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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

JOSE ANTONIO GARCIA,
Plaintiff,

v.

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

Case No. 3:24-cv-3997-RS

**DEFENDANTS' OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

Hearing Date: October 3, 2024
Time: 1:30 PM
Location: Courtroom 3, 17th Floor

The Hon. Richard Seeborg

Trial Date: None Set

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INTRODUCTION

1
2 A cloud of toxic smoke drifts into the faces and lungs of teenagers and young adults
3 lining the intersection. In front of them, a driver spins his car’s rear wheels, intentionally
4 burning off the tire’s traction. The car takes off; the driver jerks the wheel, sending the rear
5 of the car swinging out wildly. The car passes inches away from the crowd—if they are lucky.
6 The crowd eggs him on. More likely than not, some of the drivers or audience members carry
7 drugs or alcohol; some carry guns. When the police show up, racers and spectators alike
8 drive off at high speeds, hopefully—but not always—avoiding collisions with pedestrians
9 and property. They leave behind garbage, destroyed intersections, and a shattered peace.

10 That, in essence, is a “sideshow,” an exhibition of reckless driving native to the Bay
11 Area. As sideshows have become more common, especially in Oakland and nearby commu-
12 nities, they have involved increasingly dangerous driving, gun violence,¹ looting, arson,² and
13 substance use. Many spectators have been injured or killed,³ either at the scene or in the
14 chaotic aftermath. Sideshows are more dangerous than the sum of their parts—they repre-
15 sent a unique blend of toxic and unlawful behaviors, and spectators are a crucial ingredient.
16 Sideshows exist for the audience; without spectators, there is only a reckless driver.

17 In 2023, to deter sideshows, Defendant County of Alameda adopted an ordinance that
18 penalized participating in these events as a spectator (“Ordinance”). Specifically, the Ordi-
19 nance prohibits knowingly being present within 200 feet of a sideshow or the preparations
20 for one for the purpose of observing, watching, or witnessing the sideshow. The Ordinance
21 says nothing about recording, photographing, or speaking at or about sideshows.

22
23 ¹ See, e.g., Hilda Flores, *1 Killed after ‘sideshow activity’ leads to shooting in San Joaquin*
24 *County, sheriff’s office says* (May 23, 2023), <https://www.kcra.com/article/sideshow-activity-deadly-shooting-san-joaquin-county-sheriffs-office/43961651>.

25 ² Sara Stinson, *Video: Vallejo sideshow ends with looted 7-Eleven* (Feb. 26, 2024),
26 <https://www.kron4.com/news/bay-area/video-vallejo-sideshow-ends-with-looted-7-eleven/?ipid=promo-link-block1>.

27 ³ See, e.g., Fox 11, *Orange County man arrested in New Mexico for South LA street takeover*
28 *death of nursing student* (Jan. 17, 2023), <https://www.foxla.com/news/south-la-christmas-street-takeover-arrest-elyzza-guajaca>.

1 Plaintiff Jose Antonio Garcia (“Garcia”), also known as Jose Feroso, reports on traf-
2 fic safety, including sideshows, for *The Oaklandside*. Although he does not state that he has
3 ever attended a sideshow, he filed this action challenging the Ordinance, alleging that it
4 violates his First Amendment rights to freedom of expression and freedom of the press by,
5 allegedly, interfering with his reporting on sideshows. The present motion seeks a prelimi-
6 nary injunction preventing the County from enforcing the Ordinance against him on the
7 grounds that, as applied to him, the Ordinance allegedly violates freedom of expression.

8 But the Ordinance does not regulate expression. It prohibits non-expressive *conduct*:
9 attending a sideshow for the purpose of watching the exhibition of dangerous driving. Courts
10 have repeatedly recognized that laws regulating non-expressive conduct are not subject to
11 First Amendment scrutiny at all, even if they incidentally limit expression. Although courts
12 have recognized that audiovisual recording can be protected expression, the Ordinance’s
13 effects on recording are solely incidental. The Ordinance prohibits participating in side-
14 shows as a spectator, not speaking or reporting about sideshows. It is therefore not subject
15 to First Amendment review.

16 Even if the Ordinance were subject to the First Amendment, it is nevertheless valid
17 as either (1) a regulation of the non-expressive aspects of conduct with both non-expressive
18 and expressive elements, or (2) as a content-neutral time, place, and manner restriction.
19 Under either frame, the Ordinance passes intermediate scrutiny because it targets non-
20 expressive participation in sideshows as a spectator because that conduct poses unique
21 threats to public safety and quality of life. The Ordinance says nothing about expressive
22 activity or content, nor was it motivated by a desire to suppress speech. It also leaves open
23 ample channels of communication. Garcia may continue reporting on sideshows: he may
24 interview spectators, drivers, and residents, and he may use video or photographs taken by
25 law enforcement, passersby or neighbors, spectators, remotely operated cameras, or tele-
26 photo lenses from beyond the Ordinance’s 200-foot boundary. As with any other member of
27 the public, the only thing he may *not* do is participate in a sideshow as a spectator.

28

1 The Ordinance, like other valid laws prohibiting spectating at illegal events such as
2 animal fights, regulates dangerous conduct and not expression. Because the Ordinance is
3 valid, Garcia cannot prevail on the merits of his claims. Moreover, his alleged injury is too
4 speculative to show irreparable harm absent an injunction. The preliminary injunction
5 should therefore be denied.

6 FACTUAL BACKGROUND

7 **A. Sideshows, including spectators, present a growing hazard to public 8 safety and quality of life in Bay Area communities.**

9 Sideshows present a serious threat to public safety. Spectators at sideshows risk
10 death or injury. Declaration of Fenton Culley in Support of Opposition to Motion for Prelim-
11 inary Injunction (“Culley Dec.”), ¶ 7a. The risks of injury or death stem not only from the
12 cars themselves, but also from the combination of dangerous behaviors associated with side-
13 shows, including gun violence, looting, and arson. *Id.*, ¶ 7b; *see also id.*, ¶ 10 (County law
14 enforcement has recovered numerous firearms during sideshow prevention and response
15 operations). Sideshows also require substantial law enforcement resources, diverting offic-
16 ers from other priorities. *Id.*, ¶ 7d. Spectators and others are often killed or injured when
17 drivers or spectators flee the scene at high speeds after law enforcement arrives. *Id.*, ¶ 7a.

18 Sideshows also threaten quality of life. They block traffic, causing delays. *Id.*, ¶ 8a.
19 Sideshow events are loud. *Id.*, ¶ 8b; Doc. 15-3, Declaration of Jose Antonio Garcia In Support
20 of Plaintiff’s Motion for Preliminary Injunction (“Garcia Dec.”), Ex. 2 at 8 (“The screeching
21 tires and revving engines would create a cacophony that would reverberate through the
22 rolling hills.”). Smoke from burning tires contains harmful chemicals. Doc. 15-3, Garcia
23 Dec., Ex. 2 at 10 (smoke drifts into nearby homes); *see also* US EPA, *Tire Fires* (Feb. 22,
24 2016), <https://archive.epa.gov/epawaste/consERVE/materials/tires/web/html/fires.html> (last
25 accessed Aug. 23, 2024). Crowds of spectators trespass, damage property, Doc. 15-3, Garcia
26 Dec., Ex. 2 at 9, and leave garbage, Culley Dec., ¶ 8d. Some locations see multiple sideshows,
27 exposing communities to these hazards repeatedly. *Id.*, ¶ 12.

1 **B. Prior interventions have not successfully deterred sideshows.**

2 The State and local governments have previously attempted to deter sideshows with-
3 out much success. In 2002, the Legislature allowed law enforcement to arrest persons
4 engaged in reckless driving and impound their vehicles. *See* Cal. Veh. Code § 23109.2. The
5 City of Oakland has increased enforcement of traffic laws, though its ordinances do not pe-
6 nalize spectators. Doc. 15-3, Garcia Dec., Ex. 2 at 13-14. Oakland has also installed Bott’s
7 Dots (ceramic bumps usually used as lane dividers that can complicate stunt-driving) and
8 hardened center-lines in streets to deter sideshows. *Id.* at 15.

9 Despite these efforts, sideshow activity has increased. The California Highway Patrol
10 received almost 26,000 calls involving sideshow activity in 2020, an approximately 15% in-
11 crease in calls from 2019. Assembly Committee on Transportation, Analysis of AB 1978 at
12 3 (Apr. 22, 2024), [https://trackbill.com/s3/bills/CA/2023/AB/1978/analyses/assembly-trans-](https://trackbill.com/s3/bills/CA/2023/AB/1978/analyses/assembly-transportation.pdf)
13 [portation.pdf](https://trackbill.com/s3/bills/CA/2023/AB/1978/analyses/assembly-transportation.pdf). In 2023, that increased to over 27,000 calls. *Id.* Bay Area jurisdictions,
14 including the City of Oakland, have struggled to address sideshows. Culley Dec., ¶ 13; Doc.
15 15-3, Garcia Dec., Ex. 2 at 14 (“Even with all these penalties and enforcement efforts, police
16 say sideshows have only become more frequent and more dangerous.”); *id.* at 2 (sideshows
17 “show no sign of slowing” in Oakland). Garcia also acknowledges that infrastructure modi-
18 fications have not deterred sideshow activity: “a recent Oaklandside investigation into
19 nearly four years of sideshow data from the Oakland Police Department found that those
20 interventions have not stopped people from organizing sideshows.” Declaration of Aaron
21 Stanton in Support of Opposition to Motion for Preliminary Injunction (“Stanton Dec.”), Ex.
22 B at 5; *see also* Culley Dec., ¶ 14 (sideshow drivers ignored Bott’s Dots).

