

INTRODUCED BY COUNCILMEMBER _____

OFFICE OF THE CITY CLERK
APPROVED AS TO FORM AND LEGALITY
05 JUL 17 2014
CITY ATTORNEY

ORDINANCE NO. 12695 C.M.S.

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.

With this ordinance, the City Council seeks to achieve reform, education and reduce recidivism rates of persons involved in sideshow activity. To that end, the City supports the administration and enforcement of this ordinance in a way that emphasizes community service, education and training (including parental participation for those violations committed

by juveniles). To the extent that the law permits these community-service alternatives to the criminal penalties provided under this Ordinance, the City Council supports those alternatives.

It is the expectation of the City Council that the City Administrator and the Oakland Police Department work with the City Attorney's office, Alameda County District Attorney's Office, Alameda County Probation and Alameda County Juvenile Court to identify specific community service and educational alternatives for violations of the ordinance.

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. Encouraging is defined as someone who urges and assists participants through actions and/or words.

"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. Encouraging is defines as someone who urges and assists participants through actions and/or words.

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.

Violations of this Ordinance shall be as follows. The first offense shall constitute an infraction punishable by a fine of not more than \$500 and/or community service and education. The second offense shall constitute an infraction punishable by a fine of not more than \$750 and/or community service and education. The third and any subsequent offenses shall constitute a misdemeanor punishable by a fine of \$1,000 and/or community service and education, by imprisonment not exceeding six months, or both. This provision shall not be read to preclude the charging or imposition of any other penalties authorized by law.

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.

Introduction Date: JUL 12 2005

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 19 2005, 20

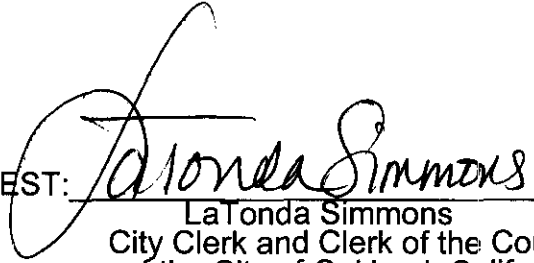
PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: 

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California