

**Case No. 24-6814**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**JOSE ANTONIO GARCIA,**

*Plaintiff and Appellant,*

v.

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

*Defendants and Appellees.*

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Appeal from United States District Court  
Northern District of California  
Hon. Richard Seeborg  
U.S. District Court Case No. 3:24-cv-03997-RS

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**APPELLANT'S EXCERPTS OF RECORD  
Volume 1 of 1**

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**INDEX**

<b>NO.</b>	<b>DKT.</b>	<b>DATE</b>	<b>DESCRIPTION OF DOCUMENTS</b>	<b>PAGE #</b>
1.	26	10/11/2024	Order Denying Motion for Preliminary Injunction	ER-0003
2.	23	9/19/2024	Plaintiff's Reply in Support of Motion for Preliminary Injunction	ER-0015
	23	9/19/2024	Declaration of David Loy in Support of Plaintiff's Motion for Preliminary Injunction and Exhibits	ER-0037
	23	9/19/2024	Declaration of Vijoia Lucas in Support of Plaintiff's Motion for Preliminary Injunction	ER-0066
3.	22	8/29/2024	Defendants' Opposition to Motion for Preliminary Injunction	ER-0068
	22-1	8/29/2024	Declaration of Fenton Culley in Support of Opposition to Motion for Preliminary Injunction and Exhibit	ER-0100
	22-2	8/29/2024	Declaration of Aaron M. Stanton in Support of Opposition to Motion for Preliminary Injunction and Exhibits	ER-0120
4.	15	7/23/2024	Plaintiff's Notice of Motion and Motion for Preliminary Injunction	ER-0130
	15-1 15-2 15-3	7/23/2024	Declaration of Jose Antonio Garcia in Support of Plaintiff's Motion for Preliminary Injunction and Exhibits	ER-0154
	15-4 15-5	7/23/2024	Declaration of Ann Cappetta in Support of Plaintiff's Motion for Preliminary Injunction and Exhibit	ER-0181
5.	1	7/2/2024	Complaint for Injunctive and Declaratory Relief and Nominal Damages	ER-0190
6.	29	11/7/2024	Plaintiff's Notice of Appeal – Preliminary Injunction Appeal	ER-0241
7.	n/a	<i>passim</i>	Civil Docket for Northern District of California Case No. 3:24-Cv-03997-RS	ER-0244

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSE ANTONIO GARCIA,  
Plaintiff,  
v.  
COUNTY OF ALAMEDA, et al.,  
Defendants.

Case No. 24-cv-03997-RS

**ORDER DENYING MOTION FOR  
PRELIMINARY INJUNCTION**

**I. INTRODUCTION**

Plaintiff Jose Antonio Garcia, also known as Jose Feroso (“Feroso”), is a reporter for *The Oaklandside* who regularly covers sideshows—events where reckless drivers entertain crowds with dangerous stunts on public streets. By their nature, sideshows pose a significant threat to public safety. In the Bay Area, they sometimes also involve gun violence, substance use, looting, and arson. To deter them from happening, defendant Alameda County adopted a local ordinance which criminalizes participating in sideshows as a spectator. Feroso subsequently brought a First Amendment challenge against the County and its sheriff, defendant Yesenia Sanchez (collectively, the “County”), seeking injunctive relief, a declaration that the ordinance is unconstitutional on its face or as applied to his reporting, nominal damages, and attorneys’ fees and costs. Feroso has since moved for a preliminary injunction to prevent the defendants from enforcing the ordinance against him in his capacity as a reporter. The defendants oppose relief, arguing that the ordinance addresses non-expressive conduct and thus does not implicate the First Amendment. For the reasons explained below, Feroso’s preliminary injunction motion is denied.

**II. BACKGROUND**

In August 2023, the Alameda County Board of Supervisors passed an ordinance to address sideshows. *See* Alameda County Code (“ACC”) § 10.40. The ordinance states that “[s]ideshows

United States District Court  
Northern District of California

1 cause significant damage to unincorporated Alameda County infrastructure including by harming  
2 or destroying intersection markings, street signs, poles, and other equipment.” *Id.* § 10.40.10. It  
3 also states that sideshows “create an unsafe environment for the communities in which they occur”  
4 due to the reckless driving and firearm use often associated with them. *Id.* Moreover, sideshows  
5 “drastically impact the quality of life” in nearby communities by causing damage to public and  
6 private property, generating air and noise pollution, and attracting unmanageable crowds. *Id.*

7 Because of the need to address these dangers, the ordinance imposes criminal sanctions on  
8 “any person” who “knowingly [is] a spectator at a sideshow event conducted on a public street or  
9 highway or off-street parking facility.” ACC §§ 10.40.030(A)–(B), 10.40.050. The ordinance  
10 further specifies that a “spectator” is “any person who is present at a sideshow event, or the site of  
11 the preparations for a sideshow event, for the purpose of viewing, observing, watching, or  
12 witnessing the sideshow event as it progresses,” with “present” defined to mean within 200 feet of  
13 the event location. ACC § 10.40.020. A sideshow is defined as “an occasion where one or more  
14 persons, for the purpose of performing a street race or reckless driving exhibition for one or more  
15 spectator(s) either blocks or impedes traffic on a street or highway or impedes access to an off-  
16 street parking facility.” *Id.* “Sideshow event” means “a sideshow, street race, or reckless driving  
17 exhibition.” *Id.* According to the County sergeant who helped author the ordinance, no sideshows  
18 have occurred on unincorporated County lands since it was adopted, and no related arrests or  
19 citations have issued. Culley Decl. ¶¶ 19–20, Dkt. No. 22-1.