23 **C. The Ordinance seeks to protect public safety and improve quality of**
24 **life by penalizing participating in sideshows as a spectator.**

25 In light of increasing sideshow activity, and after receiving numerous complaints
26 from residents in the unincorporated County, the Sheriff’s Office and a member of the Board
27 of Supervisors sponsored an ordinance prohibiting joining sideshows as a spectator. Culley
28 Dec., ¶¶ 5-6 & Ex. A. The Board adopted the Ordinance in August 2023. *Id.*, ¶ 18.

1 The materials presented to the Board in support of the Ordinance described the dan-
 2 gers associated with spectating at sideshows. A presentation highlighted deaths and
 3 injuries, including those of a nursing student and a toddler, caused by reckless driving and
 4 sideshow-related gun violence. Culley Dec., Ex. A at 10. The presentation also described
 5 other unlawful acts associated with sideshows, including shootings, vandalism, arson, and
 6 destruction of public property. *Id.* at 12, 18.

7 The Board adopted findings demonstrating the necessity for the Ordinance. Alameda
 8 County Code (“ACC”) § 10.40.010.⁴ The findings state that sideshows involve damage to
 9 public property; monopolization of law enforcement resources; drug and alcohol use, reckless
 10 driving, gun violence, and vandalism caused by drivers and spectators alike; noise; air pol-
 11 lution; garbage left by crowds; and death and injury to spectators. *Id.*

12 To prevent these harms, the Ordinance prohibits spectating at sideshows. Specifi-
 13 cally, it prohibits knowingly being “present” within 200 feet of a sideshow or the
 14 preparations for a sideshow “for the purpose of viewing, observing, watching, or witnessing
 15 the sideshow event as it progresses.” ACC §§ 10.40.020, 10.40.030.

16 Notably, the Ordinance emphasizes that spectators *participate* in sideshows. It de-
 17 fines a “sideshow” as an event in which a person blocks a public right-of-way “for the purpose
 18 of performing a street race or reckless driving exhibition *for one or more spectator(s).*” ACC
 19 § 10.40.020 (emphasis added). The Ordinance recognizes that there is no sideshow without
 20 spectators.⁵

21 **D. Garcia reports on sideshows but does not state that he has ever**
 22 **attended one. No sideshows have been reported in unincorporated**
 23 **Alameda County since the Ordinance was adopted.**

24 Garcia reports on sideshows and other traffic safety issues for *The Oaklandside*. Doc.
 25 15-1, Garcia Dec., ¶¶ 2, 9, 10. While Garcia “regularly rel[ies] on photographs, as well as

26 ⁴ The Alameda County Code is available online at <https://library.municode.com/ca/alameda-county/codes/code-of-ordinances>.
 27

28 ⁵ Independent of the Ordinance’s definition, the integral nature of the audience is evident
 in the name of these events: *sideshows*.

1 video and audio recordings” in his reporting, *id.* at ¶ 12, he does not state that he has per-
 2 sonally attended, filmed, photographed, or recorded a sideshow himself. Rather, he has used
 3 police data, *id.* at ¶ 13, post-incident interviews, *id.* at ¶ 16, and images taken by others, *see*
 4 Doc. 15-2, Garcia Dec., Ex. 1 at 5; Doc. 15-3, Garcia Dec., Ex. 2 at 4, 7-11, 13, 15.

5 Since the Ordinance’s adoption in 2023, the County Sheriff’s Office has not been
 6 aware of any reports of sideshows occurring in the unincorporated County. Culley Dec., ¶
 7 19. The Ordinance has never been enforced. *Id.*, ¶ 20.

8 PRELIMINARY INJUNCTION STANDARD

9 A preliminary injunction must be denied unless the plaintiff establishes that “(1) he
 10 is likely to succeed on the merits of his claim, (2) he is likely to suffer irreparable harm
 11 absent the preliminary injunction, (3) the balance of equities tips in his favor, and (4) a
 12 preliminary injunction is in the public interest.” *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th
 13 Cir. 2023). The first factor is essential: “a court need not consider the other factors if a mo-
 14 vant fails to show a likelihood of success on the merits.” *Id.* (quoting *Disney Enters., Inc. v.*
 15 *VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017)). As to the second factor, speculative injury
 16 does not justify preliminary injunctive relief; a plaintiff must demonstrate *imminent* threat-
 17 ened injury. *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011 (9th Cir. 2016). When the
 18 opposing party is the state, the third and fourth factors merge. *Baird*, 81 F.4th at 1080.

19 ARGUMENT

20 I. Garcia cannot succeed on the merits of his claims.

21 A. The Ordinance is not subject to First Amendment scrutiny. It is a 22 generally applicable regulation of conduct that at most marginally burdens expressive conduct.

23 The Ordinance does not restrict expression. It prohibits spectators’ participation in
 24 dangerous “sideshows”: exhibitions of reckless driving that threaten harm to all partici-
 25 pants—drivers and spectators—and the broader public. The Ordinance is thus a generally
 26 applicable regulation of conduct that only incidentally affects speech. It is therefore not sub-
 27 ject to review under the First Amendment.

1 In *Arcara v. Cloud Books, Inc.*, 478 U.S. 697 (1986), the Supreme Court upheld the
2 application of a state nuisance statute to close an adult bookstore that harbored prostitu-
3 tion. *Id.* at 707. The Court rejected the defendant’s First Amendment defense even though
4 the state’s action plainly curtailed speech by closing a bookstore. While noting that “every
5 civil and criminal remedy imposes some conceivable burden on First Amendment activities,”
6 the Court held that “the First Amendment *is not implicated* by the enforcement of a public
7 health regulation of general application against the physical premises in which respondents
8 happen to sell books.” *Id.* at 706-07 (emphasis added). Similarly, First Amendment review
9 does not apply to an ordinance prohibiting outdoor fires despite its effect of prohibiting flag
10 burning at a protest, *see R.A.V. v. City of St. Paul*, 505 U.S. 377, 385 (1992), to an ordinance
11 that prohibits providing booking services for unregistered short-term property rentals de-
12 spite its incidental restriction of advertising, *HomeAway.com, Inc. v. City of Santa Monica*,
13 918 F.3d 676, 686 (9th Cir. 2019), to statutes prohibiting firearms sales on public property
14 despite their possible effect of preventing pro-gun speech at gun shows, *B & L Prods., Inc.*
15 *v. Newsom*, 104 F.4th 108, 113 (9th Cir. 2024), to suspension of a license for an erotic danc-
16 ing venue for serving alcohol without a liquor license despite its curtailing expressive
17 dancing, *Talk of the Town v. Dep’t of Fin. & Bus. Servs.*, 343 F.3d 1063, 1069-70, 1073-74
18 (9th Cir. 2003), or to a Covid-19 stay-at-home order despite its requiring closure of tattoo
19 parlors, *Mitchell v. Newsom*, 509 F. Supp. 3d 1195, 1201 (C.D. Cal. 2020). These courts have
20 all recognized that “the First Amendment does not prevent restrictions directed at com-
21 merce or conduct from imposing incidental burdens on speech.” *HomeAway.com*, 918 F.3d
22 at 685 (quoting *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011)).

23 Garcia complains that the Ordinance prohibits his recording of sideshows as part of
24 his journalistic work, claiming that audiovisual recording can be protected expression.
25 Doc. 15, Plaintiff’s Notice of Motion and Motion for Preliminary Injunction (“Mot.”) at 14
26 (citing, e.g., *Animal Legal Defense Fund v. Wasden*, 878 F.3d 1184, 1203-04 (9th Cir. 2018)
27 (“ALDF”). But he then takes a leap further and asserts that the Ordinance’s prohibition of
28 joining a sideshow as a *spectator* is itself subject to First Amendment review because mere

1 viewing “is ‘a necessary prerequisite to recording.’” *Id.* (quoting *Chestnut v. Wallace*, 947
2 F.3d 1085, 1090 (8th Cir. 2020)). But the cases that found viewing a prerequisite to record-
3 ing involved observing and recording *police activity*. *Chestnut*, 947 F.3d at 1090 (“Every
4 circuit court to have considered the question has held that a person has the right to record
5 police activity in public.”); *Sanchez v. City of Atherton*, No. 22-cv-03106, 2023 WL 137475,
6 at *5 (N.D. Cal. Jan. 9, 2023) (observing *police* is part of recording them).⁶ Garcia’s cases do
7 not stand for the sweeping proposition that “observing” of any kind is protected expression
8 and not merely conduct that may be regulated as part of general public safety measures.
9 *See Colten v. Kentucky*, 407 U.S. 104, 109-10 (1972) (upholding enforcement of generally
10 applicable “move-on” order pursuant to disorderly conduct statute; rejecting argument that
11 plaintiff’s observation of a traffic citation was speech activity).

12 In fact, courts have expressly refused to classify all “observing” as expressive activity.
13 The recent decision in *National Press Photographers Ass’n v. McCraw*, 90 F.4th 770 (5th
14 Cir. 2024), *cert. petition docketed*, No. 23-1105 (Apr. 11, 2024) reflects the right approach. A
15 state statute prohibited flying drones over particular facilities such as prisons and large
16 sports venues (the “no-fly” proscription) and separately prohibited using drones to “capture
17 an image” of persons or property without their consent. *Id.* at 777-78. Following the line of
18 cases Garcia cites, the court applied First Amendment scrutiny to the latter restriction be-
19 cause it directly regulated recording, but the court *refused* to apply that scrutiny to the no-

21 ⁶ *Brown v. Kemp*, 86 F.4th 745 (7th Cir. 2023), involved observing hunters, not police officers,
22 but the law in that case “was specifically intended to target the expressive activities” of anti-
23 hunting advocates, expressly including their video recordings, rather than their conduct. *Id.*
24 at 780. In contrast, the Ordinance here is not intended to suppress speech. *See* § I.B.1.a, *infra*.
25 Moreover, in extending First Amendment protection to observing, *Brown* relied on *ACLU v.*
26 *Alvarez*, 679 F.3d 583, 595 (7th Cir. 2012), which itself involved observation of police. Garcia
27 also cites to *Western Watersheds Project v. Michael*, 869 F.3d 1189 (10th Cir. 2017), which ap-
28 plied the First Amendment to a statute that penalized trespassing for the purpose of collecting
data, including notes and photographs. But it was because “[t]he challenged statutes apply *spe-*
cifically to the creation of speech” that “they are subject to the First Amendment.” *Id.* at 1197
(emphasis added). Indeed, the court suggested the result would have been different if plaintiffs
had challenged the state’s general trespassing statute. *Id.* Here, the Ordinance does not apply
to the creation of speech—it does not prohibit recording, note-taking, or any other expression.

