

1 DAVID LOY, Cal. Bar No. 229235
ANN CAPPETTA, Cal. Bar No. 354079
2 FIRST AMENDMENT COALITION
534 4th Street, Suite B
3 San Rafael, CA 94901-3334
Telephone: 415.460.5060
4 Email: dloy@firstamendmentcoalition.org
acappetta@firstamendmentcoalition.org

5 Attorneys for Plaintiff JOSE ANTONIO GARCIA
6
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
10

11 JOSE ANTONIO GARCIA,
12 Plaintiff,
13 v.
14 COUNTY OF ALAMEDA, and YESENIA
SANCHEZ, Sheriff of Alameda County, in her
15 official capacity,
16 Defendants.

Case No. 3:24-cv-03997-RS
**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
INJUNCTION**
Date: September 5, 2024
Time: 1:30 p.m.
Judge: Honorable Richard Seeborg
Ctrm: Courtroom 3 – 17th Floor

17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>Page</u>
NOTICE OF MOTION AND MOTION	1
MEMORANDUM OF POINTS AND AUTHORITIES	2
I. ISSUE PRESENTED	2
II. INTRODUCTION.....	2
III. BACKGROUND.....	3
A. Feroso Covers Sideshows in Unincorporated Alameda County, Where Firsthand Reporting and Recording Offer Key Context to Readers.	3
B. The Ordinance Criminalizes Observing and thus Recording or Reporting on Sideshows and Prevents Feroso from Critical Newsgathering.	4
IV. LEGAL STANDARD	6
V. ARGUMENT	6
A. The Ordinance Likely Violates the First Amendment as a Content-Based Restriction on Protected Speech.....	7
1. The Ordinance Restricts Access to a Traditional Public Forum and Effectively Criminalizes the Protected Speech of Newsgathering and Recording or Reporting on Events of Public Concern.	7
2. The First Amendment Protects Speech About Unlawful Conduct.	9
3. The Ordinance Is a Content-Based Restriction on Speech As It Prohibits Recording or Reporting on the Defined Topic of Sideshows.....	12
4. The Ordinance Fails Strict Scrutiny Because the County May Punish the Unlawful Conduct of Engaging in a Sideshow Without Restricting Protected Speech About Sideshows.....	13
B. Feroso Is Suffering Irreparable Harm, and the Balance of Equities and Public Interest Favor an Injunction Protecting His First Amendment Rights.....	16
C. No Bond Should be Required.....	17
VI. CONCLUSION	18

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

CASES

ACLU v. Alvarez
679 F.3d 583 (7th Cir. 2012)..... 9

Am. Beverage Ass’n v. City & County of San Francisco
916 F.3d 749 (9th Cir. 2019) (en banc)..... 17

Animal Legal Def. Fund v. Wasden
878 F.3d 1184 (9th Cir. 2018)..... 8, 12, 13

Ashcroft v. Free Speech Coal.
535 U.S. 234 (2002) 11, 16

Askins v. U.S. Dep’t of Homeland Sec.
899 F.3d 1035 (9th Cir. 2018)..... 8, 13

Baca v. Moreno Valley Unified Sch. Dist.
936 F. Supp. 719 (C.D. Cal. 1996)..... 17

Bartnicki v. Vopper
532 U.S. 514 (2001) 16

Bass v. First Pac. Networks, Inc.
219 F.3d 1052 (9th Cir. 2000)..... 17

Berger v. City of Seattle
569 F.3d 1029 (9th Cir. 2009)..... 8

Bible Club v. Placentia-Yorba Linda Sch. Dist.
573 F. Supp. 2d 1291 (C.D. Cal. 2008)..... 17

Branzburg v. Hayes
408 U.S. 665 (1972) 8

Brown v. Ent. Merchs. Ass’n
564 U.S. 786 (2011) 16

Brown v. Kemp
86 F.4th 745 (7th Cir. 2023)..... 9

Cal. First Amend. Coal. v. Calderon
150 F.3d 976 (9th Cir. 1998)..... 8

Carey v. Brown
447 U.S. 455 (1980) 13

1 *Chestnut v. Wallace*
 2 947 F.3d 1085 (8th Cir. 2020)..... 8

3 *City of Austin v. Reagan Nat’l Advert. of Austin, LLC*
 4 596 U.S. 61 (2022) 12, 13

5 *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*
 6 657 F.3d 936 (9th Cir. 2011)..... 14

7 *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*
 8 82 F.4th 664 (9th Cir. 2023)..... 16

9 *Galassini v. Town of Fountain Hills*
 10 No. CV-11-02097-PHX, 2011 U.S. Dist. LEXIS 128294 (D. Ariz. Nov. 3, 2011)..... 17

11 *Gorbach v. Reno*
 12 219 F.3d 1087 (9th Cir. 2000)..... 17

13 *Holt v. Hobbs*
 14 574 U.S. 352 (2015) 13

15 *IMDb.com Inc. v. Becerra*
 16 962 F.3d 1111 (9th Cir. 2020)..... 13, 15

17 *Index Newspapers LLC v. U.S. Marshals Serv.*
 18 977 F.3d 817 (9th Cir. 2020)..... 15

19 *Johnson v. Couturier*
 20 572 F.3d 1067 (9th Cir. 2009)..... 17

21 *Keenan v. Superior Ct.*
 22 27 Cal. 4th 413 (2002)..... 10

23 *Leigh v. Salazar*
 24 677 F.3d 892 (9th Cir. 2012)..... 8

25 *McCullen v. Coakley*
 26 573 U.S. 464 (2014) 7, 12, 15

27 *Meinecke v. City of Seattle*
 28 99 F.4th 514 (9th Cir. 2024)..... 6, 14, 16, 17

Mills v. Alabama
 384 U.S. 214 (1966) 10

People for the Ethical Treatment of Animals, Inc. v. N.C. Farm Bureau Fed’n, Inc.
 60 F.4th 815 (4th Cir. 2023)..... 9

Police Dep’t of Chi. v. Mosley
 408 U.S. 92 (1972) 13

1 *Reed v. Town of Gilbert*
 2 576 U.S. 155 (2015) 12

3 *Rice v. Paladin Enters.*
 4 128 F.3d 233 (4th Cir. 1997)..... 11

5 *Sanchez v. City of Atherton*
 6 No. 22-cv-03106, 2023 U.S. Dist. LEXIS 3763 (N.D. Cal. 2023) 8

7 *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*
 8 502 U.S. 105 (1991) 9, 12, 16

9 *United States v. Playboy Ent. Grp.*
 10 529 U.S. 803 (2000) 13

11 *United States v. Stevens*
 12 559 U.S. 460 (2010) 9

13 *W. Watersheds Project v. Michael*
 14 869 F.3d 1189 (10th Cir. 2017)..... 9

15 *Winters v. New York*
 16 333 U.S. 507 (1948) 10

17 **STATUTES**

18 **Alameda County Code**

19 § 10.40 4

20 § 10.40.020 5, 12, 13

21 § 10.40.030 12

22 § 10.40.030(A)–(B) 5

23 § 10.40.050 5

24 Alameda County Ordinance No. 2023-31 1

25 California Health & Safety Code § 41800 6, 14

26 **California Penal Code**

27 § 246.3 6, 14§

28 374 6, 14

§ 415(2) 6, 14

§ 594 6, 14

California Vehicle Code

§ 22500 6, 14

§ 23109 6, 14

§ 23152 6, 14

Oakland, Cal., Code §§ 10.74.010-10.74.090 (2023) 6, 14

1 **OTHER AUTHORITIES**

2 Alyssa Goard, *San Jose sideshow near Santana Row injures spectator, police officer*, NBC
 3 Bay Area (June 16, 2024), <https://www.nbcbayarea.com/news/local/south-bay/santana-row-sideshow/3568247/> (last updated June 17, 2024, 4:47 AM) 11

4 Caleb Lunetta, *Street Takeover Events Involving 200 People Thwarted Throughout San
 5 Diego Last Weekend*, San Diego Union-Tribune (June 5, 2024, 8:08 PM) (last updated
 6 June 6, 2024, 12:23 AM)..... 14

7 Daniel González & Gustavo Solis, *A Human Smuggler, and the Wall That Will Make Him
 Rich*, Desert Sun (Sept. 27, 2017), <https://perma.cc/ME7E-729W> 10

8 David Hernandez, *11 Arrested, 51 Cited During Street Takeovers in San Diego, Spring
 9 Valley*, San Diego Union-Tribune (Sept. 6, 2022, 8:45 PM),
 10 [https://www.sandiegouniontribune.com/news/public-safety/story/2022-09-06/11-
 11 arrested-52-cited-during-street-takeovers-in-san-diego-spring-valley](https://www.sandiegouniontribune.com/news/public-safety/story/2022-09-06/11-arrested-52-cited-during-street-takeovers-in-san-diego-spring-valley) (last updated Sept.
 7, 12:45 AM) 15

12 Federal Rule of Civil Procedure 65(c) 17

13 John Ringer & Meghna Chakrabarti, *The Reality of the Drug Trade in San Francisco*,
 14 WBUR (Nov. 2, 2022), [https://www.wbur.org/onpoint/2022/11/02/tenderloin-reality-
 of-the-drug-trade-in-san-francisco](https://www.wbur.org/onpoint/2022/11/02/tenderloin-reality-of-the-drug-trade-in-san-francisco) 10

15 Jose Feroso, *Sharing our reporting on traffic safety and systems with high schoolers*,
 16 Oaklandside (May 17, 2023, 10:08 AM), [https://oaklandside.org/2023/05/17/sharing-
 our-traffic-violence-reporting-castlemont-ousd-high-school-public-health/](https://oaklandside.org/2023/05/17/sharing-our-traffic-violence-reporting-castlemont-ousd-high-school-public-health/) 10

17 Karen Kucher, *Officers Seize 13 Vehicles, Arrest 2 in Connection with Street Takeover
 18 'Sideshows' in San Diego*, San Diego Union-Tribune (May 2, 2024, 8:30 PM),
 19 [https://www.sandiegouniontribune.com/news/public-safety/story/2024-05-02/officers-
 seize-vehicles-street-takeover-sideshows](https://www.sandiegouniontribune.com/news/public-safety/story/2024-05-02/officers-seize-vehicles-street-takeover-sideshows) (last updated May 3, 12:30 AM)..... 15

20 Kevin Ko, *San Francisco police chief promises accountability, but so far no arrests in
 21 Sunday sideshows*, CBS News Bay Area (June 11, 2024, 5:59 PM),
 22 [https://www.cbsnews.com/sanfrancisco/news/san-francisco-police-chief-promises-
 accountability-but-no-arrests-so-far-in-weekend-sideshows/](https://www.cbsnews.com/sanfrancisco/news/san-francisco-police-chief-promises-accountability-but-no-arrests-so-far-in-weekend-sideshows/) 11, 12

23 Vice, *Illegal Border Crossing in Mexico*, YouTube (May 31, 2012),
<https://perma.cc/7VJF-6SNP>..... 10

24 Will Kerr, *Thieves Are Using Apple AirTags to Steal Cars. Here's How to Stop Them*, By
 25 Miles (June 10, 2022), <https://perma.cc/M8AL-3S7M>..... 10

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION AND MOTION

TO THE COURT, DEFENDANTS, AND ALL COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that on September 5, 2024 at 1:30 p.m., or as soon thereafter as the matter can be heard before the Honorable Richard Seeborg, in Courtroom 3 on the 17th Floor of the San Francisco Division of the above-captioned court, Plaintiff Jose Antonio Garcia¹ will and hereby does move this Court to grant a preliminary injunction to enjoin Defendants and their officers, agents, servants, employees, attorneys, and anyone in active concert or participation with any of the foregoing persons (collectively, “County”) from enforcing Alameda County Ordinance No. 2023-31 (“Ordinance”), codified at Chapter 10.40 of the Alameda County Code, against Feroso in his capacity as a reporter. The Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the supporting declarations and exhibits thereto, all pleading and papers filed in this action, and such additional papers and arguments as may be presented at or in connection with the hearing.

