages where persons in vehicles engage in reckless stunts and maneuvers on city streets, sidewalks and other public places in the presence of spectators; and

**WHEREAS**, the history of sideshows in Oakland indicate that these activities place residents, other drivers and spectators in danger of injury or death; promote and cause disorderly conduct, vandalism and unruly behavior; incite violence and create an imminent threat to public safety and order; and

**WHEREAS**, since 1988 Oakland has been the location of numerous sideshows where a pattern of violence and threats of imminent violence has been established in connection with these activities, including numerous shootings, robberies, sexual assaults and even some incidents involving fatalities; and

**WHEREAS**, the reckless behavior that typifies the sideshows has been the subject of for-profit videos such as: *Ballertown*, *23109*, *High Side'n*, and *Sidewayz*, and these videos portray the City in a negative light, encourage the proliferation of the activity and allow the promoters to popularize and profit from sideshows; and

**WHEREAS**, sideshows and the spectators who are attracted to them cause chaos and confusion in the neighborhoods by interfering with pedestrian and vehicular traffic and by creating a situation where residents and members of the public feel threatened and intimidated; and

**WHEREAS**, the participation of spectators in sideshows fuels these activities and create an environment which allows these activities to flourish and spectators facilitate and aid and abet in these activities by standing in the streets, blocking sidewalks, shouting, playing loud music and engaging in unruly behavior; and

**WHEREAS**, the operators of vehicles involved in sideshows disturb the tranquility of Oakland residents and threaten their safety by screeching their tires, revving their engines, playing loud music, engaging in reckless stunts and maneuvers, driving over sidewalks and at times crashing into other vehicles, private and public property, and innocent persons; and

**WHEREAS**, sideshow activity creates serious traffic problems; interfere with the safe use of streets and sidewalks; and has resulted in gridlock conditions on arterial roadways leading to the Oakland International Airport; road closures impacting emergency vehicles; the closure of freeway off-ramps and instances where legitimate vehicles and pedestrians are trapped in the middle of these activities; and

**WHEREAS**, these activities are injurious to the health and offensive to the senses; interfere with the peace and quiet of Oakland residents and with their right to enjoy their homes; interfere with the right of business owners to enjoy their property; and interfere with the comfortable enjoyment of life and property of entire communities and neighborhoods in Oakland and, as such, constitute a public nuisance; and

**WHEREAS**, over the past five years the City has spent over \$2 million dollars in an effort to abate sideshows and the attendant public nuisance problems associated with them; and

**WHEREAS**, the City Council seeks to prohibit sideshows on city highways and the gathering of spectators at these events.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND  
HEREBY ORDAINS AS FOLLOWS:**

The Municipal Code is hereby amended to add Chapter 9.60 as follows.

**CHAPTER 9.60 PROHIBITION AGAINST VEHICLE SIDESHOW EVENTS, PENALTIES  
AGAINST SPECTATORS AND AUTHORITY TO FORFEIT VEHICLES USED IN  
SIDESHOW EVENTS.**

**9.60.010 PURPOSE.**

This chapter is adopted to prohibit sideshow gatherings, processions and assemblages on city streets and highways, to prohibit the gathering of spectators at these events and to provide for the forfeiture of vehicles used in sideshows. The purpose of this law is to significantly curb this illegal and nuisance activity. The law targets a very clear, limited population and gives proper notice to citizens of the activities that are considered a nuisance and prohibited under this ordinance. In prohibiting this activity, discouraging spectators and forfeiting the nuisance vehicles, the city intends to take a significant step toward making its streets and highways safe to pedestrians, motorists and the general public.



**9.60.020. FINDINGS.**

The City Council adopts the recitals contained in this ordinance as true and correct and makes these findings an integral part of the Council's decision.

**9.60.030. DEFINITIONS.**

**A. Definitions.**

**"Driver"** means any person who drives or is in physical control of a vehicle.

**"Highway"** means a way or place of whatever nature, which is used by the public for vehicular travel in the City. The definition of highway under this ordinance shall also include off-street parking facilities. It does not include a facility which is specifically designed and legally maintained for the purpose of vehicle exhibitions.

