

# CITY OF OAKLAND



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January 3, 2006

**HONORABLE CITY COUNCIL**  
**Oakland, California**

**President De La Fuente and Members of the City Council:**

**Subject: Report re Whether To Join in an Amicus Brief to the California Supreme Court Regarding the Case of *O'Connell v. City of Stockton* To Protect Oakland's Beat Feet and Sideshow Vehicle Forfeiture Ordinances**

## **Summary of Action Requested**

The City of Stockton and the League of California Cities have asked other California Cities to join in filing an *amicus* (friend of the court) brief with the California Supreme Court opposing the Third District Court of Appeal's decision in O'Connell v. City of Stockton (2005) 27 Cal.Rptr.3d 696, 05 Cal. Daily Op. Serv. 3410, 2005 Daily Journal D.A.R. 4635, 2005 Daily Journal D.A.R. 481. The Supreme Court will decide whether Stockton's vehicle forfeiture ordinance relating to prostitution and illegal drug activity is preempted by the California Vehicle Code and/or the Health and Safety Code.

## **Background**

In O'Connell v. City of Stockton (Supreme Court Case Number S135160) the California Supreme Court will decide whether Stockton's vehicle forfeiture ordinance relating to prostitution and illegal drug activity is preempted by the California Vehicle Code and/or the Health and Safety Code.

Oakland Municipal Code (OMC) Chapter 9.56, enacted in 1997 and most recently amended in July 2005, provides for the forfeiture of nuisance vehicles used to illegally purchase drugs or used in prostitution, pimping and pandering. OMC Chapter 9.60, passed in July 2005, provides for the forfeiture of nuisance vehicles used in sideshows and penalizes being a spectator at a sideshow event. Both ordinances could be effected, should the Supreme Court uphold the Third District Court of Appeal's decision in O'Connell v. City of Stockton (April 2005) and overrule Horton v. City of Oakland (2000).

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**SUBJECT: Report re Whether To Join in an Amicus Brief to the California Supreme Court Regarding the Case of *O'Connell v. City of Stockton* To Protect Oakland's Beat Feet and Sideshow Vehicle Forfeiture Ordinances**

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In 2000, Oakland won the Horton v. City of Oakland (2000) 82 Cal.App.4<sup>th</sup> 580 (1<sup>st</sup> District) lawsuit, which alleged that state law preempted Oakland's legislation. About a dozen California cities (including Stockton, Richmond, El Cajon, Los Angeles, Long Beach, Bellflower, Costa Mesa, and Riverside) then enacted local forfeiture ordinances modeled on Oakland's law.

Meanwhile, Stockton was sued by Kendra O'Connell and received a favorable judgment, but the Third District Court of Appeal reversed in April 2005, holding that Stockton's ordinance was preempted by state law. On September 6, 2005, the Supreme Court accepted Stockton's petition for review. The Supreme Court will address the direct conflict between the two district courts of appeal in the Horton holding and the O'Connell holding on the issue of pre-emption.

**Fiscal Impact**

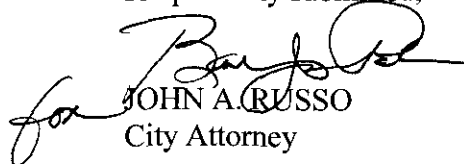
The City will not incur any outside counsel expense because the *amicus* brief will be drafted by the Los Angeles City Attorney's Office for the League of California Cities, and any input from the Oakland City Attorney will be performed by staff attorneys.

**Recommendation**

The City Attorney recommends that the City Council authorize it to support the City of Stockton and the California League of Cities by joining in and signing the amicus brief to be filed with the California Supreme Court in O'Connell v. City of Stockton (Supreme Court Case Number S135160).

This matter was heard in closed session on December 6, 2005. ✶

Respectfully submitted,

  
JOHN A. RUSSO  
City Attorney

Attorney Assigned:  
Pelayo A. Llamas, Jr.

**CITY COUNCIL**

**JAN 03 2006**

05 DEC 19 AM 9:30  
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# Oakland City Council

RESOLUTION No. \_\_\_\_\_ C.M.S.

## RESOLUTION AUTHORIZING THE CITY ATTORNEY TO JOIN IN AN AMICUS BRIEF TO THE CALIFORNIA SUPREME COURT REGARDING THE CASE OF O'CONNELL v. CITY OF STOCKTON TO PROTECT OAKLAND'S BEAT FEET AND SIDESHOW VEHICLE FORFEITURE ORDINANCES

**WHEREAS**, in O'Connell v. City of Stockton (2005) 27 Cal.Rptr.3d 696, 05 Cal. Daily Op. Serv. 3410, 2005 Daily Journal D.A.R. 4635, 2005 Daily Journal D.A.R. 481, the Third District Court of Appeal held that Stockton's nuisance vehicle forfeiture ordinance was preempted by Health and Safety Code section 11469 et seq and by Vehicle Code sections 21 and 22659.5; and

**WHEREAS**, the California Supreme Court has accepted Stockton's petition for review in O'Connell v. City of Stockton (Supreme Court Case Number S135160); and

**WHEREAS**, if upheld by the California Supreme Court, the O'Connell decision may have an adverse impact on Oakland Municipal Code chapter 9.56 and 9.60 which relate to forfeiture of nuisance vehicles used in illegal drug purchases, solicitation of prostitution, pandering, and sideshows; and

**WHEREAS**, the League of California Cities has decided to file an *amicus* (friend of the court) brief to the California Supreme Court in support of the City of Stockton and has asked Oakland and other cities to join in the brief; now therefore be it

**RESOLVED**, that the City Attorney, on behalf of the City of Oakland, is authorized to sign and join in an *amicus* brief to the California Supreme Court advocating that the O'Connell decision be overruled and supporting the City of Stockton's position.


IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -  
ABSENT -  
ABSTENTION -

ATTEST:

  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California

OAKLAND CITY COUNCIL

JAN 03 2006