Feroso seeks a preliminary injunction prohibiting the County from enforcing the Ordinance against him for observing, recording, or reporting on sideshows or related preparations in his capacity as a reporter. The requested injunction would prohibit the County from citing, detaining, arresting, or seeking prosecution of Feroso for an alleged violation of the Ordinance arising from his work as a reporter.

¹ Garcia writes under his maternal family surname, “Jose Feroso,” and will be referred to by this professional pen name in the remainder of the notice of motion, motion, and memorandum of points and authorities.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. ISSUE PRESENTED**

3 Should the Court grant a preliminary injunction prohibiting the County from enforcing the
4 Ordinance against Feroso in his capacity as a reporter because he is likely to prevail on his claim
5 that as applied to him the Ordinance is a content-based restriction on speech that violates the First
6 Amendment by criminalizing journalism on matters of public concern?

7 **II. INTRODUCTION**

8 Journalism is not a crime, yet the Ordinance makes it unlawful to observe, record, and
9 report news of public concern. This Court’s intervention is necessary to protect the First
10 Amendment right to gather news and inform the public.

11 Jose Feroso is the road safety beat reporter for *The Oaklandside*. To perform his job
12 effectively, he needs to cover sideshows—controversial events where drivers take over
13 intersections with their cars as they skid in circles while performing stunts. Previously, he has
14 interviewed residents and business owners who are affected by the sideshows, detailed efforts to
15 curb sideshows through enforcement and traffic safety measures, and performed data analysis to
16 map sideshow hotspots. But Feroso’s readers need and want more firsthand news on sideshows
17 to understand what is happening in their communities and make informed decisions about reforms.

18 Yet, in Alameda County, the Ordinance criminalizes the mere observation of “Sideshow
19 Events” occurring on public streets. By punishing observation of sideshows, it inherently prohibits
20 recording or reporting on them, but it does not prevent recording or reporting on other events or
21 matters at the same time and place. Therefore, the Ordinance unconstitutionally punishes protected
22 speech based on its content. Existing laws already prohibit reckless driving and other dangerous
23 activities that often occur at sideshows. As other jurisdictions have done, the County could have
24 bolstered enforcement of those laws or adopted an ordinance aimed at the promoters or organizers
25 of sideshows, but this Ordinance does not do that. Instead, it criminalizes journalism.

26 As a result, Feroso cannot do his job of effectively reporting on sideshows in Alameda
27 County. Fearing arrest or prosecution under the Ordinance, he is unable to observe, record, and
28 report firsthand at sideshows in the County. The Ordinance compels this self-censorship and

1 violates Feroso’s First Amendment right to gather and report the news. The dangers of
2 sideshows cannot justify restricting protected speech about them. In fact, those very dangers show
3 why sideshows are a matter of significant public concern. Without firsthand reporting and
4 recordings, County communities lack reliable information with which to advocate for real safety
5 reforms. An order prohibiting enforcement of the Ordinance is necessary to cure the irreparable
6 harm inherent in violating a reporter’s First Amendment right to cover and report on events of
7 public concern occurring in a public place.

8 **III. BACKGROUND**

9 **A. Feroso Covers Sideshows in Unincorporated Alameda County, Where 10 Firsthand Reporting and Recording Offer Key Context to Readers.**

11 Feroso is the road safety, transportation, and public health beat reporter for *The*
12 *Oaklandside*, a nonprofit journalism platform founded in June 2020, committed to rooting its
13 reporting in the needs and wants of diverse communities across the City of Oakland and
14 amplifying community voices. Feroso Decl. ¶ 2. Feroso reports on road safety matters both
15 within Oakland city limits, as well as in parts of unincorporated Alameda County, among other
16 areas, when issues important to Oakland communities arise outside the geographical boundaries of
17 the City. *Id.* ¶ 8. Feroso has regularly reported on sideshows that have occurred in both Oakland
18 and unincorporated Alameda County. *Id.* ¶¶ 10, 15, 17. In the past two years, Feroso has written
19 at least 16 articles that discuss incidents at a sideshow, sideshows generally, or sideshow-
20 prevention measures. *Id.* ¶ 10. Feroso sees his role as neutrally informing Oakland communities
21 on the facts and circumstances of sideshows, so that they are empowered with the knowledge
22 necessary to understand the history of and problems associated with these events and may make
23 fact-based decisions regarding sideshow attendance, policing, and policy reform. *Id.* ¶ 11.

24 For instance, on May 30, 2023, Feroso published an article in *The Oaklandside* entitled
25 “Map: These Oakland intersections are hotspots for sideshows.” *Id.* ¶ 13 & Ex. 2. In reporting this
26 article, Feroso and his co-author mapped every report of a sideshow made to Oakland police
27 from January 2019 to November 2022. *Id.* As reported in the article, Feroso found that the
28 intersection most frequently taken over by sideshows, according to the reports to police, was

1 Keller Avenue and Skyline Boulevard, with 55 days of sideshow activity reported to police
2 between January 2019 and November 2022. *Id.* ¶ 14 & Ex. 2.

3 The intersection of Keller Avenue and Skyline Boulevard is on the border between the
4 City of Oakland and unincorporated Alameda County. *Id.* ¶ 15. Sideshows occurring at this
5 intersection are visible, within 200 feet, from areas of unincorporated Alameda County. *Id.* Other
6 sideshows Feroso mapped for the article occurred directly in unincorporated Alameda County,
7 including one day of sideshow activities reported at the intersection of Grass Valley Road and
8 Skyline Boulevard, as well as at 7861 Redwood Road. *Id.* ¶ 17.

9 The public response to Feroso’s article was substantial. *Id.* ¶ 20. As of or about June 18,
10 2024, this article has been viewed approximately 13,000 times. *Id.* Since the publication of this
11 article, Feroso has planned to do on-site follow-up reporting on sideshows, due to the high level
12 of community interest in the article and in understanding sideshows. *Id.* ¶ 21. He planned to
13 personally observe, record, and report on the scene of sideshows in Oakland and unincorporated
14 Alameda County, with particular interest in observing, recording, and reporting on sideshows at
15 the most frequently reported intersection of Keller Avenue and Skyline Boulevard. *Id.* ¶ 22.
16 Feroso planned such observation to include recording and photographing the intersection and
17 sideshow event from all angles, including from unincorporated Alameda County, within 200 feet
18 of the intersection, to best capture images for purposes of newsgathering and reporting. *Id.* Quality
19 audio and visual recordings and photographs are uniquely valuable to journalistic work because
20 they help transport viewers to what is happening on the scene, especially in the context of
21 breaking news. *Id.* ¶ 12.

22 **B. The Ordinance Criminalizes Observing and thus Recording or Reporting on**
23 **Sideshows and Prevents Feroso from Critical Newsgathering.**

24 On August 1, 2023, the County Board of Supervisors passed the Ordinance, codified at
25 Alameda County Code (“ACC”) § 10.40, which, in relevant part, makes it a criminal offense for
26 “any person to knowingly be a spectator at a sideshow event conducted on a public street or
27 highway or off-street parking facility” and for “any person to knowingly be a spectator at the
28 location of preparations for a sideshow event on a public street or highway or off-street parking

1 facility.” ACC § 10.40.030(A)–(B). “Sideshow” means “an occasion where one or more persons,
2 for the purpose of performing a street race or reckless driving exhibition for one or more
3 spectator(s) either blocks or impedes traffic on a street or highway or impedes access to an off-
4 street parking facility.” ACC § 10.40.020. “Sideshow event” means “a sideshow, street race, or
5 reckless driving exhibition.” ACC § 10.40.020.

6 “Spectator” means “any person who is present at a sideshow event, or the site of the
7 preparations for a sideshow event, for the purpose of viewing, observing, watching, or witnessing
8 the sideshow event as it progresses.” ACC § 10.40.020. “Spectator” may include but is not limited
9 to “any person at the location of the sideshow event that may have participated in preparations
10 and/or promoting the sideshow event.” *Id.* A person is “present” at “a sideshow event if that
11 person is within two hundred (200) feet of the location of the sideshow event, or within two
12 hundred (200) feet of the site of the preparations for any sideshow event.” ACC § 10.40.020.

13 The Ordinance imposes criminal sanctions, making a violation “a misdemeanor punishable
14 by imprisonment not exceeding three months or by fine not exceeding one thousand dollars
15 (\$1,000.00) or by both.” ACC § 10.40.050. By prohibiting being “present” at a sideshow for
16 purposes of viewing, observing, watching, or witnessing the sideshow, the Ordinance effectively
17 prohibits recording or reporting on the sideshow, because viewing, observing, watching, or
18 witnessing an event is inherently necessary to recording or reporting on it. The Ordinance thus
19 criminalizes journalism about matters of public concern related to sideshows by prohibiting
20 reporters from the essential newsgathering of observing, recording, or reporting on them from
21 anywhere within 200 feet of a sideshow or related preparations.

22 Despite Feroso’s plans to observe, record, and report on sideshows in person to expand
23 upon his prior data-based sideshow reporting, he “canceled all future plans to report on-site at
24 sideshows in the unincorporated areas of Alameda County” because he reasonably “feared
25 citation, arrest, and criminal prosecution under the Ordinance” after he learned of its enactment.
26 Feroso Decl. ¶ 25. Nonetheless, observing, recording, and reporting on these events remains
27 critical to the dissemination of information to Oakland and Alameda County communities, which
28

1 facilitates more widespread awareness of sideshows and associated problems, policing, and policy
2 reform. *Id.* ¶ 12.

3 County Board of Supervisors President Nathan A. Miley and Defendant County Sheriff
4 Yesenia Sanchez sent a letter to the County Board of Supervisors on June 6, 2023, that proposed
5 the adoption of this Ordinance. Cappetta Decl. ¶ 2 & Ex. 3. The letter specified that the Ordinance
6 would be targeted at spectators who “take video recordings of these events.” *Id.* The letter also
7 admits that “California law already prohibits drivers and passengers from engaging in Sideshow
8 Events by criminalizing illegal street racing and illegal exhibitions of reckless driving.” *Id.*

9 Existing laws also prohibit the conduct causing alleged problems associated with
10 sideshows that are referred to the Ordinance’s findings, such as the “discharge of firearms,” Cal.
11 Penal Code § 246.3; driving “under the influence of drugs and alcohol,” Cal. Veh. Code § 23152;
12 littering, Cal. Penal Code § 374; “vandalism,” *id.* § 594; “harming or destroying” infrastructure or
13 other property, *id.*; blocking or preventing access, Cal. Veh. Code § 22500; “burning rubber tires,”
14 *id.* § 23109; Cal. Health & Safety Code § 41800; and “noise pollution,” Cal. Penal Code § 415(2).
15 Additionally, other municipalities, including the City of Oakland, have adopted ordinances that
16 prohibit the organizing or facilitating of sideshows without making it unlawful for journalists or
17 others to observe, record, and report on them. *See Oakland, Cal., Code §§ 10.74.010–10.74.090*
18 (2023).

19 **IV. LEGAL STANDARD**

20 To obtain a preliminary injunction, Feroso must show “(1) he is likely to succeed on the
21 merits of his claim, (2) he is likely to suffer irreparable harm absent the preliminary injunction, (3)
22 the balance of equities tips in his favor, and (4) a preliminary injunction is in the public interest.”
23 *Meinecke v. City of Seattle*, 99 F.4th 514, 521 (9th Cir. 2024) (quoting *Baird v. Bonta*, 81 F.4th
24 1036, 1040 (9th Cir. 2023) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).
25 When the government opposes an injunction, the third and fourth factors merge. *Id.*

26 **V. ARGUMENT**

27 On the undisputed facts, Feroso is entitled to a preliminary injunction prohibiting
28 enforcement of the Ordinance against him in his capacity as a reporter. Feroso is likely to

1 succeed on the merits because the Ordinance violates the First Amendment by imposing a content-
2 based restriction on his protected speech of newsgathering, recording, and reporting on events of
3 public concern in a traditional public forum, and the County has the less restrictive alternative of
4 punishing the unlawful conduct associated with sideshows rather than punishing reporters for
5 exercising their First Amendment rights to observe and record them. Violations of the First
6 Amendment are irreparable harm as a matter of law, and the balance of equities and public interest
7 always favor protecting First Amendment rights.