20 Upon learning of the new ordinance, Feroso canceled all future plans to report on-site at  
21 sideshows in the County because he “feared citation, arrest, and criminal prosecution.” Feroso  
22 Decl. ¶ 25, Dkt. No. 15–1. This case followed.

### 23 III. LEGAL STANDARD

24 To secure a preliminary injunction, a plaintiff must establish the four factors set out in  
25 *Winter v. Nat. Res. Def. Council, Inc.* 555 U.S. 7, 20 (2008): that “(1) he is likely to succeed on the  
26 merits of his claim, (2) he is likely to suffer irreparable harm absent the preliminary injunction, (3)  
27 the balance of equities tips in his favor, and (4) a preliminary injunction is in the public interest.”

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*Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023). The first factor is a threshold question; “a court need not consider the other factors if a movant fails to show a likelihood of success on the merits.” *Id.* (quoting *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017)).

**IV. DISCUSSION**

The First Amendment states that “Congress shall make no law . . . abridging the freedom of speech, or of the press[.]” Via its application to the states via the Fourteenth Amendment, “[t]he First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Ashcroft v. ACLU*, 535 U.S. 564, 573 (2002) (citation omitted).

**A. Standing**

“In order to invoke the jurisdiction of the federal courts, a plaintiff must establish ‘the irreducible constitutional minimum of standing,’ consisting of three elements: injury in fact, causation, and a likelihood that a favorable decision will redress the plaintiff’s alleged injury.” *Lopez v. Candaele*, 630 F.3d 775, 785 (9th Cir. 2010) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). The injury in fact must constitute “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560 (citation omitted). In First Amendment cases, plaintiffs may satisfy this requirement by “alleg[ing] an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute [or ordinance], and . . . a credible threat of prosecution thereunder.” *Lopez*, 630 F.3d at 785 (citation omitted); *see also Peace Ranch, LLC v. Bonta*, 93 F.4th 482, 487 (9th Cir. 2024).

The County argues that Feroso fails to allege imminent harm because law enforcement is aware of no sideshows in the County during the 13 months since the ordinance took effect. The ordinance has never been enforced, and Feroso has not claimed to have attended a sideshow in order to report on it—in fact, his reporting has tended to rely on data and content provided by others. In short, the County says, Feroso’s alleged injury is too speculative.

The County’s standing argument is unavailing. First, Feroso has declared under penalty of perjury that, until learning of the ordinance, he planned to observe future sideshows in

1 unincorporated Alameda County from within a 200 feet radius so as to best capture audio and  
2 visual recordings of the event—conduct that is “arguably affected with a constitutional interest.”  
3 *Lopez*, 630 F.3d at 785. Second, there is a credible threat that his planned actions would expose  
4 him to prosecution under the ordinance; the County has not disavowed enforcement against  
5 journalists, and the fact that it has not yet prosecuted anyone does not foreclose it from  
6 prosecuting Feroso if given the chance. Feroso’s fear of prosecution is therefore neither  
7 imaginary nor wholly speculative. This matter presents an Article III case or controversy.

8 **B. Conduct vs. Expression**

9 In arguing that the ordinance’s restriction of his journalistic ability to observe sideshows  
10 violates his First Amendment rights, Feroso bears an initial burden of “demonstrat[ing] that the  
11 First Amendment even applies.” *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 n.5  
12 (1984). To do so, Feroso contends that the ordinance restricts expression (*i.e.*, recording) in a  
13 traditional public forum (*i.e.*, streets and sidewalks) based on content (*i.e.*, sideshows). The  
14 County counters by arguing that the ordinance should receive rational basis review as a generally  
15 applicable regulation of conduct (*i.e.*, spectating at a sideshow) that only marginally burdens  
16 expression. In the alternative, even if the First Amendment applies, the defendants say the  
17 ordinance survives intermediate scrutiny as a content-neutral time, place, and manner restriction,  
18 narrowly tailored to serve a compelling governmental interest, that leaves open ample alternative  
19 channels for communication. Feroso maintains, however, that the regulation is content-based  
20 and fails to survive the strict scrutiny that content-based laws must satisfy.

21 Feroso fails to carry his threshold burden of establishing that the ordinance regulates any  
22 speech cognizable under the First Amendment. The First Amendment only applies to conduct  
23 regulations if “conduct with a ‘significant expressive element’ drew the legal remedy” or if “the  
24 [statute] has the inevitable effect of ‘singling out those engaged in expressive activity.’” *Int’l*  
25 *Franchise Ass’n v. City of Seattle*, 803 F.3d 389, 408 (9th Cir. 2015) (quoting *Arcara v. Cloud*  
26 *Books, Inc.*, 478 U.S. 697, 706-07 (1986)). Neither necessary condition is present here.

1  
2 ***I. Directly Regulated Conduct***

3 The “first inquiry is to determine what precise conduct ‘drew the legal remedy’ of the  
4 [c]hallenged [regulation].” *B & L Prods., Inc. v. Newsom*, 104 F.4th 108, 113 (9th Cir. 2024)  
5 (quoting *Arcara*, 478 U.S. at 706–07). There is no dispute on this front; both parties agree that the  
6 County ordinance proscribes “knowingly be[ing] a spectator at a sideshow event,” with  
7 “spectator” defined as being “present [*i.e.*, within 200 feet] . . . for the purpose of viewing,  
8 observing, watching, or witnessing the sideshow event as it progresses.” ACC ¶§ 10.40.020.