1 fly provision. *Id.* at 787-88. The plaintiff argued the no-fly provision was subject to the First
 2 Amendment because it “*necessarily* prohibits photojournalists from capturing images from
 3 the air over those [restricted] facilities.” *Id.* at 788. That is *precisely* Garcia’s argument here,
 4 too. The court summarily rejected the argument, stating:

5 There are few restrictions on action which could not be clothed by ingenious
 6 argument in the garb of decreased data flow. For example, the prohibition of
 7 unauthorized entry into the White House diminishes the citizen’s opportuni-
 8 ties to gather information he might find relevant to his opinion of the way the
 country is being run, but that does not make entry into the White House a First
 Amendment right. The right to speak and publish does not carry with it the
 unrestrained right to gather information.

9 *Id.* (quoting *Zemel v. Rusk*, 381 U.S. 1, 16-17 (1965)). The no-fly provision had “nothing to
 10 do with speech, or even expressive activity,” and did not implicate the First Amendment. *Id.*

11 Like the regulations in *Arcara* and similar cases, the Ordinance at most incidentally
 12 affects expression. It proscribes spectator participation in sideshows, not expression of any
 13 kind. It defines a sideshow as “an occasion where one or more persons, for the purpose of
 14 performing a street race or reckless driving exhibition for one or more spectator(s) either
 15 blocks or impedes traffic on a street or highway or impedes access to an off-street parking
 16 facility.” ACC § 10.40.020. Spectators are as much a part of a sideshow as is the reckless
 17 driving; the whole purpose of a sideshow is “performing a[n] . . . exhibition for . . . spectators.”
 18 The Ordinance thus prohibits only *conduct*: attendance at sideshows as a spectator. Indeed,
 19 it does not impose a blanket prohibition on knowingly watching or otherwise observing side-
 20 shows, as they may still be viewed from 200 feet away. Rather, it prohibits only observing
 21 by those “spectators” who are “present” at—i.e., intentionally part of—the sideshow. *Id.* (de-
 22 fining “present” and “spectator”). That this prohibition may incidentally limit a journalist’s
 23 making audiovisual recordings while attending an illegal sideshow does not subject the Or-
 24 dinance to the First Amendment.⁷

25 _____
 26 ⁷ The *Arcara* Court recognized that generally applicable regulations that “impose a dispro-
 27 portionate burden upon those engaged in protected First Amendment activities” could be
 28 subject to the First Amendment. 478 U.S. at 704 (citing *Minneapolis Star & Tribune Co. v.*
Minn. Comm’r of Revenue, 460 U.S. 575 (1983)). Garcia can make no such claim here: he is
 the *only* person whose expression has been allegedly inhibited by the Ordinance.

1 Garcia’s claim would open numerous generally applicable statutes to First Amend-
 2 ment scrutiny based on their incidental interference with a journalist’s observation. But the
 3 First Amendment does not license the press to engage in unlawful activity to gather news.
 4 *ALDF*, 878 F.3d at 1190 (“[T]he First Amendment right to gather news within legal bounds
 5 does not exempt journalists from laws of general applicability.”); *see also Cohen v. Cowles*
 6 *Media Co.*, 501 U.S. 663, 669 (1991) (“[G]enerally applicable laws do not offend the First
 7 Amendment simply because their enforcement against the press has incidental effects on
 8 its ability to gather and report the news.”); *Branzburg v. Hayes*, 408 U.S. 665, 682-83 (1972)
 9 (same). Prohibitions on speeding and reckless driving may prevent the press from docu-
 10 menting high-speed police chases or other subjects of public concern, and yet “driving in
 11 violation of traffic laws is not an accepted news or information gathering technique entitled
 12 to any special protection.” *Raef v. App. Div. of Super. Ct.*, 240 Cal. App. 4th 1112, 1119, 1128
 13 (2015) (upholding statute penalizing “reckless driving . . . committed with the intent to cap-
 14 ture an image . . . of another person for a commercial purpose”); *see also People v. Bergen*,
 15 883 P.2d 532, 544-45 (Colo. App. 1994) (reporter was validly subject to statute prohibiting
 16 attendance, by anyone, at dogfights). Nor does the First Amendment provide the press a
 17 special right of access to places normally closed to the public, such as prisons. *See, e.g.*,
 18 *Houchins v. KQED, Inc.*, 438 U.S. 1, 11, 12 (1978) (discussing cases); *see also Branzburg*,
 19 408 U.S. at 684-85 (“Newsmen have no constitutional right of access to the scenes of crime
 20 or disaster when the general public is excluded.”).

21 Garcia’s claim would subject both the County’s Ordinance and many similar sideshow
 22 prohibitions to the First Amendment.⁸ But it would also bring within the First Amendment
 23 many unrelated criminal statutes that prohibit attending illegal events as a spectator. *See*,
 24 *e.g.*, 7 U.S.C. § 2156(a)(2) (animal fights); Cal. Pen. Code § 413 (illegal boxing matches),
 25

26
 27 ⁸ *See, e.g.*, City of San Diego Municipal Code § 52.5203; City of San Jose Code of Ordinances
 28 § 10.50.020; City of Los Angeles Municipal Code § 47.15; County of Sonoma Code of Ordina-
 nances § 19-80; City of Santa Clara Municipal Code § 10.06.020; City of Turlock Municipal
 Code § 4-20-102; City of Santa Rosa Municipal Code § 10-26.040.

1 § 597.5 (dog fights), § 597b (animal fights); Okla. Stat. tit. 21, § 1692.6 (cockfights); Conn.
2 Gen. Stat. § 53–247(c)(4) (animal fights); *see also Foley v. Superior Court*, 117 Cal. App. 4th
3 206, 211 n.2 (2004) (comparing illegal street racing to other such illegal exhibitions). Courts
4 have repeatedly upheld such regulations against First Amendment challenges, including
5 freedom of expression challenges. *See, e.g., Hernandez-Gotay v. United States*, 985 F.3d 71,
6 80 (1st Cir. 2021) (federal statute prohibiting spectating at animal fighting event did not
7 infringe of freedom of speech or association); *Bergen*, 883 P.2d at 544 (state statute punish-
8 ing spectating at animal fighting event did not violate reporter’s First Amendment rights);
9 *see also State v. Tabor*, 678 S.W.2d 45, 48 (Tenn. 1984); *State v. Arnold*, 557 S.E.2d 119, 122
10 (N.C. Ct. App. 2001); *State v. Bonilla*, 131 Conn. App. 388, 392 (Conn. Ct. App. 2011).

11 Finally, contrary to Garcia’s argument (Mot. at 13), the fact that sideshows occur on
12 streets and sidewalks does not change the analysis despite some of those areas being con-
13 sidered public fora. In *Wright v. City of St. Petersburg*, 833 F.3d 1291 (11th Cir. 2016), a
14 minister had been arrested in a city park—a traditional public forum—for obstruction of
15 justice, and pursuant to statute, the arresting officer had ordered him not to return to the
16 park for one year. *Id.* at 1293-94. The court rejected Wright’s First Amendment challenge,
17 finding that *Arcara*, not the line of cases governing speech restrictions in public fora, con-
18 trolled. *Id.* at 1295-96 & n.4; *see also Doe v. City of Lafayette*, 377 F.3d 757, 764, 772 (7th
19 Cir. 2004) (applying *Arcara* to hold that an order banning a sex offender from public parks
20 was not subject to the First Amendment; finding public forum doctrine inapplicable). “Re-
21 gardless of the nature of the forum, the First Amendment does not prohibit regulation of
22 non-expressive activity unless the regulation ‘impose[s] a disproportionate burden’” on
23 speech, which the Ordinance does not do. *Kreimer v. Bur. of Police*, 958 F.2d 1242, 1263 n.24
24 (3d Cir. 1992) (quoting *Arcara*, 478 U.S. at 704-05); *see note 7, supra*. Participating in a
25 sideshow as a spectator does not become an expressive activity merely because that conduct
26 occurs on a public street.

1 **B. If it were subject to First Amendment review, the Ordinance would**
 2 **satisfy intermediate scrutiny.**

3 Because the Ordinance regulates non-expressive conduct without triggering the First
 4 Amendment, *see* § I.A, *supra*, the Court need go no further to determine that Garcia’s chal-
 5 lenge cannot succeed on the merits. But even if the Ordinance did regulate expressive
 6 activity, it would be subject to—and survive—intermediate scrutiny.

7 The Supreme Court applies intermediate scrutiny to laws that regulate expressive
 8 conduct or speech not based on or because of its content, but to further other legitimate
 9 governmental concerns. *McCullen v. Coakley*, 573 U.S. 464, 477 (2014). For such regula-
 10 tions, courts apply a more relaxed means-ends test than that applicable to content-based
 11 regulation: laws must be narrowly tailored to serve significant governmental interests, but
 12 they need not be the least restrictive means of advancing those interests. *Ward v. Rock*
 13 *Against Racism*, 491 U.S. 781, 798-800 (1989).