8 **A. The Ordinance Likely Violates the First Amendment as a Content-Based**
9 **Restriction on Protected Speech.**

10 The Court must follow “a unique likelihood-of-success standard in First Amendment
11 cases,” under which “the moving party bears the initial burden of making a colorable claim that its
12 First Amendment rights have been infringed, or are threatened with infringement, at which point
13 the burden shifts to the government to justify the restriction on speech.” *Id.* (quoting *Cal.*
14 *Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 478 (9th Cir. 2022))
15 (citing *Doe v. Harris*, 772 F.3d 563, 570 (9th Cir. 2014)). On the undisputed facts, the Ordinance
16 infringes Feroso’s First Amendment rights, and the County cannot carry its burden to justify
17 restricting his speech in his capacity as a reporter.

18 **1. The Ordinance Restricts Access to a Traditional Public Forum and**
19 **Effectively Criminalizes the Protected Speech of Newsgathering and**
20 **Recording or Reporting on Events of Public Concern.**

21 The Ordinance is subject to First Amendment scrutiny because it restricts access to a
22 traditional public forum and effectively criminalizes protected speech in the form of
23 newsgathering and recording and reporting on events of public concern in public places.

24 By punishing an observer’s presence on “public streets and sidewalks” within 200 feet of a
25 sideshow or related preparations, the Ordinance “restricts access to traditional public fora and is
26 therefore subject to First Amendment scrutiny,” even if it “says nothing about speech on its face.”
27 *McCullen v. Coakley*, 573 U.S. 464, 476 (2014) (holding law that established 35-foot buffer zone
28 around reproductive health care facility violated First Amendment). “The protections afforded by

1 the First Amendment are nowhere stronger” than in a traditional public forum. *Berger v. City of*
2 *Seattle*, 569 F.3d 1029, 1035–36 (9th Cir. 2009) (citations omitted).

3 The Ordinance also inherently criminalizes the protected speech of newsgathering and
4 recording or reporting on sideshows. Newsgathering must “qualify for First Amendment
5 protection,” because “without some protection for seeking out the news, freedom of the press
6 could be eviscerated.” *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972). Therefore, “newsgathering
7 is an activity protected by the First Amendment.” *Leigh v. Salazar*, 677 F.3d 892, 897 (9th Cir.
8 2012) (quoting *United States v. Sherman*, 581 F.2d 1358, 1361 (9th Cir. 1978)) (citing *Branzburg*,
9 408 U.S. at 681); *see also Cal. First Amend. Coal. v. Calderon*, 150 F.3d 976, 981 (9th Cir. 1998)
10 (noting the “right of the press to gather news and information is protected by the First
11 Amendment”).

12 In addition, the acts of making recordings and gathering information are protected by the
13 First Amendment. “The act of recording is itself an inherently expressive activity,” and because
14 “the recording process is itself expressive and is ‘inextricably intertwined’ with the resulting
15 recording, the creation of audiovisual recordings is speech entitled to First Amendment protection
16 as purely expressive activity.” *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1203–04 (9th
17 Cir. 2018) (quoting *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1062 (9th Cir. 2010)); *see*
18 *also Askins v. U.S. Dep’t of Homeland Sec.*, 899 F.3d 1035, 1044 (9th Cir. 2018) (“The First
19 Amendment protects the right to photograph and record matters of public interest.”) (citations
20 omitted).

21 By punishing observation of sideshows, the Ordinance necessarily prohibits recording
22 them, because observing is “a necessary prerequisite to recording.” *Chestnut v. Wallace*, 947 F.3d
23 1085, 1090 (8th Cir. 2020); *see also Sanchez v. City of Atherton*, No. 22-cv-03106, 2023 U.S.
24 Dist. LEXIS 3763, *14 (N.D. Cal. 2023) (“[G]iven that the Ninth Circuit protects the recording of
25 police engaged in official duties, it follows that the act of observing them, which would
26 necessarily be part of recording them, would also be protected.”). The letter supporting the
27 Ordinance confirms it is targeted at “video recordings” of sideshows. Cappetta Decl. ¶ 2 & Ex. 3.

28

1 As the Seventh Circuit confirmed, the “act of *making* an audio or audiovisual recording is
2 necessarily included within the First Amendment’s guarantee of speech and press rights as a
3 corollary of the right to disseminate the resulting recording,” and “[b]ecause the First Amendment
4 protects conduct and activities necessary for expression,” it covers actions “essential to carry out
5 . . . protected monitoring and recording” of events in public, such as observing them from
6 sufficient “visual or physical proximity.” *Brown v. Kemp*, 86 F.4th 745, 779 (7th Cir. 2023)
7 (quoting *ACLU v. Alvarez*, 679 F.3d 583, 595 (7th Cir. 2012)).

8 The same is true for observation as a prerequisite to note-taking or other means of
9 gathering or recording information. Unsurprisingly, “scores of Supreme Court and circuit cases
10 apply the First Amendment to safeguard the right to gather information as a predicate to
11 speech. . . . The right to gather information plays a distinctly acute role in journalism. Firsthand
12 accounts, buttressed by video evidence, enhance accuracy and credibility in reporting and increase
13 transparency and reader trust, allowing the press ‘to tell more complete and powerful stories.’”
14 *People for the Ethical Treatment of Animals, Inc. v. N.C. Farm Bureau Fed’n, Inc.*, 60 F.4th 815,
15 829 (4th Cir. 2023) (citations omitted); *see also W. Watersheds Project v. Michael*, 869 F.3d 1189,
16 1196 (10th Cir. 2017) (“An individual who photographs animals or takes notes about habitat
17 conditions is creating speech in the same manner as an individual who records a police
18 encounter.”); *ACLU*, 679 F.3d at 595–96 (noting that “banning photography or note-taking at a
19 public event would raise serious First Amendment concerns; a law of that sort would obviously
20 affect the right to publish the resulting photograph or disseminate a report derived from the
21 notes.”). Because it prohibits protected newsgathering or recording of sideshows located in
22 traditional public fora, the Ordinance is subject to First Amendment scrutiny.

23 2. The First Amendment Protects Speech About Unlawful Conduct.

24 Although sideshows themselves may be illegal, the First Amendment protects speech
25 about crime, even if it describes or depicts actual crimes. *United States v. Stevens*, 559 U.S. 460,
26 469 (2010) (while government may enforce “prohibition of animal cruelty itself . . . *depictions* of
27 animal cruelty” are not excluded “from ‘the freedom of speech’ codified in the First
28 Amendment”); *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105,

1 116–18 (1991) (invalidating law that imposed financial burden on speech about crime); *Winters v.*
2 *New York*, 333 U.S. 507, 508, 510 (1948) (holding publications “principally made up of criminal
3 news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed,
4 lust or crime” were “as much entitled to the protection of free speech as the best of literature”);
5 *Keenan v. Superior Ct.*, 27 Cal. 4th 413, 428 (2002) (striking down law that imposed financial
6 burden on speech about crime).

7 Reporting on unlawful conduct informs the debate on whether certain conduct should be
8 criminal, helps the public evaluate the government’s enforcement policies and practices, and
9 enables people to protect themselves. *See, e.g., Vice, Illegal Border Crossing in Mexico*, YouTube
10 (May 31, 2012), <https://perma.cc/7VJF-6SNP>; Daniel González & Gustavo Solis, *A Human*
11 *Smuggler, and the Wall That Will Make Him Rich*, *Desert Sun* (Sept. 27, 2017),
12 <https://perma.cc/ME7E-729W>; John Ringer & Meghna Chakrabarti, *The Reality of the Drug Trade*
13 *in San Francisco*, *WBUR* (Nov. 2, 2022), [https://www.wbur.org/onpoint/2022/11/02/tenderloin-](https://www.wbur.org/onpoint/2022/11/02/tenderloin-reality-of-the-drug-trade-in-san-francisco)
14 [reality-of-the-drug-trade-in-san-francisco](https://www.wbur.org/onpoint/2022/11/02/tenderloin-reality-of-the-drug-trade-in-san-francisco); Will Kerr, *Thieves Are Using Apple AirTags to Steal*
15 *Cars. Here’s How to Stop Them*, *By Miles* (June 10, 2022), <https://perma.cc/M8AL-3S7M>.

16 Feroso’s reporting on sideshows serves these interests. He is a road safety reporter and
17 sees his role as “neutrally informing Oakland communities on the facts and circumstances of
18 sideshows,” among other traffic dangers, “so that they are empowered with the knowledge
19 necessary to understand the history of and problems associated with these events and may make
20 fact-based decisions regarding sideshow attendance, policing, and policy reform.” Feroso Decl.
21 ¶ 11. As Feroso reported in May 2023, the impact of *The Oaklandside*’s reporting “was reflected
22 in the budget priorities Councilmembers published last month. For the first time in years, all of
23 them prioritized traffic safety by asking for barricades at intersections and sidewalks, hardened
24 medians to stop sideshows, and faster repairs to potholed streets.” Jose Feroso, *Sharing our*
25 *reporting on traffic safety and systems with high schoolers*, *Oaklandside* (May 17, 2023, 10:08
26 AM), [https://oaklandside.org/2023/05/17/sharing-our-traffic-violence-reporting-castlemont-ousd-](https://oaklandside.org/2023/05/17/sharing-our-traffic-violence-reporting-castlemont-ousd-high-school-public-health/)
27 [high-school-public-health/](https://oaklandside.org/2023/05/17/sharing-our-traffic-violence-reporting-castlemont-ousd-high-school-public-health/). Such reporting makes essential contributions to “the free discussion of
28 governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

1 The Ordinance prohibits mere presence and observation of sideshows, not any “attempt,
2 incitement, solicitation, or conspiracy.” *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 253 (2002).
3 In doing so, the Ordinance punishes recording or reporting on sideshows, which is protected
4 speech that cannot be made a crime:

5 News reporting, we can assume, no matter how explicit it is in its description or
6 depiction of criminal activity, could never serve as a basis for aiding and abetting
7 liability consistent with the First Amendment. It will be self-evident in the context
8 of news reporting, if nowhere else, that neither the intent of the reporter nor the
purpose of the report is to facilitate repetition of the crime or other conduct
reported upon, but, rather, merely to report on the particular event, and thereby to
inform the public.

9 *Rice v. Paladin Enters.*, 128 F.3d 233, 266 (4th Cir. 1997).