9  
10 The dispute instead centers on whether the spectating conduct that drew the legal remedy  
11 has a significant expressive element. Feroso contends that, by outlawing the observation of  
12 activity that occurs on public streets and sidewalks, the regulation necessarily restricts access to a  
13 traditional public fora for expression, even if it “says nothing about speech on its face.” *McCullen*  
14 *v. Coakley*, 573 U.S. 464, 476 (2014). The County, however, contends that the ordinance  
15 regulates participatory conduct that only incidentally affects speech.

16  
17 A useful analogue to this case is *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d  
18 676 (9th Cir. 2019). There, a local ordinance barred online platforms from renting homes that  
19 were not licensed and listed on a public registry. *Id.* at 680. Several platforms challenged the  
20 ordinance on First Amendment grounds, but the district court concluded that the ordinance  
21 “regulates conduct” that “does not have such a significant expressive element’ as to draw First  
22 Amendment protection.” *Id.* at 684. The Ninth Circuit agreed, observing that the ordinance  
23 “regulate[d] nonexpressive conduct—namely, booking transactions—not speech.” *Id.* at 685.  
24 This was true notwithstanding the fact that, in regulating bookings, the ordinance necessarily  
25 restricted the speech that comprised them. Nor did it matter that the Supreme Court had recently  
26 declared online social media platforms to be “the modern public square,” *Packingham v. North*

1 *Carolina*, 582 U.S. 98, 107 (2017), akin to a public forum.

2 Likewise here, the County’s ordinance is plainly directed at conduct that “impos[es]  
3 incidental burdens on speech” only. *HomeAway.com, Inc.*, 918 F.3d at 686 (citation omitted).  
4 Similar to regulations on serving alcohol, setting outdoor fires, selling firearms, and operating a  
5 tattoo parlor in a pandemic, a regulation about spectating at a sideshow does not address conduct  
6 with a significant expressive element. *See, e.g., Talk of the Town v. Dep’t of Fin. & Bus. Servs.*,  
7 343 F.3d 1063, 1069–70 (9th Cir. 2003) (“[T]he [ordinance] that bars the consumption of alcohol  
8 in establishments that lack valid liquor licenses [] in no way can be said to regulate conduct  
9 containing an element of protected expression.”); *See also R.A.V. v. City of St. Paul*, 505 U.S. 377,  
10 385 (1992) (“[N]onverbal expressive activity can be banned because of the action it entails, but  
11 not because of the ideas it expresses—so that burning a flag in violation of an ordinance against  
12 outdoor fires could be punishable, whereas burning a flag in violation of an ordinance against  
13 dishonoring the flag is not.”); *B & L Productions, Inc. v. Newsom*, 104 F.4th 108, 114 (9th Cir.  
14 2019) (upholding regulation on firearm sales); *Mitchell v. Newsom*, 509 F. Supp. 3d 1195, 1201  
15 (C.D. Cal. 2020) (upholding stay-home order as applied to tattoo parlor).

16  
17  
18 Feroso aims to distinguish this line of cases by highlighting the extent to which the  
19 County ordinance regulates conduct in a public forum and exposes newsmen like him to criminal  
20 prosecution. True, none of the above cases involved conduct on a public sidewalk. *B&L*  
21 *Productions* did involve a publicly operated fairground, but the conduct in that case (*i.e.*,  
22 contracting to purchase a gun) was less expressive than the conduct in which Feroso purports to  
23 engage (*i.e.*, recording and publishing videos and news reports about sideshows). Moreover, a  
24 fairground is hardly a public sidewalk, which the Supreme Court has identified as perhaps the  
25 quintessential public forum. *See U.S. v. Kokinda*, 497 U.S. 720, 726–27 (1990) (distinguishing  
26 enforcement of anti-soliciting law, as applied to a post office sidewalk, from enforcement in public  
27



1 streets and parks “that ha[ve] been traditionally open to the public for expressive activity”); *see*  
2 *also Snyder v. Phelps*, 562 U.S. 443, 456 (2011) (“We have repeatedly referred to public streets  
3 as the archetype of a traditional public forum,’ noting that “[t]ime out of mind” public streets and  
4 sidewalks have been used for public assembly and debate.” (quoting *Frisby v. Schultz*, 487 U.S.  
5 474, 480 (1988))).

6 Ultimately, however, Feroso’s distinctions are unpersuasive. The fact that an ordinance  
7 applies in a particularly expression-prone place does not transform the non-expressive conduct that  
8 it regulates into conduct with a significant expressive element. For example, Federal law prohibits  
9 knowingly attending, sponsoring, or exhibiting a cockfight. *See* 7 U.S.C. § 2156(a), *see also*  
10 *Hernández-Gotay v. U.S.*, 985 F.3d 71, 80 (1st Cir. 2021) (rejecting First Amendment challenge  
11 by Puerto Rican cockfighting sponsors). If the government can constitutionally prohibit attending  
12 or sponsoring the fight, *see id.*, that prohibition becomes no less constitutional simply because two  
13 roosters do battle on a sidewalk. If the opposite were true, all manner of local prohibitions could  
14 be invalidated by simply moving proscribed conduct from the shadows to the streetcorners.  
15

16  
17 Feroso’s journalistic intent does not change the analysis— “[t]he right to speak and  
18 publish does not carry with it the unrestrained right to gather information.” *Zemel v. Rusk*, 381  
19 U.S. 1, 16–17 (1965). In that case, the Supreme Court explained in dicta that:

20 . . . there are few restrictions on action which could not be clothed by ingenious  
21 argument in the garb of decreased data flow. For example, the prohibition of  
22 unauthorized entry into the White House diminishes the citizen’s opportunities to  
23 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.”

