



AGENDA REPORT

TO: HENRY L. GARDNER
INTERIM CITY ADMINISTRATOR

FROM: Gregory Minor
Assistant to the
City Administrator

SUBJECT: Informational Report on Draft
Regulations for Circus Events

DATE: July 10, 2014

City Administrator
Approval

Date

7/10/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the Public Safety Committee accept the draft regulations for circus permits subject to any modifications suggested by the Public Safety Committee and the County Board of Supervisors in the fall.

EXECUTIVE SUMMARY

In December 2013 the City Council amended Oakland Municipal Code (OMC) Section 9.52, Special Event Permits, to include specific requirements for circus events. The ordinance requires the City Administrator to draft related regulations and present them to the Public Safety Committee as well as the Alameda County Board of Supervisors for public review and comment. Accordingly, staff presents for review and comment the attached draft regulations, which outline:

- facility and animal conditions;
- penalty provisions;
- and the process for appealing violations.

OUTCOME

Constructive feedback regarding the draft circus regulations will shape the final version of the regulations and thereby the processes circuses must follow when visiting Oakland.

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BACKGROUND

As noted above, the City Council amended OMC Chapter 9.52 in late 2013 to address circus events in Oakland and asked the City Administrator to adopt regulations on certain topics:

The City Administrator shall have the power to adopt regulations relevant to circus events covered under 9.52.065 [Contents of permit applications for circuses which include entertainment by a trained animal or a restricted animal], to enforce this chapter and to provide for the welfare of all animals and restricted animals and for the health and safety of the public. These regulations shall include, but are not limited to facilities inspections, restricted and other animal health inspections by City staff including any experts or consultants appointed by the Chief of Police, and inspections of the restricted and other animals' food quality, the production of veterinary medical records, the production of test results for disease, and other health-related information. OMC 9.52.080.

The City Administrator shall enact regulations to enforce [OMC 9.52.115 Denial of Future Circus Event Permits based on past violations], and the regulations shall include criteria describing types of violations, along with corresponding mandatory denial periods, depending on the seriousness of the past violations and/or the number of past violations. OMC 9.52.115.

The ordinance then requires the City Administrator to present a draft version of these regulations for public review and comment. (Ordinance 13209, Section 3).

ANALYSIS

Using the provisions of OMC Chapter 9.52 highlighted above as a guide, staff drafted the attached draft regulations that identify specific facility and animal conditions as well as permit revocation and violation procedures.

In regards to facility and animal conditions, the regulations lay out conditions that circuses must provide both in general and to specifically identified animals (See Section C, Circus Conditions). This structure is intended to allow City staff and any appointed consultants who assess these conditions both broad guidelines as well as a checklist for certain animals.¹

The regulations also prescribe processes that will take place if required conditions are not met. For example, in extreme circumstances a Notice of Violation with no opportunity to correct may be given or the Special Event Permit may be revoked altogether (Section D, Permit Revocation; Section E, Violations). Likewise, for less serious violations, a Notice to Correct may be issued. Staff provided examples in the regulations. The regulations then include a chart with guidelines

¹ In addition to the pre-performance inspection, staff may monitor the conditions required under the Circus permit regulations during and after the performance as well (Section B, Inspections).

for how long the applicant will be disqualified from being granted a future circus permit (Section F, Mandatory Denial of Application). Since the types of potential violations and the corresponding harm ranges so greatly, this chart simply provides a guideline and six general factors for determining the denial period (*Id.*). Finally, the regulations outline the administrative hearing process for contesting any cited violations, including the appeal period, hearing process, and applicable burden of proof.

PUBLIC OUTREACH/INTEREST

The draft Circus regulations were composed through both internal and external collaborations. Externally, City staff reached out to different municipal permitting departments, including Los Angeles and Marin County. Staff also shared the initial draft regulations with representatives of Feld Entertainment, which owns Ringling Bros. and Barnum & Bailey. Feld representatives then offered suggested revisions with City staff.

Additionally, after this report is presented to the Public Safety Committee, staff will present the draft regulations to the Alameda County Board of Supervisors for their review and comment.

COORDINATION

The draft regulations were the product of the Oakland Police Department's Special Events Unit, Oakland Animal Services, and the City Administrator's Office Special Permits Division. The City Attorney and the Budget Office were also consulted in the preparation of this report.

COST SUMMARY/IMPLICATIONS

It is possible that heightened animal and public safety requirements contained in the draft circus regulations may discourage some circus providers from visiting Oakland and thus reduce revenue for the City. However, as mentioned above, Feld Entertainment has been consulted during the drafting of these regulations and many of their suggested revisions were accepted by City staff. This indicates that these regulations may not be as discouraging to circuses as might appear at first glance, particularly in light of existing state and federal law on the same subject.