14 If the Ordinance could be considered a regulation of speech at all, at most, it could
 15 qualify as a regulation of the non-expressive aspects of conduct with both expressive and
 16 non-expressive elements, which is subject to review under *United States v. O’Brien*, 391 U.S.
 17 367 (1968). If the Ordinance did regulate expression directly, it would be considered a reg-
 18 ulation of the time, place, and manner of expression. But under either framework, the
 19 Ordinance easily survives intermediate scrutiny. Because the test applied to time, place,
 20 and manner laws is more comprehensive, and because the Ordinance satisfies even that
 21 test, the County addresses that analysis first.

22 **1. If the Ordinance could be said to directly regulate speech, it**
 23 **would be a legitimate and content-neutral time, place, and**
 24 **manner restriction.**

25 Regulations restricting the time, place, or manner of speech or expressive conduct—
 26 including in traditional public fora—pass First Amendment scrutiny if they are content-
 27 neutral, narrowly tailored to serve a compelling governmental interest, and if they leave
 28 open “ample alternative channels for communication of the information.” *Clark v. Cmty. for*
Creative Non-Violence, 468 U.S. 288, 293 (1984). The Ordinance readily passes this test. It

1 regulates conduct based on its time and place—i.e., within 200 feet of an ongoing or immi-
2 nent sideshow—because of the dangers to public safety and quality of life associated with
3 that conduct, and without reference to the content of any speech. Moreover, it is both nar-
4 rowly tailored and leaves open ample alternatives to communicate information.

5 **a. The Ordinance is content-neutral.**

6 In analyzing content-neutrality, courts look both to whether the law “draw[s] content-
7 based distinctions *on its face*” and to whether it is “*justified* without reference to the content
8 of the regulated speech.” *McCullen*, 573 U.S. at 479-80 (emphasis added). Here, neither the
9 Ordinance on its face nor its justification relates to the content of speech.

10 Facially content-based laws include those that require examination of the “content of
11 the message that is conveyed” to identify a violation. *Id.*; *Reed v. Town of Gilbert*, 576 U.S.
12 155, 163 (2015) (content-based laws “appl[y] to particular speech because of the topic dis-
13 cussed or the message expressed”); *see also City of Austin v. Reagan Nat’l Advert. of Austin,*
14 *LLC*, 596 U.S. 61, 69 (2022) (regulations requiring “an examination of speech only in service
15 of drawing neutral, location-based lines” are content-neutral). In contrast, when a violation
16 depends not on “what [plaintiffs] say,” but on “where they say it,” the law is content-neutral
17 on its face. *McCullen*, 573 U.S. at 479-80. For example, in *McCullen*, the Court judged a law
18 prohibiting access to a buffer zone around abortion clinics content-neutral because it applied
19 based on speakers’ location rather than their message. *Id.* The Court reasoned that one
20 could violate the law “merely by standing in a buffer zone, without displaying a sign or
21 uttering a word.” *Id.* While acknowledging that the law’s targeting of abortion clinics had
22 “the inevitable effect of restricting abortion speech more than speech on other subjects,” *id.*
23 at 480, the Court did not disturb its conclusion that the law was content-neutral: “a facially
24 neutral law does not become content based simply because it may disproportionately affect
25 speech on certain topics.” *Id.*

26 Here, the Ordinance’s application does not depend on the topic or message of any
27 expression. A violation occurs when an individual knowingly spectates at a sideshow—i.e.,
28 stands within 200 feet for the purpose of observing the sideshow—regardless of any message

1 they intend to convey or any topic they intend to discuss. ACC §§ 10.40.020 & .030. As in
2 *McCullen*, enforcement has nothing to do with whether the individual speaks or what sub-
3 ject they speak about. As long as spectators are knowingly there to watch the sideshow, the
4 Ordinance applies equally to silent spectators, spectators speaking or carrying signs ad-
5 dressing any topic and conveying any message, and spectators like Garcia who are preparing
6 to speak in the future.

7 Of course, by regulating sideshows, the Ordinance may inevitably have a greater
8 incidental impact on speech about sideshows. But that does not make it content-based. *See*
9 *McCullen*, 573 U.S. at 480 (“[A] regulation that serves purposes unrelated to the content of
10 expression is deemed neutral, even if it has an incidental effect on some speakers or mes-
11 sages but not others.”). Indeed, an individual standing within 200 feet of a sideshow may
12 advocate for or against sideshows or animal rights or seek recruits to her religion or her
13 book club, all without fear of citation, as long as she is not there for the purpose of observing
14 the sideshow. The Ordinance does not target spectators’ expression, if any there be, based
15 on its topic or message; it targets their participation in a dangerous non-expressive event,
16 based on their intentional presence to engage in that event as a spectator. That purpose and
17 effect is content-neutral. *See Project Veritas v. Ohio Elec. Comm’n*, 418 F. Supp. 3d 232, 258
18 (S.D. Ohio 2019) (law prohibiting undercover reporting of political campaigns was content-
19 neutral because it did not prohibit reporting based on the topic or message, but only based
20 on whether the campaign knew about the reporting).

21 Courts evaluating content-neutrality must also look to whether the law’s justification
22 relates to the content of speech. *Reed*, 576 U.S. at 166. Here, the Ordinance seeks not to
23 suppress speech about sideshows, but to protect public safety and quality of life from threats
24 posed by—and to—spectators at sideshows. The County’s concerns are content neutral. *See*
25 *McCullen*, 573 U.S. at 480; *Ward*, 419 U.S. at 792 (regulation to control noise had nothing
26 to do with content).

27 The Ordinance’s statement of purpose addresses sideshows’ damage to infrastruc-
28 ture; diversion of law enforcement resources; reckless driving, drug and alcohol use, and

1 gun violence by drivers *and* spectators; property damage; air pollution; noise; spectators’
2 garbage; disproportionate impacts on disadvantaged communities; and injury and death to
3 spectators. ACC § 10.40.010. None of these factors relates to speech, let alone content.

4 Garcia argues that the Ordinance is intended to suppress video recording of side-
5 shows. Mot. at 14. But the Ordinance says nothing about recording. Recording, reporting,
6 or speaking are neither elements of a violation nor aggravating factors. *Cf. Patagonia Corp.*
7 *v. Bd. of Governors of the Fed. Reserve Sys.*, 517 F.2d 803, 813 (9th Cir. 1975) (statute’s text
8 is the best evidence of legislative intent). Garcia points instead to one statement in a letter
9 from the Sheriff and a member of the Board of Supervisors noting that spectators often post
10 sideshow videos on social media, which can encourage the activity. Mot. at 14; *see also* Doc.
11 15-5, Declaration of Ann Cappetta In Support of Plaintiff’s Motion for Preliminary Injunc-
12 tion (“Cappetta Dec.”), Ex. 3 at 2.

13 In context, however, this letter concerns spectators’ conduct—not their speech. It ex-
14 plains that existing laws penalizing reckless drivers cannot deter sideshows because
15 sideshows “include” spectators. Doc. 15-5, Cappetta Dec., Ex. 3 at 2; *see also* ACC § 10.40.020
16 (defining a sideshow as reckless driving “for one or more spectator(s)”; Culley Dec., ¶¶ 15-
17 16 (“Sideshows would not occur without spectators present to observe the reckless driving
18 at close range.”). The spectators cause their own problems: the letter lists drug and alcohol
19 use, gun violence, vandalism, garbage, and injury and death. Doc. 15-5, Cappetta Dec., Ex.
20 3 at 3; ACC § 10.40.010. The letter also explains that spectators “encourag[e]” sideshows,
21 including by gathering in large crowds and taking and posting videos on social media. Doc.
22 15-5, Cappetta Dec., Ex. 3 at 2. The latter statement, emphasized by Garcia, is merely one
23 of several examples of how spectators may encourage sideshows. Nothing in the letter or
24 the Ordinance itself mentions any restriction on posting videos or otherwise publicizing
25 sideshows. As a whole, the letter shows that the Ordinance is intended to ensure spectators
26 can “be held accountable”—*not* for posting videos to Tik-Tok, but for their participation in
27 an activity that threatens public safety and quality of life in all of the ways the letter
28

1 discusses. *Id.* at 2-3; *cf. Raef*, 240 Cal. App. 4th at 1131-32 (looking at legislative history
2 document as a whole to determine that the legislature had a content-neutral motivation).

3 In any event, “courts will not invalidate a statute that is ‘constitutional on its face,
4 on the basis of what fewer than a handful of [legislators] said about it.’” *B&L Prods., Inc. v.*
5 *Newsom*, 104 F.4th 108, 116 (9th Cir. 2024) (quoting *O’Brien*, 391 U.S. at 384) (alteration
6 in original). In fact, the Board did not fully adopt the views in the letter. The Ordinance’s
7 findings copy verbatim most of the factors described in the letter cited by Garcia. *Compare*
8 *Doc. 15-5, Cappetta Dec., Ex. 3 at 2-3, with ACC § 10.40.010*. But those findings *omit* con-
9 cerns about video and social media. *Id.* The Board’s omission of this topic, combined with
10 the absence of any evidence of speech-suppressive intent on the face of the Ordinance, sug-
11 gests that the Board lacked intent to suppress speech about sideshows. *O’Brien*, 391 U.S. at
12 384 (“What motivates one legislator to make a speech about a statute is not necessarily what
13 motivates . . . others to enact it We decline to void . . . legislation . . . which could be
14 reenacted in its exact form if [a] . . . legislator made a ‘wiser’ speech about it.”).