24 *Id.* So, too here—the prohibition on spectating at sideshows diminishes Feroso’s opportunities  
25 to gather information about them, but that does not make witnessing them a First Amendment  
26 right. As the Ninth Circuit recently put it: “[T]he First Amendment right to gather news within  
27 legal bounds does not exempt journalists from laws of general applicability.” *Animal Legal*

1 *Defense Fund v. Wasden*, 878 F.3d 1184, 1190 (9th Cir. 2018) (hereafter “*ALDF*”) (upholding  
2 state law criminalizing misrepresentation to obtain records but finding unconstitutional a ban on  
3 video recordings of an animal production facility’s operations).

4 To be sure, the Ninth Circuit has also recognized the “First Amendment right to film  
5 matters of public interest.” *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995). “The act  
6 of recording is itself an inherently expressive activity.” *ALDF*, 878 F.3d at 1203. In *ALDF*, the  
7 Ninth Circuit characterized an Idaho law banning recording in animal production facilities as an  
8 “obvious” example of content-based speech regulation, *id.* at 1204, even where the setting, unlike  
9 the public sidewalk here, was not generally open to the public.

10 Yet this case does not involve an anti-recording component—the challenged ordinance  
11 does not specifically prohibit the conduct of *recording*. Its focus on the conduct of *knowingly*  
12 *being present for the purpose of observing a sideshow* makes it less about speech production and  
13 more about locational activity. In this regard it is not unlike all manner of standard laws that  
14 restrict conduct in public areas for safety reasons, notwithstanding their impact on those who  
15 would engage in such conduct in order to speak. *See, e.g., Raef v. App. Div. of Super. Ct.*, 240  
16 Cal. App. 4th 1112, 1119 (2015) (upholding statute penalizing “reckless driving . . . committed  
17 with the intent to capture an image . . . of another person for a commercial purpose”). Because  
18 observing a sideshow from within 200 feet is not conduct with a significantly expressive element,  
19 “[i]t is clear that the ordinance was not motivated by a desire to suppress speech.” *Int’l Franchise*  
20 *Ass’n*, 803 F.3d at 409. The First Amendment therefore does not apply, and Feroso fails to show  
21 a likelihood of success on the merits.

## 22 **2. Inevitable Effect**

23 The other way that Feroso could show First Amendment applicability to this regulation  
24 of conduct is if he demonstrates that the ordinance “singles out those engaged in expressive  
25 activity.” *See, e.g., Minneapolis Star & Tribune Co. v. Minn. Comm’r of Revenue*, 460 U.S. 575,  
26 581 (1983) (finding that a tax on paper and ink purchases singled out newspapers and thus  
27 violated the First Amendment). That Feroso does not make this argument underscores its  
28 futility; the statute applies to all who gather within 200 feet of a sideshow, with no “singling out”

1 as occurred in the *Minneapolis Star* case. At any rate, even if this argument might hold water,  
2 Feroso’s failure to raise it means that the applicability of the First Amendment hinges, in this  
3 litigation, on whether spectating at a sideshow has a significant expressive element as discussed  
4 *supra*. Because it does not, the First Amendment does not apply, and Feroso necessarily fails to  
5 show a likelihood of success on the merits of his First Amendment claim.

6 **C. The Ordinance Is Content-Neutral And Satisfies Intermediate Scrutiny**

7 In the alternative, even if the First Amendment *were* deemed applicable to the challenged  
8 ordinance, Feroso still fails to show a likelihood of success on the merits of his claim.

9 Were the First Amendment to be triggered here, the question would become whether the  
10 ordinance is a content-neutral or content-based restriction. *See Reed v. Town of Gilbert, Ariz.*, 576  
11 U.S. 155, 166 (2015). If it is content-neutral, it receives intermediate scrutiny, which requires that  
12 the ordinance be narrowly tailored to serve a compelling governmental interest and that it leaves  
13 open ample alternative channels for communication of the information. *See Ward v. Rock Against*  
14 *Racism*, 491 U.S. 781, 798–800 (1989).<sup>1</sup> If, however, the regulation is content-based, it receives  
15 strict scrutiny, which requires that the ordinance be the least restrictive means available to further  
16 a compelling government interest. *See U.S. v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000).

17 **1. *Content-Neutral vs. Content-Based***

18 Feroso sees the ordinance as content-based because it applies to observations of  
19 sideshows only—and thus restricts observational recordings based on the content they depict. In  
20 other words, it “targets only the subject of sideshows and inherently prohibits recording or  
21 reporting on that topic but not others such as buildings or sunsets.” Reply Br. at 7–8. As a result,  
22 he argues strict scrutiny should apply. The County, however, posits that the ordinance does not  
23 draw content-based distinctions nor rely on speech-content for a justification: it does not address  
24 “what [plaintiffs] say” but rather “where they say it.” Opp. Br. at 20.