SUSTAINABLE OPPORTUNITIES

Economic: Increased regulation of circuses may discourage some circuses from visiting Oakland; it could also attract more professional and responsible circus providers.

Environmental: Reasonable circus regulations that encourage circus providers to continue to visit Oakland will allow local families to attend circus events in Oakland rather than commute long distances to other venues.

Social Equity: Reasonable circus regulations can help both animal and public safety while still allowing Oakland residents to attend family entertainment close to home.

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For questions regarding this report, please contact Greg Minor, Assistant to the City Administrator, at (510) 238-6370.

Respectfully submitted,



Greg Minor
Assistant to the City Administrator
City Administrator's Office

Reviewed by:

Chantal Cotton, Assistant to the City Administrator

Prepared by:

Greg Minor, Assistant to the City Administrator

Encl: Draft Regulations for Circus Permits

DRAFT REGULATIONS FOR CIRCUS PERMITS

Pursuant to Oakland Municipal Code (OMC) Sections 9.52.085(B) and 9.52.115, the City Administrator hereby adopts the following regulations to provide for administration of Circus Events, animal and restricted animal welfare, and public safety:

A. **ADDITIONAL APPLICATION INFORMATION:** In addition to the information required under OMC 9.52.065, applicants seeking a permit for a circus event shall provide the following:

- 1) Current copies of United States Department of Agriculture licenses and California Fish & Wildlife permits, if applicable. Compliance with all conditions of such permits and with all other federal, state, and local laws, regulation, and rules, including, but not limited to, those conditions of the USDA, the US Fish & Wildlife Service, and the California Department of Fish & Wildlife will be required.
- 2) The event sponsor's veterinarian's name and telephone number.
- 3) An animal confinement map and a plan with specific descriptions of how each species is to be confined as well as a daily time schedule for the watering and feeding of animals.
- 4) An inventory of all electrical control devices and all animal handling and restraint equipment, including drugs and firearms.
- 5) Copies of the fire prevention plan and natural disaster response plan, as they relate to animals.

B. **INSPECTIONS:** To provide for the welfare of all animals and restricted animals and for the health and safety of the public, an inspection shall be conducted of the Circus 24 to 48 hours prior to the commencement of the event. This inspection does not preclude additional monitoring during and after the Circus performance. The pre-performance inspection shall include but is not limited to the following:

- 1) Facilities inspections.
- 2) Restricted and other animal health inspections by City staff including experts or consultants appointed by the Chief of Police.
- 3) Inspections of the restricted animal's food quality.
- 4) Review of veterinary medical records to include:
 - i. Test results for disease
 - ii. Other health-related information.

C. **CIRCUS CONDITIONS:**

- 1) **General Facility Conditions:**
 - i. A licensed veterinarian shall be on call or on site for the entire period of time that the Circus is in the City Of Oakland.
 - ii. Enclosures shall be kept clean and sanitary at all times, including the removal of excessive manure and other waste products, standing water, and mud.

- iii. Animals shall be placed in interim secure confinement during any cleaning process involving hosing and disinfecting. Cleaning shall be done at least once a day, as dictated by the nature of the housing.
- iv. Animal transport vehicles must be in conformance with USDA and California statutory standards (14 CCR 671.4). The vehicles shall be cleaned of feces and debris upon unloading and any wastes properly disposed. No potentially injurious conditions shall exist in the transport vehicles.
- v. All tack and equipment shall fit properly and be in good working order.
- vi. There must be adult supervision in animal areas.
- vii. All ground surfaces to which animals have access shall be free of hazardous conditions. All animal enclosure fencing shall be structurally sound in order to prevent escape and injuries.
- viii. Animals shall have access to clean water in safe containers so that each animal receives sufficient water. Species appropriate food shall be provided to all animals.

2) General Animal Conditions:

i. Housing:

- a. Enclosures and housing areas shall be kept secured at all times so that animals cannot escape and the public cannot gain access.
- b. The on-site manager shall prevent excessive handling or stressful teasing of animals by the public.
- c. Individual animals and species temperamentally unsuited to each other shall not be housed together or near each other so as to cause annoyance or fighting.
- d. No animal shall be tied to another animal in a manner that jeopardizes the animal's health or public's safety.
- e. Sick and/or injured animals shall be isolated from healthy animals as prescribed by a veterinarian.
- f. Animals shall be provided with sufficient protection from the elements at all times.

ii. Performance:

- a. No underweight, sick, diseased, lame, or deformed animal shall be worked or displayed. In addition, no animal exhibiting whip marks or welts shall be displayed.
- b. All working or performing animals shall be provided with adequate rest periods as required by the individual animal's needs.
- c. Fire may only be used during an animal performance if this use of fire has been presented to and approved by City staff during the pre-performance inspection.
- d. Electrical devices, other than electric fencing, shall not be used as a means of control, except in case of an emergency. Sedation or tranquilization of animals to alter behavior or performance shall be prohibited unless prescribed by a veterinarian. Tranquilization

shall only occur in the event of an emergency or for medical purposes under the supervision of a licensed veterinarian.