10 Firsthand observation and recording from bystanders other than reporters are also critical
11 to inform the public and assist law enforcement in prosecuting crimes that occur at sideshows. For
12 example, NBC Bay Area recently reported on a sideshow in San Jose, including publishing a still
13 from a witness’s firsthand recording that depicted a sideshow participant jumping on top of a
14 police patrol car. Alyssa Goard, *San Jose sideshow near Santana Row injures spectator, police*
15 *officer*, NBC Bay Area (June 16, 2024), [https://www.nbcbayarea.com/news/local/south-](https://www.nbcbayarea.com/news/local/south-bay/santana-row-sideshow/3568247/)
16 [bay/santana-row-sideshow/3568247/](https://www.nbcbayarea.com/news/local/south-bay/santana-row-sideshow/3568247/) (last updated June 17, 2024, 4:47 AM). The article reports
17 that police are working to identify the suspects behind the sideshow to ensure they “are prosecuted
18 to the fullest extent the law allows” and indicates “San Jose police are asking if anyone has any
19 video” of “the sideshow to contact them.” *Id.*

20 CBS News Bay Area reported on another June 2024 sideshow at which “[s]tunning video
21 of the incident showed the dangerous scene on the Embarcadero with cars doing donuts
22 surrounding a burning vehicle” while others “launch[ed] fireworks into the sky.” Kevin Ko, *San*
23 *Francisco police chief promises accountability, but so far no arrests in Sunday sideshows*, CBS
24 News Bay Area (June 11, 2024, 5:59 PM), [https://www.cbsnews.com/sanfrancisco/news/san-](https://www.cbsnews.com/sanfrancisco/news/san-francisco-police-chief-promises-accountability-but-no-arrests-so-far-in-weekend-sideshow/)
25 [francisco-police-chief-promises-accountability-but-no-arrests-so-far-in-weekend-sideshow/](https://www.cbsnews.com/sanfrancisco/news/san-francisco-police-chief-promises-accountability-but-no-arrests-so-far-in-weekend-sideshow/). San
26 Francisco Police Department Chief William Scott “urged the public to call 911 if they ever
27 witness a side show, while also asking witnesses to share videos with police to assist in
28

1 investigations.” *Id.* Ironically, however, the Ordinance makes it a crime for bystanders to assist
 2 law enforcement in this way.

3 **3. The Ordinance Is a Content-Based Restriction on Speech As It**
 4 **Prohibits Recording or Reporting on the Defined Topic of Sideshows.**

5 Under the First Amendment, the government “has no power to restrict expression because
 6 of its message, its ideas, its subject matter, or its content,” and any such restriction is
 7 “presumptively unconstitutional.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (quoting
 8 *Police Dep’t of Chi. v. Mosley*, 408 U.S. 92, 95 (1972)). That principle “applies with full force in a
 9 traditional public forum.” *McCullen*, 573 U.S. at 477 (citing *Mosley*, 408 U.S. at 95). A law is
 10 content based “on its face” if it “defin[es] regulated speech by particular subject matter.” *Reed*,
 11 576 U.S. at 163. Such a law remains content based regardless of any “innocuous justification” or
 12 “benign motive” the government might have for enacting it. *Id.* at 165–66. “Innocent motives do
 13 not eliminate the danger of censorship presented by a facially content-based statute, as future
 14 government officials may one day wield such statutes to suppress disfavored speech.” *Id.* at 167.

15 The Ordinance inherently “prohibits the recording of a defined topic”—sideshows and
 16 related preparations. *See Animal Legal Def. Fund*, 878 F.3d at 1204. It does not prohibit speech on
 17 other topics at the same time and place, such as architectural photography of a building, aesthetic
 18 photography of a sunset, or any photography, filming, or other speech unrelated to sideshows.
 19 ACC § 10.40.20. Therefore, it is “an ‘obvious’ example of a content-based regulation of speech
 20 because it ‘defin[es] regulated speech by particular subject matter.’” *See id.* (alteration in original)
 21 (quoting *Reed*, 576 U.S. at 163) (citing *Stevens*, 559 U.S. at 468 (holding statute was content
 22 based when it prohibited “visual [and] auditory depiction[s] . . . depending on whether they depict
 23 conduct in which a living animal is intentionally harmed”) (alterations in original)). By
 24 criminalizing recording or reporting on sideshows, the Ordinance imposes a powerful
 25 “disincentive only on speech of a particular subject.” *See Simon & Schuster*, 502 U.S. at 116.

26 Although the Ordinance applies only in specified locations, ACC § 10.40.030, it is not
 27 purely “location-based” or “agnostic as to content.” *City of Austin v. Reagan Nat’l Advert. of*
 28 *Austin, LLC*, 596 U.S. 61, 69 (2022). Instead, it is content based because it singles out “specific

1 subject matter for differential treatment” by punishing the observing and recording of sideshows
 2 but not, for example, sunsets, buildings, or other landmarks or events. *Id.* (quoting *Reed*, 576 U.S.
 3 at 169); ACC § 10.40.20 (defining a “spectator” as a person present at a sideshow event “*for the*
 4 *purpose of viewing, observing, watching, or witnessing the sideshow event*”) (emphasis added).

5 A law that targets speech based on topic or subject matter remains content based
 6 notwithstanding that it has a limited geographic scope. *Carey v. Brown*, 447 U.S. 455, 460–61
 7 (1980) (holding that statute prohibiting residential picketing except for labor disputes was “based
 8 upon the content of the demonstrator’s communication”); *Mosley*, 408 U.S. at 95 (holding that
 9 ordinance restricting picketing near schools except for labor disputes was content based because it
 10 “describes permissible picketing in terms of its subject matter”). Thus, the Ordinance is a content-
 11 based restriction on speech.

12 **4. The Ordinance Fails Strict Scrutiny Because the County May Punish**
 13 **the Unlawful Conduct of Engaging in a Sideshow Without Restricting**
Protected Speech About Sideshows.

14 “Content-based restrictions on speech are subject to strict scrutiny and may only be upheld
 15 if they are the least restrictive means available to further a compelling government interest.”
 16 *Askins*, 899 F.3d at 1044 (citation and quotation marks omitted). “The least-restrictive-means
 17 standard is exceptionally demanding.” *Holt v. Hobbs*, 574 U.S. 352, 364 (2015) (quoting *Burwell*
 18 *v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014)). “If a less restrictive alternative would
 19 serve the Government’s purpose, the legislature must use that alternative.” *United States v.*
 20 *Playboy Ent. Grp.*, 529 U.S. 803, 813 (2000) (citation omitted). “Even if a state intends to advance
 21 a compelling government interest, we will not permit speech-restrictive measures when the state
 22 may remedy the problem by implementing or enforcing laws that do not infringe on speech.”
 23 *IMDb.com Inc. v. Becerra*, 962 F.3d 1111, 1125 (9th Cir. 2020) (citations omitted).

24 While the County may have a compelling interest in preventing hazards caused by
 25 sideshows, it has the less restrictive alternative of punishing the unlawful conduct associated with
 26 such events rather than punishing reporters or others for exercising their First Amendment right to
 27 observe and record them. Therefore, the Ordinance fails strict scrutiny. *Animal Legal Def. Fund*,
 28 878 F.3d at 1204–05 (holding content-based law which prohibited “recording of a defined topic”

1 on private property failed strict scrutiny where “owners can vindicate their rights” through
2 enforcing other laws).

3 As the County has acknowledged, “California law already prohibits drivers and passengers
4 from engaging in Sideshow Events by criminalizing illegal street racing and illegal exhibitions of
5 reckless driving.” Cappetta Decl. ¶ 2 & Ex. 3. Other laws also prohibit the “discharge of firearms,”
6 Cal. Penal Code § 246.3; driving “under the influence of drugs and alcohol,” Cal. Veh. Code. §
7 23152; littering, Cal. Penal Code § 374; “vandalism,” *id.* § 594; “harming or destroying”
8 infrastructure or other property, *id.*; blocking or preventing access, Cal. Veh. Code § 22500;
9 “burning rubber tires,” *id.* § 23109; Health & Safety Code § 41800; and “noise pollution,” Penal
10 Code § 415(2).

11 In addition, the County may adopt a law that targets sideshows directly without punishing
12 protected speech. For example, the City of Oakland adopted an ordinance prohibiting the
13 organizing or facilitating of sideshows without making it unlawful for journalists or others to
14 observe, record, and report on them. *See* Oakland, Cal., Code §§ 10.74.010–10.74.090.

15 The County thus has readily available alternatives to address any dangerous conduct,
16 because “the penal laws” can be “used to punish such conduct directly” rather than punishing
17 reporters or others for engaging in protected speech. *Comite de Jornaleros de Redondo Beach v.*
18 *City of Redondo Beach*, 657 F.3d 936, 950 (9th Cir. 2011) (quoting *Village of Schaumburg v.*
19 *Citizens for a Better Env’t*, 444 U.S. 620, 637 (1980)). Because the County has “several less
20 speech-restrictive alternatives to achieve public safety,” the Ordinance violates the First
21 Amendment. *Meinecke*, 99 F.4th at 525.

22 Experience shows that such alternatives can be effective. For example, San Diego police
23 recently prevented “a coordinated event at multiple intersections,” arresting the alleged
24 coordinator “on suspicion of conspiracy to commit felony vandalism, exhibition of speed, reckless
25 driving, facilitating an exhibition of speed and obstructing arrest.” Caleb Lunetta, *Street Takeover*
26 *Events Involving 200 People Thwarted Throughout San Diego Last Weekend*, San Diego Union-
27 Tribune (June 5, 2024, 8:08 PM), [https://www.sandiegouniontribune.com/news/public-](https://www.sandiegouniontribune.com/news/public-safety/story/2024-06-05/street-takeover-events-san-diego)
28 [safety/story/2024-06-05/street-takeover-events-san-diego](https://www.sandiegouniontribune.com/news/public-safety/story/2024-06-05/street-takeover-events-san-diego) (last updated June 6, 2024, 12:23 AM).

1 Earlier this year, officers “seized 13 vehicles and arrested two people on suspicion of participating
2 in illegal street takeover ‘sideshow’ events.” Karen Kucher, *Officers Seize 13 Vehicles, Arrest 2 in*
3 *Connection with Street Takeover ‘Sideshows’ in San Diego*, San Diego Union-Tribune (May 2,
4 2024, 8:30 PM), [https://www.sandiegouniontribune.com/news/public-safety/story/2024-05-](https://www.sandiegouniontribune.com/news/public-safety/story/2024-05-02/officers-seize-vehicles-street-takeover-sideshows)
5 [02/officers-seize-vehicles-street-takeover-sideshows](https://www.sandiegouniontribune.com/news/public-safety/story/2024-05-02/officers-seize-vehicles-street-takeover-sideshows) (last updated May 3, 12:30 AM). Around
6 Labor Day in 2022, “officers arrested 11 people and cited 51 involved with the events,” and
7 recently, “officers were able to prevent a group from putting on two sideshows after catching word
8 the events were being planned.” *Id.*; see also David Hernandez, *11 Arrested, 51 Cited During*
9 *Street Takeovers in San Diego, Spring Valley*, San Diego Union-Tribune (Sept. 6, 2022, 8:45 PM),
10 [https://www.sandiegouniontribune.com/news/public-safety/story/2022-09-06/11-arrested-52-](https://www.sandiegouniontribune.com/news/public-safety/story/2022-09-06/11-arrested-52-cited-during-street-takeovers-in-san-diego-spring-valley)
11 [cited-during-street-takeovers-in-san-diego-spring-valley](https://www.sandiegouniontribune.com/news/public-safety/story/2022-09-06/11-arrested-52-cited-during-street-takeovers-in-san-diego-spring-valley) (last updated Sept. 7, 12:45 AM).

12 As these examples show, the proper response to unlawful conduct is to take action against
13 those “who actually engage in such conduct, rather than to suppress legitimate First Amendment
14 conduct as a prophylactic measure.” *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817,
15 834 (9th Cir. 2020) (quoting *Collins v. Jordan*, 110 F.3d 1363, 1373 (9th Cir. 1996)); see also,
16 e.g., *IMDb.com*, 962 F.3d at 1123 (“Rather than restrict truthful speech, the typical ‘method of
17 deterring unlawful conduct is to impose an appropriate punishment on the person who engages in
18 it.”) (quoting *Bartnicki v. Vopper*, 532 U.S. 514, 529 (2001)).

19 Perhaps it might be easier to enforce a 200-foot perimeter against anyone observing or
20 recording a sideshow than to arrest and prosecute individuals who are driving unlawfully or
21 committing other crimes, but the First Amendment does not permit laws restricting speech simply
22 because they are easier to enforce. *McCullen*, 573 U.S. at 495 (striking down buffer zone and
23 noting that “[a] painted line on the sidewalk is easy to enforce, but the prime objective of the First
24 Amendment is not efficiency.”).