**"Nuisance Vehicle"** means a vehicle used as part of a sideshow event on a highway.

**"Sideshow"** means a gathering, procession or assemblage of vehicles on highways where vehicles in motion are used to exhibit stunts and maneuvers in the presence of spectators.

**"Spectator"** means a person who is knowingly present at the location of a sideshow for the purpose of encouraging, facilitating or aiding and abetting in the sideshow activity. To be present means a person who is within 100 feet of a sideshow event.

**"Prosecuting Agency"** means the District Attorney or the City Attorney.

**9.60.040. DECLARATION OF PUBLIC NUISANCE**

- A. A sideshow on a highway is a public nuisance.
- B. Any person who operates or controls a vehicle used as part of a sideshow event is responsible for creating a public nuisance.
- C. Any person who is in a vehicle that is used as part of a sideshow event and performs a reckless stunt or maneuver is responsible for creating a public nuisance.
- D. Any person who is a spectator at a sideshow event is responsible for creating a public nuisance.
- E. Any vehicle used as part of a sideshow event constitutes a public nuisance.

**9.60.50. PROHIBITED ACTIVITY**

- A. It is unlawful for any person to operate or control a vehicle used as part of a sideshow event.
- B. It is unlawful for any person who is in a vehicle that is used as part of a sideshow event to perform a reckless stunt or maneuver.
- C. It is unlawful for any person to be a spectator at a sideshow event.
- D. It is unlawful for any vehicle to be part of a sideshow event.

**9.60.60. NON-APPLICABILITY**

This ordinance does not prohibit members of law enforcement, the medical profession or any other legitimate service provider from being present at a sideshow while in the course of their official duties.

**9.60.70. RELEVANT CIRCUMSTANCES TO PROVE A VIOLATION.**

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

- time of day and nature and description of the scene;
- number of people and vehicles gathered at the scene;
- location of the individual charged in relation to the location of the sideshow activity;
- whether vehicles gathered at the scene are engaged in vehicular stunts and maneuvers;
- whether the individual charged has previously participated in, attended, been present at or in some other way aided and abetted in a sideshow;
- how long the individual remains at the scene of a sideshow;
- whether the individual arrived at the scene by driving a vehicle, riding as a passenger in a vehicle, walking, or arriving by some other means;
- whether the individual is facilitating the illegal activity in any manner, such as by encouraging the event, obstructing foot or vehicular traffic or placing barricades or other obstructions upon any highway.

**9.60.80. ADMISSIBILITY OF PRIOR ACTS.**

The list of circumstances set forth in section 9.60.070 is not exclusive. Evidence of prior acts may be admissible to show the propensity of a person to participate in, be present at or attend a sideshow activity, if the prior act or acts occurred within three years of the presently charged offense. These prior acts may be admissible to show that a person had knowledge that a sideshow activity was taking place at the time of the presently charged offense.

**9.60.90. ABATEMENT OF NUISANCE VEHICLES BY SEIZURE AND FORFEITURE.**

**A. Nuisance vehicles.**

Any vehicle used as part of a sideshow event, is declared a nuisance, and the vehicle shall be enjoined and abated as provided in this ordinance. Any person or his or her servant, agent, or employee who owns, leases, conducts, or maintains any vehicle used for any of the purposes or acts prohibited by this ordinance is guilty of a nuisance.

**B. Declaration by court.**

Upon proof that the vehicle was used as part of a sideshow event, the court shall declare the vehicle a nuisance and order that it be forfeited, sold, and the proceeds distributed as provided by this ordinance.

**C. Right, title and interest in property.**

All right, title, and interest in any vehicle that constitutes a nuisance under this ordinance shall vest in the city.