15 Finally, Garcia argues the Ordinance is content-based because it allegedly prohibits
16 recording of sideshows but not recording of other subjects, like photography of a sunset or
17 architectural details, in the same time and place. *Mot.* at 18-19. Garcia misconstrues the
18 Ordinance’s purpose and effect. The Ordinance does not prohibit recording sideshows. A
19 passerby or a neighbor may record a nearby sideshow to show a friend, to inform police or
20 the local news, or to post the video to social media. Meanwhile, a spectator knowingly pre-
21 sent at the same time and place to observe the sideshow violates the Ordinance whether
22 they film nothing, film the sideshow, or film the sunset while they are there. Recording—or
23 any other speech activity—is superfluous to the Ordinance’s application and enforcement.⁹

24
25
26 ⁹ Plaintiff’s central case is thus inapposite. The statute in *ALDF*, 878 F.3d at 1184, expressly
27 prohibited recording on a particular subject. The Ordinance here does not prohibit record-
28 ing. *Brown v. Kemp*, 86 F.4th at 779-80, is also distinguishable. There, the law directly
prohibited recording, and even the non-recording provisions clearly targeted the plaintiff’s
expressive activities. The Ordinance here does not target expressive activity.

1 Rather, the Ordinance distinguishes not based on the subject of an individual's
2 speech, but based on the intent behind an individuals' conduct—her knowing presence at a
3 sideshow for the purpose of observing it—because of unique dangers associated with that
4 intent. An individual who intends *knowingly to be a spectator* at a sideshow implicates
5 threats to public safety and quality of life in ways that an individual who intends to observe
6 a sunset in the same time and place does not. *Culley Dec.*, ¶¶ 15-16. While both observers
7 are at risk of injury from reckless driving, one who travels to an intersection to watch a
8 sideshow is more likely to be associated with drug and alcohol use, gun violence, looting,
9 noise, and reckless driving of their own, and they are more likely to remain at the scene
10 despite these dangerous behaviors, than the romantic who arrives at the same place in
11 search of a sunset. *Id.* Further, a driver is more likely to “ghost ride the whip” for an audi-
12 ence watching his stunts than he is to drive recklessly for, say, an architectural critic focused
13 on documenting a particularly stunning example of Modernism.

14 At the same time, the reporter who seeks out a sideshow to watch and film it from
15 within the throng of spectators may be indistinguishable from other engaged audience mem-
16 bers, and thus may contribute to the same risks, even if the reporter's purpose in observing
17 and filming is to educate rather than to encourage. The Ordinance prohibits spectators' be-
18 havior, including the spectating behavior of members of the press, not because of any
19 relation to speech or its subject matter, but because of the dangers of spectating to public
20 safety and quality of life. These are both content-neutral concerns. *See Hill v. Colorado*, 530
21 U.S. 703, 719-20 (2000) (“[G]overnment regulation of expressive activity is ‘content neutral’
22 if it is justified without reference to the content of regulated speech.”); *see also City of Seattle*
23 *v. Abercrombie*, 85 Wash. App. 393, 399 (1997) (law penalizing refusing to leave a crime
24 scene after request by an officer was content-neutral because it was “directed at the conduct
25 of the individual” in refusing to leave, and “not the words being spoken”).

1 **b. The Ordinance is narrowly tailored to serve a compelling**
2 **governmental interest in public safety.**

3 To pass intermediate scrutiny, a content-neutral time, place, and manner regulation
4 must be narrowly tailored to serve a compelling government interest. *Cnty. for Creative*
5 *Non-Violence*, 468 U.S. at 293. Unlike laws subject to strict scrutiny, such a regulation need
6 not employ the least restrictive means of furthering the state’s interests. *Ward*, 491 U.S. at
7 798-99. Rather, a law is narrowly tailored if it promotes an interest that “would be achieved
8 less effectively absent the regulation.” *Id.* at 799; *United States v. Albertini*, 472 U.S. 675,
9 688-89 (1985). Then, so long as the regulation does not “burden substantially more speech
10 than is necessary to further the government’s legitimate interest,” it is narrowly tailored.
11 *Ward*, 491 U.S. at 799-800. Courts focus this analysis on the law’s effects as a whole, not its
12 application to a particular individual. *Id.* at 801.

13 The Ordinance furthers compelling interests in public safety and quality of life by
14 deterring spectating at sideshows. Spectators risk injury and death. *Culley Dec.*, ¶ 7a-b. By
15 their presence, they encourage sideshows and the lawless behaviors associated with them.
16 *Id.*, ¶¶ 15-16. Spectators contribute to the public safety hazards associated with sideshows,
17 including looting, destruction of public property, and diverting law enforcement from other
18 priorities. *Id.*, ¶¶ 7d, 10, 11. Sideshows also generate noise, air pollution, garbage, and traf-
19 fic disruptions, at all hours of the day and night. *Id.*, ¶¶ 8a-d. Many of these nuisances stem
20 from spectators themselves. *Id.* By deterring spectating, the Ordinance deters these harms.

21 These interests are compelling, and Garcia does not say otherwise. In fact, the acute
22 dangers posed by sideshows make the County’s public safety concerns even more compelling
23 than those upheld in other cases. *See, e.g., Menotti v. City of Seattle*, 409 F.3d 1113, 1143
24 n.57 (9th Cir. 2005) (city had compelling interest in safety and security); *Comite de Jor-*
25 *naleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 947-48 (9th Cir. 2011)
26 (city had compelling interests in traffic safety and flow); *see also Ward*, 491 U.S. at 796 (city
27 had substantial interest in protecting residents from unwelcome noise).

1 The Ordinance is narrowly tailored to advance public safety and quality of life be-
 2 cause it hones in on the harmful behavior of spectating without restricting more speech than
 3 necessary. First, the Ordinance’s “knowing presence” requirement avoids sweeping in inno-
 4 cent bystanders. Second, the 200-foot boundary allows individuals to view a sideshow from
 5 a safer distance, and from a position less likely to encourage sideshows and other illegal
 6 behaviors. Culley Dec., ¶ 16. Third, the Ordinance does not prohibit speaking or gathering
 7 information about sideshows—or any other topic—from *any location*, so long as the speaker
 8 is not knowingly within the 200-foot boundary for the purpose of spectating. Fourth, the
 9 Ordinance does not prohibit recording or reporting; it says nothing about video, photo-
 10 graphs, or note-taking. Contrary to Garcia’s claims, Mot. at 17-18, 22, individuals may
 11 record sideshows and share video with the media, the police, or their social media followers;
 12 none of that is a crime under the Ordinance. It prohibits being *knowingly* present for the
 13 purpose of spectating at the sideshow. Fifth, the Ordinance does not penalize the use of
 14 video or other information, even if obtained from a spectator. Ultimately, the County sought
 15 to avoid the harms created (or suffered) by sideshow spectators, and it determined that pe-
 16 nalizing knowing spectating—i.e., being *present* for the purpose of viewing a sideshow, and
 17 not merely seeing a sideshow, let alone recording one—would reduce those harms. By pro-
 18 hibiting only spectating near a sideshow, the County chose means proportional to its ends.¹⁰

19
 20
 21 ¹⁰ Garcia argues that the Ordinance is *underinclusive* because it does not prohibit observing
 22 or recording by participants or via remote means (e.g., via drone). Mot. at 22. Garcia mis-
 23 takes the Ordinance’s goals. It does not prohibit recording and prohibits only being
 24 *knowingly* present to observe—conduct in which even drivers arguably engage. Further,
 25 recording sideshows by remote means is not associated with the same unlawful behaviors
 26 as spectating at close range. Culley Dec., ¶ 16. That the Ordinance allows remote recording
 27 and does not restrict the use of recordings, however they were made, is a feature and not a
 28 flaw. Similar considerations refute Garcia’s argument that the Ordinance is *overinclusive*
 because it covers conduct—e.g., protesting sideshows or reporting on them—unrelated to
 promoting sideshows. *See* Mot. at 22. Like sideshow fans, protestors and reporters know-
 ingly attending a sideshow are more likely than passersby to stay at a sideshow despite the
 dangerous conditions, Culley Dec., ¶¶ 15-16, raising their risk of injury. *Cf. Raef*, 240 Cal.
 App. 4th at 1135 (one driving recklessly to take photographs is more likely to continue tail-
 gating than other drivers). The Ordinance is narrowly tailored to combat these safety risks.

1 Garcia may argue that the County had alternative available means to suppress side-
2 shows and related harms, including enforcing existing laws, penalizing facilitating
3 sideshows, *see* Mot. at 20, or implementing infrastructure solutions, Doc. 15-3, Garcia Dec.,
4 Ex. 2 at 15. There are several flaws in this argument.

5 First, the proposed alternatives have not successfully deterred sideshows. Garcia
6 himself has reported that enforcement of alternative ordinances has not succeeded in the
7 City of Oakland, Doc. 15-3, Garcia Dec., Ex. 2 at 2, 14, and that infrastructure interventions
8 have not deterred sideshows, Stanton Dec., Ex. B at 5. The Sheriff’s Office reached the same
9 conclusions. Culley Dec., ¶¶ 13, 14. Garcia cites articles about enforcement in San Diego to
10 argue that enforcement, without penalizing spectators, works. Mot. at 20-21. San Diego,
11 however, adopted an ordinance that prohibited spectating at sideshows approximately 20
12 years ago. *See* San Diego Municipal Code § 52.5203; *Foley*, 117 Cal. App. 4th at 211 (finding
13 ordinance valid under state law); Stanton Dec., Ex. C at 9 (article cited by Garcia; “11 people
14 were arrested on suspicion of crimes including . . . spectating at an illegal event.”). Garcia’s
15 articles support the County’s argument and undermine his own.

16 Second, as described above, the government need not choose the *least* restrictive al-
17 ternative, so long as it does not burden more speech than needed to achieve its goals. The
18 Ordinance aims to deter evils associated with audiences for sideshows; it does so by penal-
19 izing joining such an audience. The Court should not second-guess the County’s reasonable
20 determination that the Ordinance’s penalties would protect public safety from threats re-
21 lated to the penalized behavior. *Ward*, 491 U.S. at 800-01 (requiring courts to “defer to the
22 [government’s] reasonable determination that its interest . . . would be best served by” its
23 choice of measure); *Raef*, 240 Cal. App. 4th at 1135-36 (concluding that considering other
24 alternatives “would constitute impermissible second-guessing of the Legislature”).