25 Therefore, “it does not matter” whether the Ordinance might “accomplish what it sets out
26 to do” by deterring speech about sideshows, because an “unconstitutional statute that could
27 achieve positive societal results is nonetheless unconstitutional.” *IMDb.com*, 962 F.3d at 1128
28 (citations omitted). The County may not invoke the Ordinance’s effect in suppressing speech

1 about sideshows as the interest justifying the Ordinance, because “this sort of circular defense can
2 sidestep judicial review of almost any statute” and “[e]very content-based discrimination could be
3 upheld by simply observing that the state is anxious to regulate the designated category of
4 speech.” *Simon & Schuster*, 502 U.S. at 120.

5 Although the government “may pass valid laws” prohibiting certain conduct, the “prospect
6 of crime . . . by itself does not justify laws suppressing protected speech,” and the “government
7 may not prohibit speech” on the asserted ground that “it increases the chance an unlawful act will
8 be committed ‘at some indefinite future time.’” *Free Speech Coal.*, 535 U.S. at 245, 253 (quoting
9 *Hess v. Indiana*, 414 U.S. 105, 108 (1973)); *cf. Bartnicki*, 532 U.S. at 529–30 (noting “it would be
10 quite remarkable to hold that speech by a law-abiding possessor of information can be suppressed
11 in order to deter conduct by a non-law-abiding third party.”).

12 The Ordinance also fails strict scrutiny because it is both “seriously underinclusive” and
13 “seriously overinclusive.” *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 805 (2011). It is seriously
14 underinclusive because it does not reach observing or recording sideshows by the participants or
15 drivers themselves, nor does it reach observing or recording by remote means from more than 200
16 feet away, such as by use of a drone. It is seriously overinclusive because it prohibits observing,
17 recording, or reporting on sideshows that has nothing to do with allegedly promoting or
18 encouraging them, such as covering them in the media, protesting them, reporting them to law
19 enforcement, or otherwise petitioning the government to take action. Accordingly, the Ordinance
20 fails the strict scrutiny that applies to content-based restrictions on speech, and Feroso is likely
21 to prevail on his claim that the Ordinance violates the First Amendment as applied to him as a
22 reporter covering sideshows.

23 **B. Feroso Is Suffering Irreparable Harm, and the Balance of Equities and**
24 **Public Interest Favor an Injunction Protecting His First Amendment Rights.**

25 Feroso is suffering irreparable harm because any “loss of First Amendment freedoms
26 constitutes an irreparable injury” as a matter of law. *Meinecke*, 99 F.4th at 526; *see also, e.g.,*
27 *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 694
28 (9th Cir. 2023) (“It is axiomatic that ‘[t]he loss of First Amendment freedoms, for even minimal

1 periods of time, unquestionably constitutes irreparable injury.”) (quoting *Roman Cath. Diocese v.*
2 *Cuomo*, 592 U.S. 14, 19 (2020)); *Am. Beverage Ass’n v. City & County of San Francisco*, 916
3 F.3d 749, 758 (9th Cir. 2019) (en banc) (“Because Plaintiffs have a colorable First Amendment
4 claim, they have demonstrated that they likely will suffer irreparable harm.”).

5 “The balance of equities and public interest favor” an injunction because “[i]t is always in
6 the public interest to prevent the violation of a party’s constitutional rights” and when a party
7 raises “serious First Amendment questions, that alone compels a finding that the balance of
8 hardships tips sharply in [its] favor.” *Meinecke*, 99 F.4th at 526 (citation and quotation marks
9 omitted). Although the government “has an interest in maintaining public order,” even
10 “undeniably admirable goals . . . must yield” to the Constitution, especially when the County has
11 “other means of vindicating its interests without restricting [Fermoso’s] speech.” *Id.*

12 **C. No Bond Should be Required.**

13 The Court has discretion “as to the amount of security required, *if any*,” under Federal Rule
14 of Civil Procedure 65(c), and it “may dispense with the filing of a bond when it concludes there is
15 no realistic likelihood of harm to the defendant from enjoining his or her conduct.” *Johnson v.*
16 *Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (citation and quotation marks omitted). It is proper
17 to waive the bond requirement in free speech cases, because “to require a bond would have a
18 negative impact on plaintiff’s constitutional rights, as well as the constitutional rights of other
19 members of the public.” *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D.
20 Cal. 1996) (citation omitted).

21 The County would incur no compensable costs or damages even if the injunction were
22 later dissolved. Parties may not recover attorney fees arising from issuance of an injunction. *Bass*
23 *v. First Pac. Networks, Inc.*, 219 F.3d 1052, 1055–56 (9th Cir. 2000). Therefore, no bond should
24 be required. *Gorbach v. Reno*, 219 F.3d 1087, 1092 (9th Cir. 2000) (upholding denial of bond in
25 absence of any costs or damages suffered by the government arising from a wrongful injunction);
26 *Galassini v. Town of Fountain Hills*, No. CV-11-02097-PHX, 2011 U.S. Dist. LEXIS 128294, at
27 *19 (D. Ariz. Nov. 3, 2011) (waiving bond in First Amendment case because it is “difficult to
28 envision how Defendants would incur compensable costs or damages”); *Bible Club v. Placentia-*

1 DAVID LOY, Cal. Bar No. 229235
ANN CAPPETTA, Cal. Bar No. 354079
2 FIRST AMENDMENT COALITION
534 4th Street, Suite B
3 San Rafael, CA 94901-3334
Telephone: 415.460.5060
4 Email: dloy@firstamendmentcoalition.org
acappetta@firstamendmentcoalition.org

5 Attorneys for Plaintiff JOSE ANTONIO GARCIA

6
7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
9

10 JOSE ANTONIO GARCIA,
11 Plaintiff,

12 v.

13 COUNTY OF ALAMEDA and YESENIA
14 SANCHEZ, Sheriff of Alameda County, in her
official capacity,
15 Defendants.
16

Case No. 3:24-cv-03997-RS

**DECLARATION OF JOSE ANTONIO
GARCIA IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

Date: September 5, 2024
Time: 1:30 p.m.
Judge: Honorable Richard Seeborg
Ctrm: Courtroom 3 – 17th Floor

17 I, JOSE ANTONIO GARCIA, declare as follows:

18 1. I have personal knowledge of the facts set forth in this declaration, and if called to
19 testify as a witness thereto, could do so competently under oath.

20 2. I am the road safety, transportation, and public health beat reporter for *The*
21 *Oaklandside*, a nonprofit journalism platform founded in June 2020, committed to rooting its
22 reporting in the needs and wants of diverse communities across the City of Oakland and
23 amplifying community voices.

24 3. I use my maternal family surname to write under the pen name “Jose Feroso” at
25 *The Oaklandside*.

26 4. *The Oaklandside* is one local news site component of the parent nonprofit Cityside
27 Journalism Initiative, which is devoted to building community and strengthening democracy
28 through local news.

1 5. I have held my position at *The Oaklandside* since September 2021, when I was
2 awarded the Knight-Wallace Reporting Fellowship through the University of Michigan, for my
3 reporting project, “Oakland’s Deadly Roadways: Reckoning with Inequities in Urban Design for
4 *The Oaklandside*.”

5 6. Before my fellowship began, I worked as a freelance reporter and had regularly
6 published stories in *The Oaklandside* since June 2020, including stories about road safety.

7 7. I was awarded the Knight-Wallace Reporting Fellowship based in part on my
8 previous freelance reporting published in *The Oaklandside* and in other major news publications
9 as a staff writer or freelance reporter including for *The Guardian (UK)*, the *Silicon Valley Business*
10 *Journal*, and the *New York Times* best-selling non-fiction book *Jony Ive: The Genius Behind*
11 *Apple’s Greatest Products*. The Knight-Wallace Reporting Fellowship is considered among the
12 three most prestigious reporting fellowships in the United States.

13 8. I report on road safety matters both within City limits, as well as in parts of
14 unincorporated Alameda County, among other areas, when issues important to Oakland
15 communities arise outside the strict geographical boundaries of the City.

16 9. As I have reported, a “sideshow” is:

17 A controversial event where drivers take over city intersections with their cars as they skid
18 in circles while performing stunts. [Sideshows](#) can last seconds or hours at a time, and they
19 can be performed by a single individual without a crowd or by multiple people with
20 hundreds of onlookers rallying them on. Some people have defended sideshows as an
[important outlet for youthful rebellion](#) while others have noted that they often, especially
in recent years, are accompanied by gun violence and rowdy behavior.

21 A true and correct excerpt of the article containing this reporting is attached hereto as **Exhibit 1**
22 and is available at [https://oaklandside.org/2023/11/30/road-safety-transportation-infrastructure-](https://oaklandside.org/2023/11/30/road-safety-transportation-infrastructure-glossary-terms-definitions/#h-sideshows)
23 [glossary-terms-definitions/#h-sideshows](https://oaklandside.org/2023/11/30/road-safety-transportation-infrastructure-glossary-terms-definitions/#h-sideshows).

24 10. In the past two years, I have written at least 16 articles published in *The*
25 *Oaklandside* that discuss incidents at a sideshow, sideshows generally, or sideshow-prevention
26 measures.

27 11. I see my role as neutrally informing Oakland communities on the facts and
28 circumstances of sideshows, so that they are empowered with the knowledge necessary to

1 understand the history of and problems associated with these events and may make fact-based
2 decisions regarding sideshow attendance, policing, and policy reform.

3 12. Observing, recording, and reporting on these events enables the dissemination of
4 critical information to Oakland and Alameda County communities, which facilitates more
5 widespread awareness of sideshows and associated problems, policing, and policy reform. I
6 regularly rely on photographs, as well as video and audio recordings, in order to gather news and
7 information and keep the public informed. Quality audio and visual recordings and photographs
8 are uniquely valuable to my journalistic work because they help transport viewers to what is
9 happening on the scene, especially in the context of breaking news.

10 13. On May 30, 2023, I published an article entitled “Map: These Oakland
11 intersections are hotspots for sideshows.” In reporting this article, my co-author and I mapped
12 every report of a sideshow made to Oakland police from January 2019 to November 2022. A true
13 and correct copy of this article is attached hereto as **Exhibit 2** and is available at
14 <https://oaklandside.org/2023/05/30/oakland-sideshow-hotspots-map/>.

15 14. As reported in the article, I found that the intersection most frequently taken over
16 by sideshows, according to reports to police, was Keller Avenue and Skyline Boulevard, with 55
17 days of sideshow activity reported between January 2019 and November 2022.

18 15. The intersection of Keller Avenue and Skyline Boulevard is on the border between
19 the City of Oakland and unincorporated Alameda County. Sideshows occurring at this intersection
20 are visible, within 200 feet, from areas of unincorporated Alameda County.

21 16. While only 55 days of sideshow activities were reported to Oakland Police at the
22 Keller-Skyline intersection from January 2019 to November 2022, I interviewed Vijo Lucas, the
23 manager of the Anthony Chabot Equestrian Center, which is in unincorporated Alameda County,
24 about 500 feet from the intersection. As reported in the article, Lucas stated that sideshows were
25 happening “nearly every night” at the intersection between 2018 and 2020, and she still hears them
26 “four or five times a month.”

27
28

1 17. Other sideshows I mapped for the article occurred directly in unincorporated
2 Alameda County. For example, one day of sideshow activities was reported at the intersection of
3 Grass Valley Road and Skyline Boulevard, as well as at 7861 Redwood Road.

4 18. Without reports of sideshows to police, I would not have been able to report this
5 article.

6 19. It is important for covering sideshows to photograph, film, and record audio of the
7 events, within 200 feet of the intersections where they occur, to convey adequately detailed visual
8 and auditory context that can enhance readers' comprehension of the matters reported. For
9 example, one image published in the article showed cars lining up on 98th Avenue near an East
10 Oakland intersection taken over for a sideshow, giving visual context to how the event impacted
11 traffic.

12 20. The public's interest in and response to this article was substantial. As of or about
13 June 18, 2024, this article has been viewed approximately 13,000 times.