**D. Procedure for Seizure of Vehicle.**

1. Vehicles subject to forfeiture under this ordinance may be seized by a peace officer upon process issued by a court having jurisdiction over the vehicle. Seizure without a court order may be made if any of the following situations exist:
  - a. The seizure is incident to an arrest or a search under a search warrant;
  - b. There is probable cause to believe that the vehicle was used in violation of this ordinance.
2. A peace officer seizing a vehicle shall complete a receipt in accordance with Section 1412 of the Penal Code and deliver it to the person out of whose possession such vehicle was seized.
3. An investigation shall be made by the public agency making the seizure as to any potential claimant to a vehicle whose right, title, interest, or lien is of record in the Department of Motor Vehicles of this or any other state or appropriate federal agency. If the public agency finds that any person, other than the registered owner, is the legal owner, and the ownership did not arise subsequent to the date and time of arrest or seizure of the vehicle or notification of the forfeiture proceedings, it shall within three (3) business days of the vehicle's seizure, send a notice of seizure and notice of a hearing to the legal owner at his or her address appearing on the records of the Department of Motor Vehicles of this or any other state or any appropriate federal agency.
4. Where appropriate, a vehicle seized pursuant to this ordinance may be held as evidence in any proceeding brought by the Prosecuting Agency.

**E. Notice of Seizure and Post-seizure hearing.**

Upon receipt of a request for a hearing within the time prescribed below, the public agency seizing the vehicle shall provide any potential claimant a post-seizure hearing to determine the existence of probable cause to support the seizure. The post-seizure hearing shall be conducted within three (3) business days of the request, or later if the claimant so requests. The public agency will retain the services of an independent hearing officer to conduct the hearing. Failure of either the registered or legal owner, or his or her agent, to request and attend a scheduled hearing within the appropriate time shall constitute a waiver of the hearing and shall satisfy due process requirements. The right to a post-seizure hearing shall expire should no interest claim be filed pursuant to the time provided in section "G" below.

1. The notice of seizure shall include the following information:
  - (a) the name, address and telephone number of the agency providing the notice;
  - (b) the authority and reason for the seizure;
  - (c) a statement that in order to receive a post-seizure hearing, the owners, or their agents, shall request the hearing in person, in writing, or by telephone so that the Prosecuting Agency receives it within ten (10) calendar days of the date of the notice;
  - (d) the time in which a claim of interest in the vehicle seized or subject to forfeiture is required to be filed.
  
2. The scope of the hearing shall be: whether probable cause exists that this ordinance was violated. If the hearing officer finds that probable cause exists, the vehicle shall remain in possession of the City of Oakland until final disposition of the property. If the hearing officer finds that probable cause does not exist, the hearing officer may recommend release of the vehicle pending trial under conditions that preserve the City's interest in the vehicle. The hearing officer may consider the existence of any affirmative defense to the forfeiture if the claimant has filed a claim in accordance with section "G" below. The hearing officer shall also consider whether it would be inappropriate for the vehicle to remain in possession of the City under the circumstances of a particular case based upon a showing of extreme hardship.

**F. Forfeiture.**

1. Except as provided in section F.7 below, if the Prosecuting Agency determines that the factual circumstances warrant that the vehicle be subject to forfeiture, the Prosecuting Agency shall file a petition for forfeiture with the Superior Court of Alameda County.

2. A petition for forfeiture shall be filed as soon as practicable, but in any case within one year of the seizure of the vehicle which is subject to forfeiture.
3. The Prosecuting Agency shall cause a notice of the seizure and of the intended forfeiture proceedings, as well as a notice stating that any interested party may file a verified claim with the Superior Court of Alameda County, to be served by personal delivery or by registered mail upon any person who has an interest in the seized vehicle. The notice shall be accompanied by a claim form as described in section "G" with directions for the filing and service of a claim and notice of the availability of a hearing.
4. An investigation shall be made by the Oakland Police Department as to any claimant to a vehicle whose right, title, interest, or lien is of record in the Department of Motor Vehicles or appropriate federal agency. If the Oakland Police Department finds that any person, other than the registered owner, is the legal owner of the vehicle and such ownership did not arise subsequent to the date and time of arrest, notification of the forfeiture proceedings or seizure of the vehicle, it shall immediately send a notice to the legal owner at the address appearing on the records of the Department of Motor Vehicles or appropriate federal agency.
5. All notices shall set forth the time within which a claim of interest in the vehicle seized or subject to forfeiture is required to be filed pursuant to section "G".
6. With respect to the nuisance vehicles for which forfeiture is sought and as to which forfeiture is contested, the city of Oakland must prove by a preponderance of the evidence that the vehicle was used in violation of this ordinance. The presiding judge of the Superior Court shall assign the action for trial, which may be held before the court or a jury.
7. The Prosecuting Agency may, order the forfeiture of vehicles seized and shall provide notice of the proceedings under this subsection, including:
  - a. A description of the vehicle;
  - b. The date and place of seizure;
  - c. The violation of law alleged with respect to forfeiture of the vehicle;
  - d. The instructions for filing and serving a claim with the Prosecuting Agency pursuant to subsection "G" and the time for filing a claim.
  - e. Notice of the availability of a hearing pursuant to section "G".
8. If no claims are timely filed, the Prosecuting Agency shall prepare a written declaration of forfeiture of the vehicle to the City and dispose of the vehicle in accordance with section "H". A written declaration of forfeiture signed by the Prosecuting Agency shall be deemed to provide good and sufficient title to the forfeited property. The Prosecuting Agency ordering forfeiture pursuant to this section shall provide a copy of the declaration of forfeiture to any person who received notice of the forfeiture proceedings.