25 \_\_\_\_\_  
26 <sup>1</sup> This intermediate scrutiny test is indistinguishable from the test articulated in *United States v.*  
27 *O’Brien*, 391 U.S. 367, 370 (1968). *See United States v. Swisher*, 811 F.3d 299, 312 & n.7 (9th  
28 Cir. 2016).

1           The ordinance is content-neutral. Unlike the law at issue in *ALDF*, the County ordinance  
2 is concerned with the location and purpose of an actor, not whether that actor speaks (and certainly  
3 not the content of any speech that occurs). In *Reed*, the Supreme Court described content-based  
4 laws as those which “appl[y] to particular speech because of the topic discussed or the message  
5 expressed.” 576 U.S. 155, 163 (2015). The ordinance here applies to particular speech because of  
6 the associated conduct, no matter the message any related speech might communicate. In other  
7 words, the statute “applies equally to silent spectators, spectators speaking or carrying signs  
8 addressing any topic and conveying any message, and spectators like [Fermoso] who are preparing  
9 to speak in the future.” Opp. Br. at 21. In this way, it closely resembles the content-neutral  
10 regulation in *McCullen*, which applied based on location rather than message and which the  
11 Supreme Court reviewed under an intermediate scrutiny standard. 573 U.S. at 479–80.

12           **2. Intermediate Scrutiny**

13           a. Public Safety As a Compelling Governmental Interest

14           Fermoso does not challenge the County’s argument that public safety is a compelling  
15 governmental interest. See Reply Br. at 10–12. Nor could he. As the County points out, public  
16 safety is a well-recognized compelling governmental interest. See, e.g., *Menotti v. City of Seattle*,  
17 409 F.3d 1113, 1143 n.57 (9th Cir. 2005) (city had compelling interest in safety and security);  
18 *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 947–48 (9th  
19 Cir. 2011) (city had compelling interests in traffic safety and flow); see also *Ward*, 491 U.S. at  
20 796 (city had substantial interest in protecting residents from unwelcome noise).

21           b. Narrowly Tailored

22           Fermoso’s main argument against upholding the ordinance through intermediate scrutiny is  
23 his contention that it is not narrowly tailored. Claiming that the County has abundant alternative  
24 means to prevent sideshows, he points to pre-existing laws against reckless driving, vandalism,  
25 harming or destroying infrastructure, burning rubber tires, causing noise pollution, and  
26 discharging firearms. He also cites to an Oakland city ordinance that prohibits organizing or  
27 facilitating sideshows rather than mere spectating. *Id.* (citing Oakland, Cal., Code §§ 10.74.010–

1 10.74.090). That ordinance addresses those who “knowingly organize, promote, instigate, assist,  
2 facilitate, aid, or abet” a sideshow, Oakland Cal., Code §10.74.040—a list of verbs that seem less  
3 likely to sweep in the stray reporter than the at-issue County ordinance, which captures those  
4 knowingly present for the purpose of “viewing, observing, watching, or witnessing the sideshow  
5 event.” ACC § 10.40.020.

6 Intermediate scrutiny does not require that a regulation be the least restrictive means of  
7 furthering state’s interest. *Ward*, 491 U.S. at 798–99. Rather, the ordinance is narrowly tailored if  
8 it does not “burden substantially more speech than is necessary to further the government’s  
9 legitimate interest.” *Id.* at 799–800 (emphasis added). A ban on spectating within 200 feet of a  
10 sideshow presents merely an incidental burden on speech—not a burden that is far greater than  
11 necessary. Indeed, the regulation features several limiting factors that avoid a greater-than-  
12 necessary impingement on speech. For one thing, it only applies to “knowing” spectators, thus  
13 avoiding sweeping in innocent bystanders. For another, its 200-foot boundary would allow  
14 Feroso to make news about the sideshow from a safer distance that is less likely to encourage the  
15 event itself or any related illegality.

16 Moreover, unlike the municipality in *Comite de Jornaleros*, which had other laws available  
17 to address its stated interests, *see* 657 F.3d at 949, Alameda County has no alternative means of  
18 deterring spectating: all the laws that Feroso cite require additional illegality (*e.g.*, being a  
19 reckless driver, firing a gun, exhibiting signs of public intoxication). They would be ineffective  
20 against the spectator who does nothing more than show up and cheer. But such a spectator is a  
21 causal contributor to the dangers that the County seeks to prevent, including the risk of injury to  
22 the spectators themselves. *See* Culley Decl. 15–16. Because the County “demonstrate[s] that  
23 alternative measures that burden substantially less speech would fail to achieve the government’s  
24 interests,” *McCullen*, 573 U.S. at 495, the ordinance is sufficiently narrowly tailored to satisfy  
25 intermediate scrutiny.