14 21. After I published the article mapping sideshows around Oakland, I planned to do
15 on-site follow-up reporting on sideshows, due to the high level of community interest in my article
16 and in understanding sideshows.

17 22. I planned to personally observe, record, and report on the scene of sideshows in
18 Oakland and unincorporated Alameda County, with particular interest in observing, recording, and
19 reporting on sideshows at the most frequently reported intersection of Keller Avenue and Skyline
20 Boulevard. I planned such observation to include recording and photographing the intersection and
21 sideshow event from all angles, including from unincorporated Alameda County, within 200 feet
22 of the intersection, to best capture images for purposes of newsgathering and reporting.

23 23. To document and report on these sideshows and provide our readers and potential
24 viewers with the most accurate account of the event, I would make audio and video recordings and
25 take still photographs.

26 24. However, I learned that the Alameda County Board of Supervisors had adopted
27 Ordinance No. 2023-31 ("Ordinance"), codified at Chapter 10.40 of the Alameda County Code
28

1 (“ACC”) on August 1, 2023, making it a crime to be a “spectator” at a “sideshow” or related
2 “preparations.” ACC § 10.40.030(A)–(B).

3 25. When I learned of the Ordinance, I canceled all future plans to report on-site at
4 sideshows in the unincorporated areas of Alameda County because such reporting would mean the
5 Ordinance’s definition of a “spectator” plainly applied to me, and I feared citation, arrest, and
6 criminal prosecution under the Ordinance.

7 26. Because of my fears of criminal prosecution for observing sideshows, I have been
8 unable to engage in effective firsthand observation and recording of sideshows in the
9 unincorporated areas of Alameda County since the Ordinance was passed.

10 27. My readers and Oakland communities need and want more news on sideshows,
11 including the kind of reporting I planned before Alameda County enacted the Ordinance.

12 I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct and that this declaration was executed in Oakland, California on
14 July 1, 2024.

15 
16 _____
17 JOSE ANTONIO GARCIA
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1



The intersection of 23rd Street and Harrison Street. More bike and pedestrian improvements are planned. Credit: Amir Aziz

ROAD SAFETY

Curb your confusion: The Oaklandside’s list of traffic and road safety terms and definitions

Fixing dangerous roads involves lots of engineering and infrastructure lingo. Here’s a guide to understanding it.

by **Jose Feroso**
Nov. 30, 2023, 9:39 a.m.

Oakland residents have consistently told us that dangerous roads, traffic collisions, and crumbling infrastructure are top concerns they want the city to fix. That’s why we’ve made [road safety and transit](#) one of The Oaklandside reporting beats.

Privacy - Terms

A big part of this work is explaining technical terms to readers, unpacking engineering concepts and road construction methods, and describing various pieces of infrastructure that are built onto roads and paths. As with any complex field of work, transportation policy and engineering can be dominated by jargon and obscure terms.

In the course of my reporting, I've repeatedly had to explain these terms and concepts because the city, county, and state agencies often aren't communicating clearly with the average person. Instead, our government agencies all too often publish technically obtuse and difficult-to-read maps, use legal language in presentations, stick to acronyms, and keep conversations at an expert level.

This is why we decided to create a glossary for roads, transportation, and transit. This list contains definitions for engineering concepts, describes the infrastructure you might see on a road, and identifies the multiple local and state government agencies that build and repair our roads.

We hope this is a useful reference for anyone trying to learn more about streets, transportation, transit, and local government.

This is a big list, but it's not comprehensive. We plan on updating it over time as we do more reporting and learn about new stuff. If you know of something missing, or you think we could explain or define something more clearly, please let us know by emailing me at jose@oaklandside.org.

Index

- [85th percentile speed](#)
- [Alameda County Transportation Commission](#)
- [Alignment](#)
- [Arterial road](#)
- [Bicycle lane](#)
- [Bicyclist and Pedestrian Advisory Commission](#)
- [Bike box](#)
- [Botts dots](#)
- [Bollards](#)
- [Buffered bicycle lane](#)
- [Bulb-out](#)
- [Bus Rapid Transit](#)
- [Caltrans](#)
- [Center hardline](#)
- [Collector road](#)
- [Collision](#)

- [Corridor](#)
- [Crosswalk](#)
- [Cul-de-sac](#)
- [Curb ramp](#)
- [Daylighting](#)
- [Diverter](#)
- [Dutch reach](#)
- [Easement](#)
- [E-bike](#)
- [Intersection crossing markings](#)
- [K-rails or Jersey barriers](#)
- [Local road](#)
- [Median island](#)
- [Metropolitan Transportation Commission](#)
- [OakDOT](#)
- [Pedestrian rapid flashing beacons](#)
- [Protected bicycle lanes](#)
- [Raised crosswalks](#)
- [Red-light running](#)
- [Road diet](#)
- [Roundabouts or traffic circles](#)
- [School zones](#)
- [Shared use paths](#)
- [Sharrows, or shared lane markings](#)
- [Sideshows](#)
- [Slip lane](#)
- [Slow Streets](#)
- [Speeding](#)
- [Speed bumps, humps, and tables](#)
- [Traffic survey](#)
- [Wayfinding](#)

Sideshows



The intersection of 106th Avenue and MacArthur Boulevard was ranked second for the number of sideshows that happened there among all city intersections in 2022. Credit: Florence Middleton

A controversial event where drivers take over city intersections with their cars as they skid in circles while performing stunts. **Sideshows** can last seconds or hours at a time, and they can be performed by a single individual without a crowd or by multiple people with hundreds of onlookers rallying them on. Some people have defended sideshows as an **important outlet for youthful rebellion** while others have noted that they often, especially in recent years, are accompanied by gun violence and rowdy behavior.

Exhibit 2

CITY HALL

Map: These Oakland intersections are hotspots for sideshows

We mapped almost four years of police data revealing the Oakland neighborhoods most impacted by rowdy street takeovers.



by **Jose Feroso** and **Darwin BondGraham**

May 30, 2023, 4:03 p.m.

Sideshows are a mainstay of news in Oakland. Here are a couple of recent headlines: “Video shows illegal Oakland sideshow with cars on fire” and “Oakland sideshows draw 500 vehicles.” One recent incident saw 80 vehicles seized by the police. At another, someone commandeered a big rig truck to spin donuts in the road. Everyone knows sideshows happen in Oakland. What’s less widely understood is *where* they happen—and the impact on Oaklanders who live near sideshow hotspots.

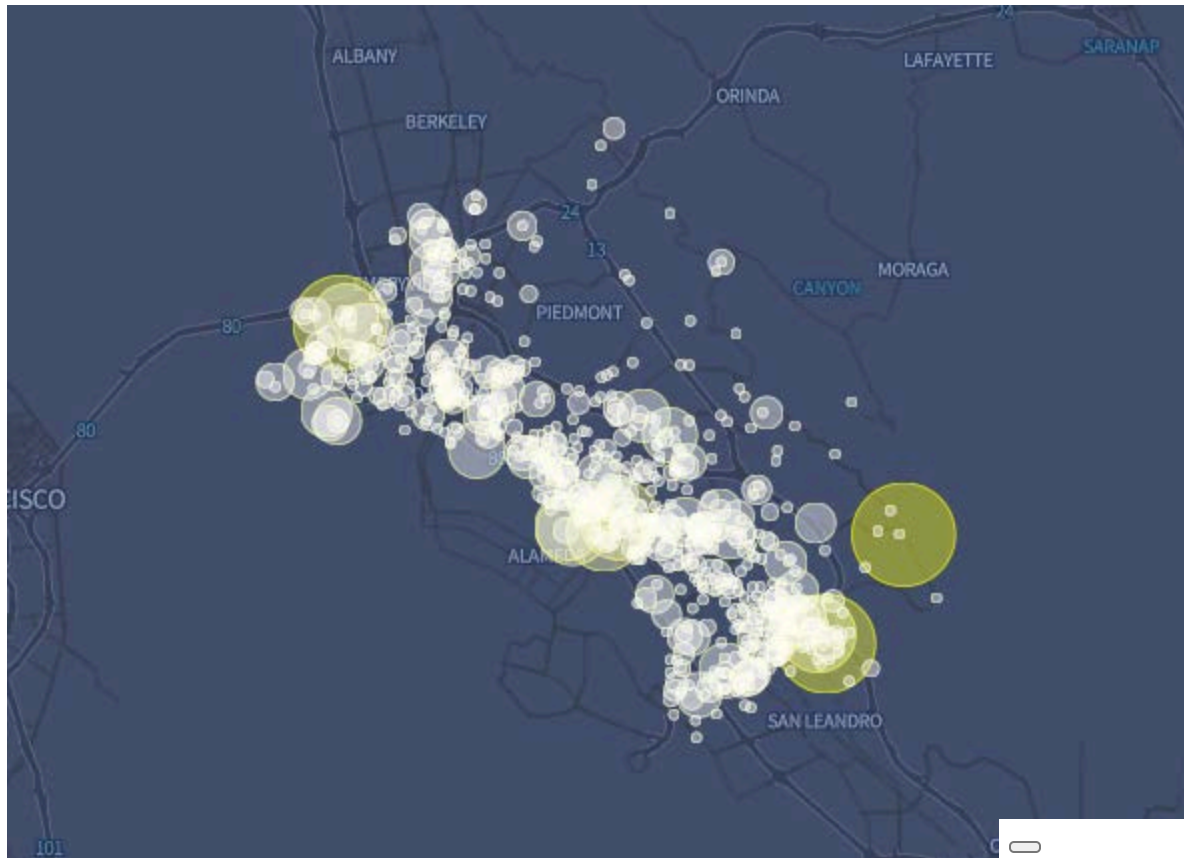
Oakland is credited with inventing these rebellious stunt-driving exhibitions, which have been happening here since the 1980s and show no sign of slowing, even while city leaders pursue [new laws](#) to deter people from participating. At a typical sideshow, drivers take over intersections for a period of minutes or hours, skidding in dizzying circles and whipping their cars from side to side, often while passengers dangle out sunroofs, windows, and open doors. Onlookers crowd around racing cars, cheering them on.

Some Oaklanders defend sideshows as a form of youthful culture, perhaps needing a more constructive and legal outlet. Others see them as a dangerous nuisance, particularly because some feature gunfire, vandalism, and violence—and because some intersections and neighborhoods see sideshows over and over again.

To help understand the impact of these events, especially where they happen most often, The Oaklandside obtained from the city nearly four years of data about sideshows. We mapped the locations most frequently taken over and spoke to nearby residents to learn how they feel about them.

All 712 Oakland sideshow locations, Jan. 2019 - Nov. 2022

Each marker reveals the locations where sideshow activity was reported to the Oakland police. Markers vary in size depending on the number of days at least one sideshow was reported, with larger dots representing places where sideshows more frequently occurred.



© OpenMapTiles © OpenStreetMap contributors

Source: Oakland Police Department • Ally Markovich | The Oaklandside

The map above displays the exact locations where sideshows were reported to the police from Jan. 1, 2019, through November 2022. There were 2,297 reports of sideshows over this period of time. Instead of mapping each sideshow report as its own event, we mapped the number of days one or more sideshows were reported at a location. We also merged some of the locations where sideshows were reported to have happened.

If a sideshow was reported to have happened at a specific address that was within a few hundred feet of an intersection where there were other reports of sideshows, we treated them all as the same location, usually marking this as the intersection.

For a full explanation of our methods, see the box at the end of this story.

Sideshows overwhelmingly take place on major roads in Oakland's flatlands, but the top hotspot may surprise you



Despite the addition of bollards and hard centerlines in the roadway in 2021, the intersection of Keller Avenue and Skyline Boulevard remains a popular sideshow spot. Credit: Florence Middleton

The intersection most frequently taken over by sideshows also has a great view of the city: Keller Avenue and Skyline Boulevard. This crossroad in the East Oakland hills saw 55 days with at least one sideshow between early 2019 and late 2022. Neighbors speculate that the view and the intersection's remoteness probably explain its popularity.