9. If a claim is timely filed, then the Prosecuting Agency shall file a petition for forfeiture pursuant to this section within thirty days of the receipt of the claim.
10. Regulations for the administration of this ordinance shall be promulgated by the by the City Administrator or designee within 60 days of the adoption of this ordinance.

**G. Interest claim.**

1. Any person claiming an interest in the vehicle seized pursuant to this ordinance must, at any time within ten (10) days from the date of the notice of seizure, file with the Superior Court of Alameda County a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. The claimant shall serve an endorsed copy of the claim on the Prosecuting Agency within ten days of the filing of the claim.
2. If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than thirty (30) days therefrom.
3. The hearing shall be before the court or jury.
4. The provisions of the Code of Civil Procedure shall apply to proceedings under this ordinance unless otherwise inconsistent with the ordinance's provisions or procedures. In proceedings under this ordinance there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints.

**H. Sale of vehicles.**

In all cases where vehicles seized pursuant to this ordinance are forfeited to the city, the vehicles shall be sold or, at the city's option, a settlement based on the monetary value of the vehicle may be arranged in lieu of forfeiture. The proceeds of any sale or settlement shall be distributed and appropriated as follows:

1. To the bona fide or innocent purchaser, conditional sales vendor, mortgagee or lien holder of the property, if any, up to the amount of his or her interest in the property, when the court or Prosecuting Agency declaring the forfeiture orders a distribution to that person.
2. To the Prosecuting Agency for all expenditures it incurred in connection with the enforcement of this ordinance, included but not limited to the publication of notices of the sale of the vehicle, including expenditures for any necessary repairs, storage, or transportation of any vehicle seized.
3. The remaining funds shall be distributed as follows:

- a. Fifty (50) percent to the local law enforcement entities that participated in the seizure, distributed so as to reflect the proportionate contribution of each agency.
  - b. Fifty (50) percent to the Prosecuting Agency.
4. All the funds distributed to the local law enforcement entities or Prosecuting Agency shall not supplant any funds that would, in the absence of this ordinance, be made available to support the agencies' law enforcement and prosecutorial efforts.

For the purposes of this section, "local governmental entity" means any city, county, or city and county in this state.

**9.60.100. ENFORCEMENT -- PENALTY.**

In addition to any other penalties authorized by law, a violation of this ordinance may be charged as an infraction or a misdemeanor. A misdemeanor may be punishable by a fine not to exceed \$500 for the first offense, \$750 for the second, and \$1000 for any subsequent offense. A misdemeanor may also be punishable by imprisonment not to exceed six months or, by both, a fine and imprisonment.

**9.60.110. SEVERABILITY**

The provisions of this ordinance are severable, and if any word, clause, sentence, paragraph, provision, or part of this ordinance, or the application of this ordinance to any person, is declared invalid, preempted or unconstitutional by any court, said ruling shall not impair or invalidate any other portion of this ordinance. The City Council finds and declares that it would have adopted this ordinance without said word, clause, sentence or provision.

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