26 c. Alternative Channels of Communication

27 Feroso does not present a discrete argument about whether the ordinance leaves open

United States District Court  
Northern District of California

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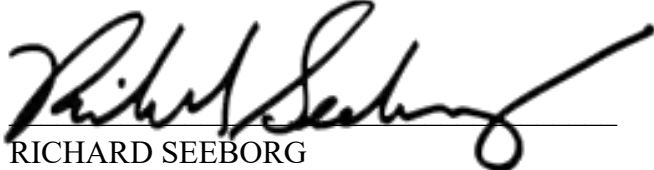
ample alternative channels for communicating information. This is conspicuous, given that the County offered an entire page of analysis to explain that he “may venture inside a 200-foot radius of a sideshow to interview residents, passersby, spectators, or even drivers, and to record these interviews,” Opp. Br. at 27–28, so long as he is not within that radius for the purpose of spectating the sideshow itself. He may also obtain videos and photos from beyond the 200-foot radius; obtain videos from sources within the 200-foot radius; record the aftermath of sideshows; and rely on public data and post-incident interviews, as he has in previous sideshow-focused reports. *Id.* Feroso’s failure to rebut these arguments waives the issue; the ordinance leaves open ample alternative channels of communication.

**V. CONCLUSION**

The County ordinance does not restrict conduct with a significant expressive element and therefore does not trigger First Amendment protections. Even if it did implicate freedom of speech or of the press, the ordinance is content-neutral and withstands intermediate scrutiny. Because of these conclusions, Feroso is unlikely to succeed on the merits of his claim. The motion for a preliminary injunction is denied.

**IT IS SO ORDERED.**

Dated: October 11, 2024

  
RICHARD SEEBORG  
Chief United States District Judge

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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 REPLY IN SUPPORT OF  
MOTION FOR PRELIMINARY  
INJUNCTION**

Date: October 3, 2024

Time: 1:30 p.m.

Judge: Honorable Richard Seeborg

Ctrm: Courtroom 3 – 17th Floor

**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>
I. INTRODUCTION.....	1
II. ARGUMENT .....	1
A. The Ordinance Is Subject to First Amendment Scrutiny Because It Restricts Access to a Traditional Public Forum and Inherently Prohibits Recording Events in that Forum. ....	1
1. The Ordinance Limits Access to a Traditional Public Forum.....	1
2. The Ordinance Inherently Prohibits Speech in a Public Forum.....	2
3. The County Misreads the Ordinance and Ignores Binding Precedent. ....	4
B. The Ordinance is Content Based Because Its Plain Language Inherently Prohibits Recording or Reporting on Sideshows but not Other Topics at the Same Time and Place. ....	7
C. The Ordinance Fails Either Strict or Intermediate Scrutiny.....	8
1. The Ordinance Does Not Meet Strict Scrutiny Because the County Retains Less Restrictive Alternatives to Serve Its Interest in Preventing Unlawful Conduct. ....	8
2. The Ordinance Fails Intermediate Scrutiny Because There Are Abundant Obvious Means to Prevent the Unlawful Conduct Involved in Sideshows Without Restricting Protected Speech. ....	10
D. Feroso Has Standing and Is Suffering Irreparable Harm Because the Ordinance is Chilling His First Amendment Right to Observe and Record Events in a Traditional Public Forum. ....	12
III. CONCLUSION .....	15



**TABLE OF AUTHORITIES**

	Page(s)
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	

Cases

*ACLU of Ill. v. Alvarez*  
679 F.3d 583 (7th Cir. 2012)..... 3

*Anderson v. City of Hermosa Beach*  
621 F.3d 1051 (9th Cir. 2010)..... 3, 9, 12

*Animal Legal Def. Fund v. Wasden*  
878 F.3d 1184 (9th Cir. 2018)..... 3, 7

*Aptive Env't, LLC v. Town of Castle Rock*  
959 F.3d 961 (10th Cir. 2020)..... 12

*Arcara v. Cloud Books, Inc.*  
478 U.S. 697 (1986) ..... 6, 7

*Ariz. Right to Life Pol. Action Comm. v. Bayless*  
320 F.3d 1002 (9th Cir. 2003)..... 14

*Askins v. U.S. Dep't of Homeland Sec.*  
899 F.3d 1035 (9th Cir. 2018)..... 4

*Berger v. City of Seattle*  
569 F.3d 1029 (9th Cir. 2009) (en banc)..... 2, 11

*Bland v. Fessler*  
88 F.3d 729 (9th Cir. 1996)..... 12, 14

*Boardman v. Pac. Seafood Grp.*  
822 F.3d 1011 (9th Cir. 2016)..... 15

*Brown v. Kemp*  
86 F.4th 745 (7th Cir. 2023)..... 3, 4, 5

*Burson v. Freeman*  
504 U.S. 191 (1992) ..... 9, 10

*Cal. Pro-Life Council, Inc. v. Getman*  
328 F.3d 1098 (9th Cir. 2003)..... 12, 14, 15

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

*City of Cincinnati v. Discovery Network, Inc.*  
507 U.S. 410 (1993) ..... 11

1 *City of Seattle v. Abercrombie*  
 85 Wash. App. 393 (1997) ..... 7

2

3 *Clark v. Cmty. for Creative Non-Violence*  
 468 U.S. 288 (1984) ..... 10

4

5 *Colten v. Kentucky*  
 407 U.S. 104 (1972) ..... 6, 7

6 *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*  
 657 F.3d 936 (9th Cir. 2011) (en banc)..... 4, 11

7

8 *Cuviello v. City of Vallejo*  
 944 F.3d 816 (9th Cir. 2019)..... 15

9

10 *Doe v. City of Lafayette*  
 377 F.3d 757 (7th Cir. 2004)..... 6

11 *Doe v. Horne*  
 No. 23-16026, 2024 U.S. App. LEXIS 22847 (9th Cir. Sept. 9, 2024) ..... 15