- e. Any animals in advanced stages of pregnancy shall not be allowed to perform unless approved by the attending veterinarian.

3) Specific Animal Conditions:

i. Elephants:

- a. Elephants shall be housed behind corral or electric fencing.
- b. No elephant rides permitted.
- c. Records regarding trunk wash and blood tests for tuberculosis shall be provided to City staff at or before the inspection.

ii. Reptiles and Amphibians:

- a. All reptiles and amphibians must be provided with substrate, proper lighting, a heat source, where appropriate, and properly ventilated caging.
- b. Animals requiring prey food shall not be fed when on display.
- c. Each animal shall have sufficient space to move away from other animals, to move laterally, or to enter hiding areas. Animals shall not be forced to touch the top or sides of the enclosure.

iii. Pygmy Hippo:

- a. They shall be provided at all times, when on display, with an appropriate aquatic habitat with nonskid ramp access. The ramp shall be no more than 35 degrees in pitch. The animal shall be able to completely enter into, submerge in, and exit from temperate water. In addition, they shall have access to indoor quarters and adequate shelter from the elements.

iv. Exotic Cats:

- a. In accordance with USDA regulations, all cages for all exotic cats shall provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement.
- b. The exotic cats shall have daily access to an exercise area, either alone or in compatible groups, free of restraint.
- c. The exotic cat shall be properly secured at all times so as to prohibit access by the public. Such exhibits shall have exclusionary barriers in a position to deter unauthorized public access to the animals, prevent any escape of animals, and to prevent any direct physical contact between the animals and the public.
- d. The exotic cat performance enclosure in the main arena shall be securely grounded and stabilized. Tigers may be held in cages without a top only when the strength of the materials and the construction meets the specifications as required by federal or state law and the sides of the cage are a minimum of 16 feet high with the top three feet turned inward at a 45 degree angle. There shall be no trees or other structures which could in any way assist the

animal in climbing or jumping located within 15 feet of the cage side.

v. Equines:

- a. The exhibitor shall not use bit checking that either injures an equine or significantly compromises the movement or vision of an equine. In any case, bit checking shall not exceed five minutes in duration.
- b. Each equine shall be provided with an individual stall or community corral area that is of sufficient size to enable the equine to comfortably stand up, turn around, and lie down.
- c. Equines may be tied either directly for supervised activities such as grooming, hoof care, medical procedures and tacking or for limited periods of temporary restraint.
- d. All equines shall be provided with an adequate exercise area and shall receive, at least, 15 minutes of free exercise daily.
- e. Any equine that exhibits signs of saddle sores, open wounds, or lameness shall not be displayed or worked.
- f. Pony rides shall be conducted with individual handlers leading one pony at a time.
- g. All equines shall be currently vaccinated against rabies, rhino, influenza, tetanus, and equine encephalitis. A health certificate that documents negative EIA (equine infectious anemia) test conducted no more than 180 days before the Oakland performances, with a current worming sequence shall be provided to the City before or at the time of inspection.
- h. Hoof picking and daily grooming shall be performed daily. All hooves shall be trimmed or shod according to the animal's individual needs.
- i. All stallions must be housed in secure confinement. No mares in heat shall be housed within 50 feet of any stallion.

vi. Dogs:

- a. All dogs on the premises, including personal pets shall be micro-chipped or have proper identification at all times except during performances.
- b. Proof of current vaccinations including DHPP, bordetella, and rabies along with a heartworm test by all performing dogs shall be provided to the City at or before the time of inspection.
- c. All dogs shall be confined or under the immediate control of a responsible person at all times. Tethering, consistent with the provisions of Penal Code 597(t), is considered adequate confinement.

vii. Hoof Stock:

- a. Proof of current tests of all goats and sheep for Q-fever shall be provided at or before the inspection. The Event sponsor shall document brucellosis and appropriate pseudorabies testing or

isolation for all swine species. For bovine species, the event sponsor shall document appropriate brucellosis protocols, TB tests, VS and scabies free inspection certificate. No animal testing positive for any of these diseases shall be permitted to enter the City Of Oakland.

- b. All hooves must be adequately trimmed as appropriate for each species/animal.
- c. Livestock shall be provided with enclosures of a sufficient size to enable the animal to comfortably stand up, turn around, and lie down.

D. PERMIT REVOCATION: Permit revocation can be ordered for any grounds stated in OMC 9.52.90 and 9.52.100 (grounds for denial). Permit Revocation may occur at any time, including during a performance, in which case the performance must cease. Notice of Revocation shall be accompanied by a written statement documenting the revocation with reference to the legal grounds and general factual basis.