All the other hotspots are almost entirely located in deep East Oakland, West Oakland near the port, and Fruitvale.

MacArthur Boulevard and 106th Avenue saw 50 days of sideshows, a level of activity made obvious by the looping tire skid marks left all over the pavement. Rivaling MacArthur Boulevard in terms of activity was Maritime Street near the Port of Oakland. The intersection of Maritime and Admiral Toney Way saw 46 days of sideshow activity over the nearly four-year period we reviewed.

One other hotspot is the nearly half-mile stretch of 42nd Avenue between International Boulevard and I-880 in Fruitvale. This span of road sees a massive number of sideshows. It's so popular with sideshows enthusiasts that the

Map: These Oakland Intersections are hotspots for sideshows
police have given it a nickname: “The Pit.”

In the shadow of the I-880 overpass and a railroad bridge, The Pit is a massive intersection where sideshows have been known to draw hundreds of spectators who block the area with parked cars while hotrods spin donuts and revelers blast off fireworks and sometimes gunshots for hours at a time. There were 30 days of sideshow activity reported where 42nd Avenue, also known as California State Route 185, passes under I-880.

In total, sideshows happened in 712 intersections and other places in Oakland in the time period we reviewed, including 265 locations where there was sideshow activity on two or more days. These reports included everything from massive street takeovers involving hundreds of cars and thousands of onlookers to smaller exhibitions with just a few cars spinning donuts.

Based on conversations with people who live and work near these intersections, the number of sideshows has very likely been underreported by a factor of two or three. Many people in Oakland do not call OPD to report sideshows because they’ve become desensitized or because they don’t want to talk to authorities.

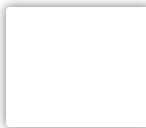
The top 50 sideshow hotspots

Jan. 2019 to Nov. 2022

Search in table

	Address	Number of days at least one sideshow was reported
1	Keller Avenue & Skyline Boulevard	55
2	106th Avenue & Macarthur Boulevard	50
3	Admiral Toney Way & Maritime Street	46
4	42nd Avenue & International Boulevard	33
5	Ca-185 & Coliseum Way	30
6	Foothill Boulevard & Macarthur Boulevard	30
7	Glascock Street & Lancaster Street	27
8	Derby Avenue & Glascock Street	23
9	W Grand Avenue & Maritime Street	22
10	98th Avenue & International Boulevard	19
11	5th Avenue & Embarcadero	17
12	35th Avenue & Macarthur Boulevard	16
13	98th Avenue & Edes Avenue	16
14	Frontage Road & W Grand Avenue	16
15	Coolidge Avenue & Macarthur Boulevard	15
16	45th Street & Market Street	14
17	7th Street & Maritime Street	14
18	98th Avenue & Bancroft Avenue	14
19	Maritime Street & Middle Harbor Road	14
20	Bancroft Avenue & Havenscourt Boulevard	13

Get the data • Created with Datawrapper



The unpleasant—and sometimes scary—realities of living by sideshow hotspots



Cars line up on 98th Avenue near an East Oakland intersection taken over for a sideshow in 2022. Credit: Eric Louie

People who live and work near the worst sideshow intersections say they are an incredible nuisance, and some even experience fear and trauma.

One family told us that in the 13 years they've lived near Keller and Skyline in Sequoyah Hills, they've seen car fires, explosions, and other recklessness associated with sideshows.

"There are a lot of stolen cars that come up here," one of the neighbors told us. They did not want to provide their name due to safety concerns.

The neighbor said sideshows around here usually feature just one or two cars but that on a few occasions, there were hours-long street parties with cars lining up on Keller. When the police were called, it would often take OPD 3-5 hours to respond. "There were so many people one time they had to bring a SWAT team to disperse it," said the neighbor.

Vijoa Lucas, who manages the Anthony Chabot Equestrian Center, which is about 500 feet from the Keller-Skyline intersection, said that between 2018 and 2020, sideshows were happening “nearly every night” at Keller and Skyline. The screeching tires and revving engines would create a cacophony that would reverberate through the rolling hills and scare the horses.

Last year, the city added hardened centerlines and plastic bollards on Skyline to try to reduce the number of sideshows there.

“We still hear them four or five times a month,” said Lucas. She also noted that since the centerlines went in, there has been an influx of abandoned cars and illegally dumped trash surrounding the intersection, including on the hiking trails next to the road.



Fresh tire marks advertise how common sideshows are at 106th Avenue and Foothill Boulevard in East Oakland. Credit: Florence Middleton

At Market Street and 45th Street in North Oakland, Northside Supermarket manager Antar Korin told us he and his neighbors have talked a lot about how to stop the sideshows, but they feel helpless. They asked the city for a roundabout but were rejected because the road wasn’t wide enough to accommodate the AC Transit bus route that

runs along it. Because this intersection, abutted by businesses on three of the four corners but mostly residential, is smaller than others, the noise from sideshows can be especially loud, said neighbors.

“They’re intense. That shit is crazy,” Korin said. On a few occasions, sideshow participants have crashed their vehicles against parked cars and even through a residential fence on the east side of the street.

“The walls on these old homes and buildings are very thin,” said Korin. “There is a lady at the corner house with a [small child]. She goes through it every time.”



Sideshows at Pearmain Street and 105th Avenue happen close to homes, filling living rooms with tire smoke. Credit: Florence Middleton

Across the street, accountant Quentin Lang said sideshow participants have climbed on top of his building to dance, stomp, and take videos. Lang placed barbed wire along the building to try and stop them. “I was told those guys were having a real good time up there,” he said.

Muhammad Ehsan, who works at the swag shop on the other corner, laughed when we told him that, based on OPD data, there were 14 days over roughly the past four years when at least one sideshow occurred at 45th Street and Market Street.

“I can confirm there’s been at least three sideshows [on three different days] just in the last two weeks,” he said

Two workers at an auto repair shop at 105th Avenue and Pearmain Street told us that smoke from car tires burning out while doing donuts often fills the air and seeps into nearby buildings, including businesses and homes. One of the workers, who lives in the area, told us it’s “awful” to experience. He did not provide his name because of privacy concerns.

At 73rd Avenue and International Boulevard in East Oakland, there were seven days of reported sideshows from 2019 through last November. Manuel Espinoza, who owns the Daily Fresh Roses Shop on the southwest corner of the intersection, said sideshows are commonplace, and crashes have pushed cars onto the sidewalk, nearly hitting pedestrians. But they’re just one nuisance in the neighborhood. He worries more about shoplifting and the economic downturn he believes was caused by the construction of AC Transit’s rapid bus line.

Yoon Jooik, the owner of Happy Dogs, a breakfast spot at 106th and Macarthur Boulevard, told us sideshows have been happening for the entire 30 years he’s been at that location. They used to happen all the time, he said, but the installation of hardened centerlines last September seems to have deterred them somewhat.



Sideshows have been taking over 106th Avenue and MacArthur Boulevard for more than 30 years. Credit: Florence Middleton

Others who have lived near sideshow hotspots say most of the infrastructure the city has added to prevent sideshows is not working. On E. 21st Street, in East Oakland, OakDOT removed a traffic lane to reduce speeding and added buffered bike lanes. But Ryan Lester, who lived on E. 18th and 21st Avenue, said the city has “failed horribly” to prevent hazardous driving. Lester recently saw a huge sideshow in the middle of the day on E. 21st, forcing his bus to detour.

Lester moved recently to the Grand Lake area and said his experience there is very different.

“One of the largest intersections near my apartment, where Santa Clara Avenue, Jean Street, and Elwood Avenue all intersect, has bulbouts and a roundabout installed, which prevents exactly this kind of activity permanently,” he said.

“It’s like I live in a completely different city that prioritizes richer and whiter people’s lives but not people in the flatlands,” said Lester.

City efforts to prevent and deter sideshows



Extra-wide roads near the Port of Oakland which are lightly traveled at night, like Maritime Street, see lots of sideshows. Credit: Florence Middleton

The city has been trying to stop sideshows for years, and its efforts fall into basically two categories: enforcement and street design interventions.

On the enforcement front, Oakland has attempted for decades to use its police department to break up sideshows, arrest participants and organizers, and impound vehicles.

In 2002, Don Perata, then a state senator, and Wilma Chan, who served in the state Assembly, introduced a bill that would have allowed the police to impound cars for 30 days if they were seized for reckless driving. Prior to this, the police could only keep a car until its owner paid a fine.

In 2005, then-Mayor Jerry Brown launched a crackdown by proposing a “spectator ordinance” that would have made it illegal for anyone to simply watch a sideshow. “If no one was watching, there wouldn’t be a sideshow,” Brown told the media. The City Council approved the new law, but it was **repealed** two years later after a lawsuit challenged its constitutionality.

Since then, the city has relied on using existing laws to cite participants in sideshows for reckless driving, tow their vehicles, and make arrests. Often, OPD has teamed up with other law enforcement agencies. For example, in November 2014, OPD, the California Highway Patrol, and Alameda County Sheriff’s Office shut down a sideshow near the port, detaining over 200 participants.



A car burns in the road after an East Oakland sideshow in 2022. Credit: Eric Louie

“Twenty-three people were arrested or cited, gunfire was reported, two firearms were recovered, participants threw rocks and bottles at the responding officers, and a stolen vehicle was lit on fire and destroyed,” according to a city [report](#) about the incident.

In 2015, OPD said in a [report](#) to the City Council it would need a dedicated force of 50 officers to tackle sideshows. Just four years later, the police [said](#) it would require 100 officers and that they had been relying on help from other agencies that were part of the Alameda County Sideshow Task Force, which was created in 2018 and includes police from Hayward, Union City, Fremont, San Leandro, Newark, Alameda, and Oakland.

In 2019, the council once again [voted](#) to support changes to state law that would make it easier to seize vehicles and impose heavy fines and felony criminal charges on people who participate in sideshows.

Last month, the Public Safety Committee [approved](#) an ordinance making promoting or facilitating a sideshow a misdemeanor with a fine of \$1,000 or six months in jail. The people who are likely to be targeted are people who promote sideshows over social media and by other means, drivers who take part in an event, and anyone that blocks streets to stop traffic. People watching sideshows will not be targeted.

Deputy City Administrator Joe Devries [told KRON 4](#) that OPD spent \$2 million on enforcement operations against sideshows in 2021.

Even with all these penalties and enforcement efforts, police say sideshows have only become more frequent and more dangerous.

Chris Bolton, a deputy chief who recently retired from OPD, worked on sideshow prevention efforts. He said at a [town hall meeting](#) about sideshows two years ago that the stunt driving events often destroy pavement and street markings such as crosswalks, making roads less safe for pedestrians and drivers. Gunfire and assaults are also more common nowadays, according to Bolton, including 42 shootings associated with sideshows in 2021.

‘They’re nothing like we were accustomed to in the past. The calls were growing more frequent,’ he said.

The city’s second method of trying to stop sideshows, changing the layouts of streets and adding physical barriers, has had mixed results.

According to OakDOT’s [website about sideshows](#), there is “no established best practice or evidence of effective engineering treatments to prevent this type of dangerous driving behavior.” Even if there were, it would be hard to install them in all the places needed. Almost any of the thousands of intersections in Oakland could be taken over by a sideshow. As a result, OakDOT has focused on interventions at the intersections where sideshows most frequently happen.



Tire burn marks atop a crosswalk on Maritime Street in West Oakland. Credit: Florence Middleton

So far, OakDOT has [intervened at 12 locations](#) across the city, including adding center hardlines and Bott's Dots, which are small ceramic bumps normally used to divide driving lanes on highways. The additions began in July 2021, when the Botts Dots and the hardlines were added to the intersection of 35th Avenue and MacArthur Boulevard.

The department hasn't shared data that could show whether these interventions have been successful in lowering the number of sideshows, although residents around these locations told us they still continue. Dotts Botts will likely not continue to be added to Oakland intersections, according to traffic safety advocates who've spoken to Oakland transportation staff.