12

13 *Dombrowski v. Pfister*  
 380 U.S. 479 (1965) ..... 12

14 *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*  
 82 F.4th 664 (9th Cir. 2023) (en banc)..... 15

15

16 *Flanagan v. Flanagan*  
 27 Cal. 4th 766 (2002)..... 4

17

18 *Foley v. Superior Court*  
 117 Cal. App. 4th 206 (2004)..... 2

19 *Frisby v. Schultz*  
 487 U.S. 474 (1988) ..... 11

20

21 *Grossman v. City of Portland*  
 33 F.3d 1200 (9th Cir. 1994)..... 10

22

23 *Hernández-Gotay v. United States*  
 985 F.3d 71 (1st Cir. 2021) ..... 2

24 *Hill v. Colorado*  
 530 U.S. 703 (2000) ..... 7

25

26 *Holder v. Humanitarian L. Project*  
 561 U.S. 1 (2010) ..... 14

27

28 *Hoye v. City of Oakland*  
 653 F.3d 835 (9th Cir. 2011)..... 8

1 *IMDb.com Inc. v. Becerra*  
 2 962 F.3d 1111 (9th Cir. 2020)..... 9

3 *Index Newspapers LLC v. U.S. Marshals Serv.*  
 4 977 F.3d 817 (9th Cir. 2020)..... 5, 8

5 *Italian Colors Rest. v. Becerra*  
 6 878 F.3d 1165 (9th Cir. 2018)..... 13, 14

7 *James v. City of Long Beach*  
 8 18 F. Supp. 2d 1078 (C.D. Cal. 1998)..... 5

9 *Jordan v. Adams Cnty. Sheriff’s Office*  
 10 73 F.4th 1162 (10th Cir. 2023)..... 4

11 *In re K.M.*  
 12 75 Cal. App. 5th 323 (2022)..... 9

13 *Lair v. Bullock*  
 14 697 F.3d 1200 (9th Cir. 2012)..... 10

15 *Leigh v. Salazar*  
 16 677 F.3d 892 (9th Cir. 2012)..... 3

17 *Libertarian Party of L.A. Cnty. v. Bowen*  
 18 709 F.3d 867 (9th Cir. 2013)..... 13

19 *Long Beach Area Peace Network v. City of Long Beach*  
 20 574 F.3d 1011 (9th Cir. 2009)..... 10

21 *Lopez v. Candaele*  
 22 630 F.3d 775 (9th Cir. 2010)..... 13

23 *LSO, Ltd. v. Stroh*  
 24 205 F.3d 1146 (9th Cir. 2000)..... 13

25 *Majors v. Abell*  
 26 317 F.3d 719 (7th Cir. 2003)..... 14

27 *McCullen v. Coakley*  
 28 573 U.S. 464 (2014)..... 2, 5, 7, 10, 11

*Meinecke v. City of Seattle*  
 99 F.4th 514 (9th Cir. 2024)..... 9, 15

*NAACP v. Button*  
 371 U.S. 415 (1963)..... 4

*National Press Photographers Ass’n v. McCraw*  
 90 F.4th 770 (5th Cir. 2024)..... 2

1 *Nunez ex rel. Nunez v. City of San Diego*  
 114 F.3d 935 (9th Cir. 1997)..... 3

2

3 *Oakland Trib., Inc. v. Chronicle Publ’g Co.*  
 762 F.2d 1374 (9th Cir. 1985)..... 15

4

5 *Peace Ranch, LLC v. Bonta*  
 93 F.4th 482 (9th Cir. 2024)..... 13, 14

6 *People for the Ethical Treatment of Animals, Inc. v. N.C. Farm Bureau Fed’n, Inc.*  
 60 F.4th 815 (4th Cir. 2023)..... 3

7

8 *People v. Bergen*  
 883 P.2d 532 (Colo. App. 1994) ..... 2

9

10 *People v. Lara*  
 9 Cal. App. 5th 296 (2017)..... 9

11 *People v. Ng*  
 13 Cal. 5th 448 (2022)..... 4

12

13 *Project Veritas v. Ohio Election Comm’n*  
 418 F. Supp. 3d 232 (S.D. Ohio 2019)..... 8

14

15 *Republican Party v. White*  
 536 U.S. 765 (2002) ..... 8

16 *Sanchez v. City of Atherton*  
 No. 22-cv-03106, 2023 U.S. Dist. LEXIS 3763 (N.D. Cal. 2023) ..... 3

17

18 *Schneider v. New Jersey*  
 308 U.S. 147 (1939) ..... 13

19

20 *Snyder v. Phelps*  
 562 U.S. 443 (2011) ..... 2

21 *Spiraledge, Inc. v. Seaworld Ent., Inc.*  
 No. 13cv296, 2013 U.S. Dist. LEXIS 96616 (S.D. Cal. July 9, 2013) ..... 15