E. VIOLATIONS: Violations of OMC 9.52, regulations for circus permits, or any permit conditions may be handled in the following way:

1) Violation without opportunity to correct: As a general rule, a notice of violation may be issued in the first instance for any violation that poses a clear and immediate danger to the public or animals.

2) Notice to Correct: Notice to correct may be issued for lower level violations which do not pose a clear and immediate danger to the public or animals. The violations shall be corrected by a re-inspection date of not less than 24 hours. Failure to correct in the allotted time shall result in a more serious violation. Violations of the following are examples of lower level violations.

- i. Not providing the appropriate documentation with the permit application as governed by OMC 9.52.065.
- ii. Sanitary keeping of animals as governed by OMC 6.04.300.
- iii. California Code of Regulations, Title 14, Sections 671.2 (Humane Care and Treatment Standards) which do not pose a danger to the public or animals.
- iv. California Code of Regulations, Title 14, 671.3 (Minimum Facility and Caging Standards for Wild Animals Housed at Permanent Facilities) which do not pose a danger to the public or animals.

3) Notices of Violation shall include the following:

- i. A statement that an appeal can be filed no later than five (5) days after the Notice.

- ii. A statement that pursuant to OMC 9.52.115 a violation of the Permit Conditions or any laws related to Circus Permits in Oakland shall result in mandatory denial of future permit applications between 12 to 60 months.

F. MANDATORY DENIAL OF APPLICATION:

- 1) Pursuant to OMC 9.52.115, violations of OMC 9.52, including these regulations, shall result in mandatory denial of applications by the same person/entity for future Circus permits, for a period between 12 and 60 months.
- 2) The following table of violations offers guidelines for the corresponding duration of mandatory permit application denial to be imposed. However, all relevant factors shall be considered when determining the length of the mandatory denial, including but not limited to the following:
 - i. Existence of multiple violations;
 - ii. Whether the applicant is a repeat offender;
 - iii. Amount of property damage caused;
 - iv. Costs incurred by the City of Oakland as a result of the violation(s);
 - v. Whether violation(s) resulted in injury and/or death
 - vi. Whether violator took any corrective action.

Violation Description	Duration of Mandatory Denial (measured from the date of violation)
<p>Any of the below listed uncorrected lower level violations which have not been corrected within 24 hours and do not pose a danger to the public or animals:</p> <p>a) Failing to provide the appropriate documentation with the permit application as governed by OMC 9.52.065.</p> <p>b) Sanitary keeping of animals as governed by OMC 6.04.300.</p> <p>c) Violations of the California Code of Regulations, Title 14, Sections 671.2 (Humane Care and Treatment Standards) which does not pose a danger to the public or animals.</p> <p>d) Violations of the California Code of Regulations, Title 14, Section 671.3 (Minimum Facility and Caging Standards for Wild Animals Housed at Permanent Facilities) which do not pose a danger to the public or animals.</p> <p>e) Violations of California Fish and Wildlife and US Fish and Wildlife in regards to permits and licensing of restricted animals.</p>	12 months

f) Violations of Animal Welfare Act in regards to permits and licensing.	
g) Violations of OMC 9.52 or its Regulations for Circus Permits	
Violations of the above listed codes resulting in major property damage.	Up to 24 months
Violations of the above listed codes resulting in minor injury to people.	Up to 36 months
Violations of the above listed codes resulting in minor property damage and injury to people. In addition, any violation of animal cruelty/neglect as defined in California Penal Code Sections 597 and 597.1 which results in minor injury to the animal.	Up to 48 months
Violations of the above listed codes in regards to public safety causing major property damage and major injury/death to people. In addition, any violation of animal cruelty/neglect as defined in California Penal Code Sections 597 and 597.1 which results in major injury/death to the animal.	Up to 60 months

G. HEARINGS PROCESS FOR VIOLATIONS:

- 1) Any person to whom a Notice of Violation or Permit Revocation has been issued may appeal the matter to an administrative Hearing Officer. This appeal must be filed with the Special Events Unit of the Oakland Police Department within five days of the Notice of Violation or Permit Revocation.
- 2) The Hearing Office shall not be bound by the common law or statutory rules of evidence and procedure but inquiry shall be made in the manner, through oral testimony and records, which is best calculated to ascertain the facts underlying the Permit Revocation or Notice of Violation and carry out the spirit and provisions of OMC 9.52.
- 3) The party appealing the violation has the burden of disproving the cited violation or basis for permit revocation under a preponderance of evidence standard.
- 4) The determination made by the Hearing Officer regarding the violation(s) resulting from the administrative hearing shall be the final administrative remedy for the appealing party.