25 **c. The Ordinance leaves open ample alternative channels**
26 **for communicating information.**

27 The Ordinance minimally affects speech. For example, Garcia may venture inside a
28 200-foot radius of a sideshow to interview residents, passersby, spectators, or even drivers,

1 and to record these interviews. He may film a sideshow he happens upon while present for
 2 other purposes. From beyond the 200-foot radius, he may obtain video or photographs, in-
 3 cluding via a remotely operated camera installed at the scene of frequent sideshows prior to
 4 an event, a drone, or a telephoto lens. *See Nicodemus v. City of South Bend*, No. 3:23-cv-744
 5 DRL, 2024 WL 139248 (N.D. Ind. Jan. 12, 2024), *appeal filed*, No. 24-1099, at *1, 7 (7th Cir.
 6 Jan. 23, 2024) (citing advanced recording technology to conclude that a buffer around police
 7 officers will not impair citizens’ ability to record).¹¹ He can use and publish sideshow video
 8 obtained from any source, including from bystanders, law enforcement, spectators, or even
 9 sideshow drivers—the Ordinance says nothing about images or recordings. *See Erwin*
 10 *Chemerinsky, Balancing the Rights of Privacy and the Press: A Reply to Professor Smolla*,
 11 67 *Geo. Wash. L. Rev.* 1152, 1155 (1999) (anti-paparazzi law discussed in *Raef* had minimal
 12 First Amendment impact, in part because it did not limit publication of images, even those
 13 obtained during unlawful reckless driving). He may film the subsequent law enforcement
 14 response from any distance. He may record the aftermath of sideshows—Garcia’s reporting
 15 has used such images to great effect. Doc. 15-2, Garcia Dec., Ex. 1 at 2, 5; Doc. 15-3, Garcia
 16 Dec., Ex. 2 at 4, 7-11, 13, 15. And he may continue to rely on public data and post-incident
 17 interviews. *See* Doc. 15-1, Garcia Dec. at ¶¶ 13, 16.

18 The only thing Garcia may not do is knowingly join a sideshow by being within 200
 19 feet of it for the purpose of observing it—the exact behavior associated with enhanced risks
 20 to public safety and quality of life. In short, Garcia may continue to educate the public about
 21 the dangers of sideshows. But he has no First Amendment right to contribute to those dan-
 22 gers. *See Branzburg*, 408 U.S. at 684-85 (“[T]he First Amendment does not guarantee the
 23

24 ¹¹ The buffer zone in *Nicodemus* was 25 feet, a distance deemed appropriate to allow officers
 25 to react to pedestrians. 2024 WL 139248, at *5. In contrast, the Ordinance concerns dangers
 26 presented by reckless driving. A car traveling at 30 mph covers 200 feet in less than 5 sec-
 27 onds; a car traveling at 70 mph covers 200 feet in less than 2 seconds. This justifies a greater
 28 buffer for sideshows. But even under *strict* scrutiny, the Supreme Court does not require
 the state to empirically justify the limits of a buffer zone and instead defers to the state’s
 judgments. *Burson v. Freeman*, 504 U.S. 191, 208-09 (1992) (declining to second-guess
 state’s choice of a 100-foot electioneering buffer around polling places).

1 press a constitutional right of special access to information not available to the public gen-
 2 erally.”); *see also Bergen*, 883 P.2d at 545 (“The dogfighting statute does not prohibit a news
 3 reporter from gathering or disseminating information about dogfighting. It simply prohibits
 4 attendance, by anyone, at any dogfight that is presented for profit or entertainment.”).

5 **2. The Ordinance is a valid regulation of the non-expressive**
 6 **aspect of conduct with expressive and non-expressive elements**
 7 **under *United States v. O’Brien*.**

8 The Ordinance is not subject to First Amendment scrutiny because it regulates non-
 9 expressive conduct: intentionally joining a sideshow as an audience member. *See* § I.A, *su-*
 10 *pra*. But even if one were to view the Ordinance as regulating conduct with both non-
 11 expressive and expressive elements, it would be valid under the intermediate scrutiny ap-
 12 plied to such regulation by the Supreme Court in *United States v. O’Brien*, which upheld a
 13 regulation prohibiting destruction of draft cards.

14 As described above, joining a sideshow as a spectator constitutes conduct, not speech.
 15 *Colten*, 407 U.S. at 109 (plaintiff’s observation of traffic citation from highway “was not,
 16 without more, protected by the First Amendment”). Assuming *arguendo* that the conduct
 17 asserted by Garcia—joining a sideshow to record and report on it—involves expressive con-
 18 duct, it does so as part of a course of conduct involving non-speech (spectating) and speech
 19 (recording and reporting) elements. Just as public nudity may be expressive in some activi-
 20 ties and not others—e.g., when combined with erotic dancing, but not when topless
 21 sunbathing, *see Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 571 (1991)—observing sideshows
 22 may be no more expressive than watching a sporting match, *James v. City of Long Beach*,
 23 18 F. Supp. 2d 1078, 1083 (C.D. Cal. 1998) (sports fans are not engaged in expressive con-
 24 duct). Because the Ordinance targets the non-speech elements of sideshow-spectators’
 25 conduct for public safety and quality of life purposes unrelated to the suppression of speech,
 26 and because it restricts no more speech than necessary to further its goals, it withstands
 27 intermediate scrutiny under *O’Brien*. *See Project Veritas*, 418 F. Supp. 3d at 256, 258 (law
 28 prohibiting undercover reporting of political campaigns was valid under *O’Brien* because it
 targeted non-expressive conduct—infiltration of campaigns—to further interests in

1 promoting election integrity unrelated to suppressing speech); *see also Raef*, 240 Cal. App.
2 4th at 1133-36 (law penalizing reckless driving to obtain images for commercial purposes
3 was valid under *O'Brien* when it targeted behavior because of its unique dangers to public
4 safety and not to suppress images).

5 Regulation of conduct with both non-expressive and expressive elements must be up-
6 held

7 [1] if it is within the constitutional power of the Government; [2] if it furthers
8 an important or substantial government interest; [3] if the governmental in-
9 terest is unrelated to the suppression of free expression; and [4] if the
10 incidental restriction on . . . [expression] is no greater than is essential to the
11 furtherance of that interest.

12 *O'Brien*, 391 U.S. at 377. The Ordinance satisfies this test.

13 First, Garcia does not assert that the Ordinance exceeds “the constitutional power of
14 the Government,” only that it allegedly infringes on expression. The Ordinance plainly lies
15 within the County’s constitutional power. Second, the Ordinance furthers compelling inter-
16 ests in public safety and quality of life. *See* § I.B.1.b, *supra*. Third, those interests do not
17 relate to the suppression of speech. The Ordinance says nothing about recording, reporting,
18 or speech of any kind on its face; nor is it justified by the suppression of speech, let alone
19 speech on any particular subject or viewpoint. *See* § I.B.1.a, *supra*; *see also Project Veritas*,
20 418 F. Supp. 3d at 259 (recognizing that this element of *O'Brien* is satisfied if the law is
21 content-neutral). Finally, the ordinance restricts no more expression than necessary to
22 achieve its interests: it is narrowly tailored. *See* § I.B.1.b, *supra*; *see also Ward*, 491 U.S. at
23 798 (the analysis under *O'Brien* is effectively the same as the narrow tailoring analysis
24 applied to time, place, or manner restrictions).

25 **II. Garcia has not shown that he would be irreparably harmed by the**
26 **Ordinance absent a preliminary injunction.**

27 Because Garcia has failed to establish a likelihood of success on the merits of his
28 constitutional claim, he has not demonstrated a First Amendment injury. Without such an
injury, he cannot show irreparable harm absent an injunction or that the balance of the

1 equities tips in his favor. *Thalheimer v. City of San Diego*, No. 09-cv-2862 IEG, 2010 WL
2 3489335, at *6 (S.D. Cal. Sep. 3, 2010).

3 Moreover, even if Garcia could establish a likelihood of success on the merits, he still
4 cannot show that an injunction is needed to address a threat of *imminent* irreparable harm.
5 *See Boardman*, 822 F.3d at 1022. There have been no sideshows in the unincorporated
6 County in the 13 months the Ordinance has been in effect.¹² *Culley Dec.*, ¶ 19. The County
7 has never enforced the Ordinance. *Id.*, ¶ 20. For his part, Garcia does not state that he has
8 *ever* attended a sideshow, and in fact, his reporting has been based entirely on data and
9 content provided by others. *See Factual Background § D, supra*. Nor does he show that he
10 has knowledge of when and where sideshows will occur.

11 In short, Garcia’s alleged injury requires each event in the following sequence to oc-
12 cur: (1) a sideshow in the unincorporated County, (2) happening with Garcia’s knowledge,
13 (3) that he attends, (4) to which law enforcement responds, (5) resulting in arrests or citation
14 of spectators. This long chain of events does not amount to an imminent threat of harm; it
15 amounts to speculation on speculation. *Index Newspapers, LLC v. City of Portland*, No. 3:20-
16 cv-1035-SI, 2022 WL 72124, at *9 (D. Or. Jan. 7, 2022) (facts no longer supported irreparable
17 harm where events causing potential injury had not recently occurred). Nor does Garcia’s
18 alleged self-censorship suffice: chilling of First Amendment rights cannot yield irreparable
19 injury when it stems from a fear of injury based on speculation.¹³ *Id.*

22 ¹² Garcia’s year-long delay in filing suit after the County enacted the Ordinance also indi-
23 cates there is no imminent need for injunctive relief. *See, e.g., Spiraledge, Inc. v. SeaWorld*
24 *Ent., Inc.*, No. 13CV296-WQH-BLM, 2013 WL 3467435, at *5 (S.D. Cal. July 9, 2013) (13
25 month delay in filing lawsuit “supports the conclusion that [the plaintiff] has failed to
demonstrate that irreparable injury is likely”) (citing *Oakland Tribune, Inc. v. Chronicle*
Publ’g Co., 762 F.2d 1374, 1377 (9th Cir. 1985)).