The cost of these interventions was about \$650,000, according to city [documents](#).

Yakpasua Zazaboi, who owns the Sidewayz Cafe at MacArthur Boulevard and Seminary Avenue, and who years ago produced a documentary about the [origins of sideshows](#) as fun and thriving hubs of [hyphy culture](#), said it's unfortunate the amount of money the city has spent since the Jerry Brown administration in the early 2000s to try to stop them, especially when the interventions apparently are not working.

“We gotta try something different if we want to have something different. It’s not getting the residents the result that they want,” Zazaboi said.

Oakland’s Bicycle and Pedestrian Advisory board member Diane Yee told The Oaklandside she’d like to see extended corner buildouts called bulbouts, which reduce the size of intersections, as well as “[left turn safety](#)” treatments that place 90-degree rubber bumps deeper into the street, such as the ones that San Francisco has added to a handful of intersections.

OakDOT Director Fred Kelley said at the big town hall meeting about sideshows two years ago that the engineering solutions they’ve looked at haven’t kept up with the problem, likening it to a whack-a-mole game.

“You engineer solutions at one intersection at one location, and the sideshows [people] are very sophisticated, and they move to another location,” he said.

HOW WE REPORTED THIS STORY



Many of the 2,297 reports of sideshows in our dataset were calls from different residents complaining about the same sideshow. To cut down on the confusion and eliminate duplicate reports, we chose to count the number of days there was at least one sideshow reported at a location instead of counting each separate call to OPD. For example, if OPD received three reports of sideshows on the same day at 45th Street and Market Street, we counted this as one day of reported sideshow activity at that location.

We also merged some nearby locations together to better reflect just how much sideshow activity some areas see. For example, if a sideshow was reported to have happened at a specific address that was within a few hundred feet of an intersection where there were other reports of sideshows, we treated them all as the same location, usually marking this as the intersection.

To visualize just how much sideshow activity there is in some parts of Oakland, we varied the size of each point on the map depending on the number of days at least one sideshow was reported to have taken place there—the bigger the point, the more days there were at least one sideshow at that spot. You can hover over each location to see specific information.

It’s important to note that our map doesn’t account for every day there might have been sideshow activity at a particular location. That’s because we relied on reports to the police. If nobody called OPD about a sideshow—no matter how rowdy the rally was—it’s missing from the data and our map.

We also did not include sideshows that took place on freeways. OPD doesn’t track these since it’s the job of the California Highway Patrol.

With data editing by Ally Markovich.

© 2024 Cityside. All Rights Reserved

Powered by Newspaper

1 DAVID LOY, Cal. Bar No. 229235
ANN CAPPETTA, Cal. Bar No. 354079
2 FIRST AMENDMENT COALITION
534 4th Street, Suite B
3 San Rafael, CA 94901-3334
Telephone: 415.460.5060
4 Email: dloy@firstamendmentcoalition.org
acappetta@firstamendmentcoalition.org

5 Attorneys for Plaintiff JOSE ANTONIO GARCIA
6
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
10

11 JOSE ANTONIO GARCIA,

12 Plaintiff,

13 v.

14 COUNTY OF ALAMEDA and YESENIA L.
SANCHEZ, Sheriff of Alameda County, in her
15 official capacity,

16 Defendants.
17
18

Case No. 3:24-cv-03997-RS

**DECLARATION OF ANN CAPPETTA IN
SUPPORT OF PLAINTIFF’S MOTION
FOR PRELIMINARY INJUNCTION**

Date: September 5, 2024
Time: 1:30 p.m.
Judge: Honorable Richard Seeborg
Ctm: Courtroom 3 – 17th Floor

19 I, ANN CAPPETTA, declare as follows:

20 1. I am a member in good standing of the State Bar of California, a Legal Fellow with
21 the First Amendment Coalition, and one of the counsel of record for Plaintiff in this action. I make
22 this declaration based on personal knowledge, and if called as a witness I could and would testify
23 competently to the facts stated herein.

24 2. On or about June 6, 2023, President of the Board of Supervisors of the County of
25 Alameda (“County”) Nathan A. Miley and County Sheriff Yesenia L. Sanchez submitted a letter
26 to the County Board of Supervisors proposing it adopt an ordinance prohibiting spectators at
27 sideshows. The County posted a copy of this letter linked in the agenda for its June 13, 2023
28

1 Regular Board of Supervisors Meeting.¹ A true and correct copy of this letter is attached hereto as
2 **Exhibit 3.**

3 I declare under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct and that this declaration was executed in Sacramento, California on
5 July 23, 2024.

6 
7 _____
8 ANN CAPPETTA
9

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

¹https://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_06_13_23/GENERAL%20ADMINISTRATION/Regular%20Calendar/President%20Miley_Sheriff_352075.pdf

Exhibit 3



COUNTY OF ALAMEDA

SHERIFF/CORONER

Yesenia Sanchez

PRESIDENT

BOARD OF SUPERVISORS

Nathan A. Miley

June 6, 2023

Honorable Board of Supervisors
County Administration Building
1221 Oak Street
Oakland, California 94612

Dear Board Members:

SUBJECT: ADOPT AN ORDINANCE ADDING CHAPTER 10.40 TO TITLE 10 OF THE ALAMEDA COUNTY ORDINANCE CODE PROHIBITING SPECTATORS AT SIDESHOWS, STREET RACES, AND RECKLESS DRIVING EXHIBITIONS

RECOMMENDATION:

Approve an ordinance adding Chapter 10.40 to Title 10 of the Alameda County Ordinance Code prohibiting spectators at sideshows, street races, and reckless driving exhibitions.

DISCUSSION/SUMMARY:

Approving this ordinance would make it unlawful to attend a sideshow or an illegal street race or reckless driving exhibition (referred to as a "Sideshow Event") as a spectator. Violation of this ordinance is a misdemeanor and individuals who violate this ordinance will be subject to a fine up to one thousand dollars (\$1,000), a sentence of up to six months in jail, or by both a fine and imprisonment.

BACKGROUND

California law already prohibits drivers and passengers from engaging in Sideshow Events by criminalizing illegal street racing and illegal exhibitions of reckless driving. Existing law allows a peace officer to arrest a person and seize their motor vehicle if the peace officer determines that the person was engaged in these activities. But Sideshow Events include many other individuals, including pedestrians and other drivers and passengers who attend the Sideshow Event as spectators, and who may also participate in blocking or preventing access to the highway or other property where the Sideshow Event occurs or as starters.

Spectators play a part in Sideshow Events by encouraging, popularizing, and facilitating these events. Sizable crowds will gather to watch races or side shows. Spectators will often take video recordings of these events and post them on social media. This behavior can expose street racing and reckless driving exhibitions to a broader audience and potentially perpetuate the activity and increase its popularity. This ordinance establishes the elements necessary for spectators at sideshows to also be held accountable.

Sideshows cause significant damage to unincorporated Alameda County infrastructure including by harming or destroying intersection markings, street signs, poles, and other equipment; this infrastructure is critical for public safety and requires replacement after a Sideshow Event, which diverts resources from other critical safety improvements.

Sideshows typically occur during times when violent and property crime rates are high in unincorporated areas and the Alameda County Sheriff's Office is already addressing high emergency call volumes; Sideshows require a law enforcement response that diverts Alameda County Sheriff Office personnel from responding to these other emergencies.

Sideshows create an unsafe environment for the communities in which they occur because participants and spectators drive recklessly before, during, and after the Sideshow Event. In addition, both participant drivers and spectators are often under the influence of drugs and alcohol and have often been associated with the discharge of firearms, resulting in higher violent crime rates and vandalism.

Sideshows drastically impact the quality of life in the communities where they occur by causing damage to vehicles and private and public property, reduced air quality due to the smoke released by burning rubber tires, noise pollution, and unmanageable crowds that leave behind garbage.

Promoters of sideshows attract hundreds of people from outside of unincorporated Alameda County that have no stake in the community and typically plan events in neighborhoods that already suffer from poverty, poorer health, higher crime rates, historic disinvestment, and the resulting poor equity indicators.

In Alameda County vehicles at sideshows have caused great bodily injury and death to spectators.

This ordinance will provide law enforcement another tool to stop and prevent sideshows and reduce risk in our neighborhoods. A number of cities and counties throughout California have enacted similar spectator ordinances.

FINANCING:

There is no net increase to County costs.

VISION 2026 GOAL:

The Ordinance meets the 10x goal pathways of a Crime Free County and Accessible Infrastructure in support of our shared vision of Safe and Livable Communities.

Very truly yours,



Nate Miley
President
Alameda County Board of Supervisors



Yesenia Sanchez
Sheriff/Coroner

1 DAVID LOY, Cal. Bar No. 229235
ANN CAPPETTA, Cal. Bar No. 354079
2 FIRST AMENDMENT COALITION
534 4th Street, Suite B
3 San Rafael, CA 94901-3334
Telephone: 415.460.5060
4 Email dloy@firstamendmentcoalition.org
acappetta@firstamendmentcoalition.org

5 Attorneys for Plaintiff JOSE ANTONIO GARCIA
6
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
10

11 JOSE ANTONIO GARCIA,

12 Plaintiff,

13 v.

14 COUNTY OF ALAMEDA and YESENIA L.
SANCHEZ, Sheriff of Alameda County, in her
15 official capacity,

16 Defendants.
17
18
19
20
21
22
23
24
25
26
27
28

Case No. 3:24-cv-03997-RS

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Date: September 5, 2024

Time: 1:30 p.m.

Judge: Honorable Richard Seeborg

Ctrm: Courtroom 3 – 17th Floor

1 On August 29, 2024, Plaintiff's Motion for Preliminary Injunction came on for hearing in
2 the above-captioned action. For the reasons stated in said motion and its supporting materials, and
3 good cause appearing therefor:

4 IT IS HEREBY ORDERED that pending final judgment in this action, Defendants and
5 their officers, agents, servants, employees, attorneys, and anyone in active concert or participation
6 with any of the foregoing persons are enjoined and prohibited from enforcing Alameda County
7 Ordinance No. 2023-31 against Plaintiff, including but not limited to citing, detaining, arresting,
8 or seeking prosecution of Plaintiff, for observing, recording, or reporting on sideshows or related
9 preparations in his capacity as a reporter.

10 Dated: _____

11 _____
12 The Honorable Richard Seeborg

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 DAVID LOY, Cal. Bar No. 229235
ANN CAPPETTA, Cal. Bar No. 354079
2 FIRST AMENDMENT COALITION
534 4th Street, Suite B
3 San Rafael, CA 94901-3334
Telephone: 415.460.5060
4 Email dloy@firstamendmentcoalition.org
acappetta@firstamendmentcoalition.org

5 Attorneys for Plaintiff JOSE ANTONIO GARCIA
6
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
10

11 JOSE ANTONIO GARCIA,

12 Plaintiff,

13 v.

14 COUNTY OF ALAMEDA and YESENIA L.
SANCHEZ, Sheriff of Alameda County, in her
15 official capacity,

16 Defendants.
17
18
19
20
21
22
23
24
25
26
27
28

Case No. 3:24-cv-03997-RS

CERTIFICATE OF SERVICE

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF MARIN

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Marin, State of California. My business address is 534 4th Street, Suite B, San Rafael, CA 94901-3334.

On July 23, 2024, I served true copies of the following document(s) described as

PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

DECLARATION OF JOSE ANTONIO GARCIA IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

DECLARATION OF ANN CAPPETTA IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

[PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

on the interested parties in this action as follows:

County of Alameda
c/o County Administrator
1221 Oak Street, Room 536
Oakland, CA 94612

Yesenia Sanchez, Sheriff of Alameda County,
in her official capacity
c/o County Administrator
1221 Oak Street, Room 536
Oakland, CA 94612

BY MAIL: I cause the above document(s) to be enclosed in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 23, 2024, at East Palo Alto, California.



Robin P. Regnier