26 ¹³ The manifold speculations necessary to find harm here also suggest that Garcia lacks
27 Article III standing to bring the action. In “pre-enforcement cases,” such as this, plaintiffs
28 must establish a “specific” and “credible threat” that the defendant will enforce the law
against them. *Lopez v. Candaele*, 630 F.3d 775, 785, 788 (9th Cir. 2010). The County may
challenge Garcia’s standing in subsequent dispositive motion practice.

1 Finally, Garcia’s allegations of harm are entitled to little weight. The Ordinance
2 leaves open ample alternative channels for Garcia to report on sideshows, including both all
3 of the channels his reporting has relied on before and the many avenues of direct newsgath-
4 ering at sideshows and from 200 feet away that do not violate the Ordinance.¹⁴ See § I.B.1.c,
5 *supra*; *Tracy Rifle & Pistol LLC v. Harris*, 118 F. Supp. 3d 1182 (E.D. Cal. 2015) (affording
6 “minimal weight” to First Amendment harms where alternative modes of communication
7 remained open).

8 **CONCLUSION**

9 For the reasons stated above, Defendants request that the Court deny the motion for
10 preliminary injunction.

11
12 DATED: August 29, 2024

SHUTE, MIHALY & WEINBERGER LLP

13
14 By: /s/Aaron M. Stanton

MATTHEW D. ZINN

AARON M. STANTON

15
16 Attorneys for Defendants

17 County of Alameda and Yesenia Sanchez
18
19
20
21
22
23
24
25

26 _____
27 ¹⁴ Even if Garcia were to wait for a sideshow to occur at the specific intersection he identifies
28 on the border of the unincorporated County, Dec. 15-1, Garcia Dec., ¶¶ 15, 22, he could be
knowingly present there to observe the sideshow at close range from the Oakland side of
the intersection without violating the Ordinance.

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9

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 JOSE ANTONIO GARCIA,
14 Plaintiff,

15 v.

16 COUNTY OF ALAMEDA and YESENIA
17 SANCHEZ, Sheriff of Alameda County,
18 in her official capacity,
19 Defendants.

Case No. 3:24-cv-3997-RS

**DECLARATION OF FENTON
CULLEY IN SUPPORT OF
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

Hearing Date: October 3, 2024
Time: 1:30 PM
Location: Courtroom 3, 17th Floor

The Hon. Richard Seeborg

Trial Date: None Set

20
21 I, Fenton Culley, declare as follows:

22 1. I am a Sergeant in the Alameda County Sheriff's Office. I have personal
23 knowledge of the facts set forth herein, except as to those stated on information and belief
24 and, as to those, I am informed and believe them to be true. If called as a witness, I could
25 and would competently testify to the matters stated herein. I make this declaration in
26 support of the County's Opposition to Plaintiff's Motion for Preliminary Injunction.
27
28

1 2. I have been a Sergeant in the Alameda County Sheriff's Office since 2021 and
2 employed with the Alameda County Sheriff's Office since 2006. In my current role, I am
3 responsible for the supervision and safety of personnel, investigative support, criminal
4 apprehension and information gathering.

5 3. I am personally familiar with the County's law enforcement response to
6 sideshow incidents. I have personally been involved by previously being assigned to a law
7 enforcement contract in Oakland where sideshow responses are common. I helped author
8 the sideshow spectator ordinance and have been asked to speak publicly and at law
9 enforcement training classes in regard to street takeovers and illegal sideshow activity
10 based on my knowledge of the way sideshow groups operate and the dangers that
11 surround these activities.

12 4. I am further personally familiar with the law enforcement responses to
13 sideshow incidents in neighboring jurisdictions, including San Leandro, Hayward, and
14 Oakland. The Sherriff's Office participates in RESET, a multi-agency sideshow
15 enforcement team also involving San Leandro Police, Hayward Police, and several local
16 offices of the California Highway Patrol. My involvement in RESET has included the
17 inception, creation, and management of RESET. I have personally overseen over 30
18 RESET operations and am responsible for statistical tracking, training and overall
19 supervision of the operations.

20 5. On April 26, 2023, I delivered a presentation describing hazards associated
21 with sideshows, the Sheriff's Office's responses to sideshows, and the then-proposed
22 ordinance prohibiting spectating at sideshows to the County's Unincorporated Services
23 Committee. A true and correct copy of the presentation is attached hereto as Exhibit A. I
24 also delivered the presentation to the Board of Supervisors Transportation / Planning
25 Committee on Monday, June 5, 2023.

26 6. I am familiar with Ordinance No. 2023-31 adopted by the Board of
27 Supervisors on August 1, 2023, the ordinance challenged in this lawsuit. I was personally
28

1 involved in the creation, research and training related to the sideshow ordinance. I
2 provided guidance to County Counsel and the Board of Supervisors related to this topic.

3 7. Sideshows present a serious threat to public safety.

4 a. Spectators at sideshows risk injury or death. Spectators and other
5 passersby may be struck by cars whether they are standing on the street or sidewalks.
6 Spectators are also at risk of injury and death when drivers or spectators flee the scene at
7 high speeds after law enforcement arrives.

8 b. Spectators and others are also at risk of injury or death from the
9 dangerous combination of behaviors associated with sideshows, including gun violence,
10 looting, and arson.

11 c. Numerous people throughout the state, including individuals in
12 jurisdictions located within Alameda County, have been killed or seriously injured by
13 sideshows.

14 d. Because of their size and complexity, sideshows require substantial
15 law enforcement resources, often requiring jurisdictions to call for mutual aid from
16 neighboring law enforcement agencies. Responding to sideshows diverts law enforcement
17 resources from other urgent priorities.

18 e. Sideshows often destroy public property and infrastructure. For
19 example, tire marks cover and obscure crosswalks, lane markings, and other safety
20 infrastructure, making roadways less safe even after sideshows end.

21 8. Sideshows also threaten the quality of life in the neighborhoods in which
22 they occur. The Sheriff's Office has received numerous complaints from citizens in the
23 unincorporated County about sideshow activity.

24 a. Sideshows and spectators block traffic, causing traffic disruptions.

25 b. Sideshows are extremely loud. Although they can and do occur at any
26 time of day, they often occur in the middle of the night, and often in residential
27 neighborhoods. Noise is generated by screeching tires, revving or backfiring engines,
28 cheering crowds, gunshots, and collisions.

1 c. Sideshows generate clouds of smoke from burning tires and, on
2 occasion, cars are intentionally set on fire and left in the middle of the intersection.

3 d. Spectators often leave behind garbage at the scene of sideshows.

4 9. Spectators and drivers at sideshows are often under the influence of drugs
5 and alcohol.

6 10. Spectators and drivers at sideshows often carry firearms, and occasionally
7 discharge them, often resulting in violence and injury. The Sheriff's Office and RESET
8 have recovered over 50 firearms during recent sideshow prevention and response
9 operations.

10 11. Sideshows also commonly involve additional criminal behavior, including gun
11 violence, stabbings, vandalism, unlawful firearm possession, and arson. Spectators are
12 often the perpetrators or victims of these additional crimes. The son of a close friend of
13 mine was shot and killed at a sideshow that occurred on Friday August 23, 2024 in the
14 City of Vallejo.

15 12. Some locations see multiple incidents of sideshow activity, exposing adjacent
16 communities to sideshow-related hazards repeatedly.

17 13. Bay Area jurisdictions have struggled to address sideshows relying only on
18 state laws criminalizing reckless driving, gun possession, and looting, and local laws
19 criminalizing organizing sideshows. Sideshows had become more common prior to the
20 adoption of the County's ordinance in 2023 despite enforcement of the laws then in effect.

21 14. Infrastructure changes to roadways have not successfully deterred sideshow
22 activities. For example, the County installed Bott's Dots at two locations in San Leandro,
23 but drivers simply did donuts (stunts) right over them. Additionally, while putting in
24 physical roundabouts may deter sideshows from occurring at one intersection, sideshows
25 simply move to other intersections without roundabouts.

26 15. Spectating at sideshows contributes to and encourages the unlawful
27 behaviors associated with sideshows. Spectators complicate the law enforcement response,
28 and their presence increases the likelihood of injury and death, property damage, looting,

1 and gun violence. Individuals present at sideshows for other reasons, including passersby
2 and local residents or workers, may be at risk of injury from sideshows, but they do not
3 present the same risks of increased unlawful behavior associated with spectators.

4 16. In my experience, spectators are an integral part of sideshows. Sideshows
5 would not occur without spectators present to observe the reckless driving at close range.
6 Individuals watching sideshows from a safe distance—for example, beyond the 200-foot
7 boundary set by the ordinance—would be less likely to be injured, and they would also be
8 less likely to contribute to and encourage the dangerous behaviors commonly associated
9 with sideshows discussed above.

10 17. In April of 2023, a draft ordinance prohibiting spectating at sideshows was
11 presented to the County’s unincorporated services committee.

12 18. The Board of Supervisors considered the ordinance at its regular meetings in
13 June and July of 2023 and adopted the final version of the ordinance on August 1, 2023.

14 19. I am not aware of any sideshows occurring in unincorporated Alameda
15 County since the ordinance prohibiting spectating was adopted.

16 20. The Sheriff’s Office has never enforced the ordinance prohibiting spectating
17 at sideshows. The Sheriff’s Office has made no arrests and issued no citations under the
18 ordinance. I am not aware of any prosecutions occurring under the ordinance.

19 I declare under penalty of perjury under the laws of the United States of America
20 that the foregoing is true and correct.

21 Executed on this 27th day of August 2024, at Scottsdale, Arizona.

22 *Sergeant Fenton Culley*

23 _____
24 Sgt. Fenton Culley

25 I attest that the Signatories whose signatures appear above have concurred in the filing of
26 this document.

27 _____
28 /s/Aaron M. Stanton

EXHIBIT A



UNINCORPORATED SERVICES COMMITTEE

4/26

Alameda County Sheriff's Office





PUBLIC SAFETY

- The Alameda County Sheriff's Office (ACSO) and California Highway Patrol (CHP) are focused on public safety and the prevention, enforcement and apprehension of individuals involved in sideshow activity and reckless driving.
- These criminal acts in our community pose a **serious risk** to drivers, spectators and all citizens within our community.
- ACSO and CHP have received numerous complaints about sideshow activity from citizens within unincorporated Alameda County.







PUBLIC SAFETY RISKS

- Numerous people throughout the state, including Alameda County, have been killed or seriously injured by sideshows and reckless driving.

Nursing student killed by doing donuts during Calif sideshow

By Fox 11 Digital team | Published December 27, 2022 8:58AM | Updated 9:28AM | California | FOX 11 |




Sideshows erupt throughout Bay Area: Vallejo, Richmond, Rodeo and Hayward

By KTVU staff | Published November 7, 2022 | Updated 6:37AM | Vallejo | KTVU FOX 2

BAY AREA

Shootings at East Oakland sideshow leave man dead, 2 wounded

 **Janelle Bitker**
March 19, 2022 | Updated: March 19, 2022 11:50 p.m.

2-Year-Old With Broken Neck Recovering From Surgery After San Leandro Freeway Sideshow



PUBLIC SAFETY RISKS





PUBLIC SAFETY RISKS

- Sideshows destroy public property and infrastructure, drain emergency resources while providing no benefit to the community.





PUBLIC SAFETY RISKS





PUBLIC SAFETY RISKS

- Sideshows recently have included an unprecedented amount of gun violence.



Alameda County **RE**gional **S**ideshow **E**nforcement **T**eam (RESET)





COMMUNITY POLICING

- RESET is a multi-agency sideshow enforcement team focused on the prevention and enforcement of sideshow activity and reckless driving through pro-active enforcement.
- Involves ACSO, San Leandro Police, Hayward Police and CHP (Hayward, Castro Valley and Dublin offices).



ACSO RESET



GUN VIOLENCE

- RESET has recovered numerous firearms during recent operations





COMMON ASSOICATED CRIMES

- Reckless Driving
- Hit and Run
- DUI
- Shootings
- Stabbings
- Vandalism
- Firearm Possession
- Arson



COUNTY ORDINACE

- The Alameda County Sheriff's Office fully supports the implementation of a county ordinance that specifically makes it unlawful to participate, spectate or promote sideshow activity within Alameda County!



ACSO - CONTACTS

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County of Alameda and Yesenia Sanchez

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

JOSE ANTONIO GARCIA,
Plaintiff,

v.

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

Case No. 3:24-cv-3997-RS

**DECLARATION OF AARON M.
STANTON IN SUPPORT OF
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

Hearing Date: October 3, 2024
Time: 1:30 PM
Location: Courtroom 3, 17th Floor

The Hon. Richard Seeborg

Trial Date: None Set

I, Aaron M. Stanton, declare as follows:

1. I am an attorney licensed to practice in the State of California and an associate at Shute, Mihaly & Weinberger LLP, attorneys for Defendants County of Alameda and Yesenia Sanchez. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief, and as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

EXHIBIT B

ROAD SAFETY

Watch a sideshow, spend 6 months in jail? Alameda County supervisors weigh new law

A Civil liberties group says outlawing spectators is unconstitutional, but the sheriff and other officials say it's necessary to clamp down on reckless driving.



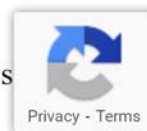
by **Jose Feroso**

June 14, 2023, 4:02 p.m.



Tire marks at 106th Avenue and Foothill Boulevard, one of many intersections in Alameda County impacted by frequent sideshows. Credit: Florence Middleton

Anyone caught within 200 feet of a sideshow to watch the stunt driving exhibition could face a \$1,000 fine or 6 months in jail under a new law being considered by the Alameda County Board of Supervisors.



The [ordinance](#) is jointly authored by Supervisor Nate Miley and Sheriff Yesenia Sanchez.

At yesterday's Board of Supervisors meeting, the supervisors had the opportunity to consider the ordinance, but they delayed a discussion on the item to their next meeting on June 27.

This proposed county-wide ban on spectators at sideshows follows a similar ordinance passed by the Oakland City Council in May. That law made it [illegal to promote, organize, or facilitate sideshows](#) on the streets or through social media. Oakland also considered making it illegal for anyone to watch sideshows but dropped this part of the law after District 1 Councilmember Dan Kalb said he was concerned about police targeting people near sideshows who didn't have a role in organizing them but just happened to be there.

Some Oakland residents criticized Kalb's stance, saying that spectators are the most influential "enablers" of sideshows because they popularize the events through social media.

The county resolution introduced this week includes fines and potential jail time for spectators under the logic that they encourage sideshow activity.

"This behavior can expose street racing and reckless driving exhibitions to a broader audience and potentially perpetuate the activity," the draft ordinance states.

In recent years, Oakland has tried to stop sideshows by adding Botts Dotts and hardline medians in streets to create physical obstacles to stunt driving. However, a recent [Oaklandside investigation into nearly four years of sideshow data](#) from the Oakland Police Department found that those interventions have not stopped people from organizing sideshows.

Other cities and counties, like San Francisco, have tried to reduce sideshows through tougher laws such as [mandating 30-day car seizures](#) of sideshow participants. In April, Pico Rivera, a Los Angeles suburb, [made it illegal](#) for spectators to be present within 500 feet of sideshows, fining violators up to \$2,000. Turlock also recently passed a [similar law](#).

Related: [These Oakland intersections are hotspots for sideshows](#)

Is it a First Amendment violation?





Cars line up near an East Oakland intersection taken over for a sideshow. Credit: Eric Louie

David Loy, the legal director of the [First Amendment Coalition](#), a nonprofit civil liberties group, said in an interview that the county's proposed ban on spectators at sideshows is unconstitutional for a variety of reasons.

[Loy sent a letter to Alameda County supervisors](#) Monday objecting to the planned ordinance because it infringes on people's "constitutional right to observe and report on events of public concern, even if those events are unlawful."

According to Loy, the law would make it illegal for a journalist or any member of the community to record the sideshow for any reason, including to inform the public, let the police know about it. Other bystanders who also just happen to be in the area could also be targeted by police, Loy told The Oaklandside.

"I could be there at a video or fashion shoot, or to report or record something else," Loy said. "So it's not only unduly restricting protected speech but doing so based on content and content-based restrictions on speech are the most unconstitutional and virtually never upheld by the courts."

Loy noted that recording or reporting on events in the public interest is a right that has been upheld by U.S. courts, including most recently in a [9th circuit case in 2018](#) which held that an Idaho law outlawing people from filming farms and ranches was unconstitutional.

Loy also said that streets and sidewalks are considered public forums that are legally protected. These are the same kinds of spaces where important news has been recorded by bystanders, including in civil rights cases.

The resolution appeared well-intentioned, said Loy, but the First Amendment violation, in his view, merited pausing and redrafting. He said his organization would look at potentially challenging the ordinance in court if the supervisors approve it.

Oakland tried to ban spectators at sideshows in the past but ran into legal obstacles. In 2005, the City Council passed an ordinance imposing penalties on anyone watching a sideshow. The law stayed in place two years but was repealed in 2007 after three residents [sued the city](#) challenging its constitutionality.



EXHIBIT C

11 arrested, 51 cited during street takeovers in San Diego, Spring Valley

David Hernandez

SAN DIEGO — Authorities made 11 arrests and issued 51 citations during a crackdown on street takeovers at seven intersections in San Diego and Spring Valley over the Labor Day weekend, police officials said Tuesday.

Street takeovers, also known as sideshows, generally involve scores of spectators who block intersections, creating space for drivers to do “donuts,” “burnouts” and other potentially dangerous maneuvers, according to authorities.

Late Saturday evening, street takeovers were staged at six locations around San Diego, at the following intersections:

- Recho Road and Carroll Road in Sorrento Valley,
- Juniper Park Lane and Sorrento Valley Boulevard in Sorrento Valley,
- Flanders Court and Flanders Drive in Sorrento Valley,
- Via Del Norte and La Jolla Boulevard in La Jolla,
- Kearny Villa Road and Topaz Way in Kearny Mesa, and
- Thorne Street and 43rd Street in City Heights.

A seventh takeover occurred at the intersection of Kenwood Drive and Bancroft Street in Spring Valley.

Hours earlier, the San Diego Police Department’s Traffic Division and the California Highway Patrol learned about the planned takeovers and joined with the National City Police Department to assemble a team of officers to crack down on the drivers and spectators, officials said.

During the street takeovers, 11 people were arrested on suspicion of crimes including reckless driving, driving under the influence, exhibition of speed and spectating at an illegal event, police said.

Seven drivers accused of reckless driving and exhibition of speed were cited, and their vehicles impounded for 30 days, police said. Another seven individuals accused of aiding and abetting in a sideshow were also cited.

Officers issued another 37 citations and impounded 10 vehicles as a result of equipment violations, police said.

Officials said street takeovers sometimes result in injuries and violence. Sometimes participants set off fireworks, creating a fire risk.

In the Los Angeles area, at least six people died in shootings and crashes near street takeovers in the first eight months of 2022, according to [the Los Angeles Times](#).

“They present serious dangers to the public,” San Diego police acting Lt. Joseph Clark said in a statement.

Street takeovers also can cause property damage. Street repairs at intersections cost \$2,500 to \$18,000 on average, officials said.

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