22

23 *Susan B. Anthony List v. Driehaus*  
 573 U.S. 149 (2014) ..... 13, 14

24

25 *Tingley v. Ferguson*  
 47 F.4th 1055 (9th Cir. 2022)..... 12, 14

26 *Turner Broad. Sys., Inc. v. FCC*  
 512 U.S. 622 (1994) ..... 10

27

28 *United States v. Grace*  
 461 U.S. 171 (1983) ..... 10

1 *United States v. O’Brien*  
 2 391 U.S. 367 (1968) ..... 10

3 *United States v. Swisher*  
 4 811 F.3d 299 (9th Cir. 2016)..... 10

5 *Virginia v. Am. Booksellers Ass’n*  
 6 484 U.S. 383 (1988) ..... 12

7 *W. Watersheds Project v. Michael*  
 8 869 F.3d 1189 (10th Cir. 2017)..... 4

9 *Ward v. Rock Against Racism*  
 10 491 U.S. 781 (1989) ..... 11

11 *Wright v. City of St. Petersburg*  
 12 833 F.3d 1291 (11th Cir. 2016)..... 6

13 Statutes

14 7 U.S.C. § 2156(a)(2)(A) ..... 2

15 Alameda County, Cal., Code § 10.40.020 (2024)..... 1, 4, 6, 7, 8

16 Alameda County, Cal., Code § 10.40.030 (2024)..... 1

17 Oakland, Cal., Code §§ 10.74.010–10.74.090 (2023)..... 9

18 Other Authorities

19 U.S. Const. amend. I ..... passim

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21

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1 **I. INTRODUCTION**

2 No one disputes that sideshows can present hazards, but that is not the issue. The issue is  
3 whether the First Amendment prevents the County from criminalizing journalism by restricting  
4 access to a public forum for the purpose of observing a sideshow. Under Supreme Court law that  
5 the County cannot distinguish, the Ordinance is subject to First Amendment scrutiny because it  
6 restricts access to a traditional public forum. It also inherently restricts speech by limiting the right  
7 to observe events in a public forum, which is a necessary predicate to recording or reporting on  
8 them. The County cannot avoid the First Amendment by equating all observers of sideshows with  
9 participants in unlawful conduct, nor can it punish peaceful observers for the unlawful conduct of  
10 others. The Ordinance is content based because it inherently prohibits recording or reporting on  
11 sideshows but not other topics at the same time and place. It is unlikely to survive strict scrutiny.  
12 Any concern for bystanders’ safety is not tenable because the Ordinance does not prohibit all  
13 persons from being present near sideshows. The County’s interest reduces to preventing the  
14 unlawful conduct of some persons, which can be served by enforcing existing laws or adopting an  
15 ordinance similar to those adopted or proposed in Oakland and San Francisco that target  
16 promoting or aiding and abetting sideshows without infringing the First Amendment rights of the  
17 press or public. Even if the Ordinance were content neutral, it would likely fail intermediate  
18 scrutiny due to the abundance of obvious alternatives for addressing sideshows without restricting  
19 speech. Because his speech is chilled by the Ordinance, Feroso has standing and is suffering  
20 irreparable harm. The Court is therefore respectfully requested to enter a preliminary injunction.

21 **II. ARGUMENT**

22 **A. The Ordinance Is Subject to First Amendment Scrutiny Because It Restricts**  
23 **Access to a Traditional Public Forum and Inherently Prohibits Recording**  
24 **Events in that Forum.**

25 **1. The Ordinance Limits Access to a Traditional Public Forum.**

26 Sideshows occur “on a public street or highway.” Alameda County, Cal., Code (“ACC”)  
27 § 10.40.030 (2024). By prohibiting persons from being “within two hundred (200) feet of the  
28 location of the sideshow event, or within two hundred (200) feet of the site of the preparations for  
any sideshow event” for purposes of observing the event, ACC § 10.40.020, the Ordinance

1 restricts access to public streets and sidewalks. Public streets and sidewalks are “the archetype of a  
2 traditional public forum” and hold a “special position in terms of First Amendment protection.”  
3 *Snyder v. Phelps*, 562 U.S. 443, 456 (2011).

4 The Supreme Court held a law that “restricts access to traditional public fora” is “subject to  
5 First Amendment scrutiny” even if it “says nothing about speech on its face.” *McCullen v.*  
6 *Coakley*, 573 U.S. 464, 476 (2014). This case is about a traditional public forum, not “places  
7 normally closed to the public, such as prisons.” Defs.’ Opp’n to Mot. Prelim. Inj. at 17:17–18.  
8 The “protections afforded by the First Amendment” are “nowhere stronger” than in “traditional  
9 public fora.” *Berger v. City of Seattle*, 569 F.3d 1029, 1035–36 (9th Cir. 2009) (en banc).

10 The County cites no case to the contrary and wrongly relies on cases that do not involve  
11 traditional public forums. In *National Press Photographers Ass’n v. McCraw*, 90 F.4th 770 (5th  
12 Cir. 2024), the court addressed a law that restricted drone flights over private property or  
13 nonpublic forums such as “airports, petroleum refineries, power generators, and military  
14 installations,” as well as “correctional facilities and detention centers” and “large sports venues.”  
15 *Id.* at 778. The court rejected a claim of “access to information not available to the public  
16 generally” and did not address access to a traditional public forum. *Id.* at 792. Likewise, cases  
17 about “animal fights” or “illegal boxing matches,” Opp’n at 17:24, are irrelevant because they  
18 addressed prohibitions on attending nonpublic events, not restrictions on access to a traditional  
19 public forum.<sup>1</sup> See, e.g., *People v. Bergen*, 883 P.2d 532, 544 (Colo. App. 1994) (rejecting claim  
20 of “access to information that is not generally available to the public”).

## 21 2. The Ordinance Inherently Prohibits Speech in a Public Forum.

22 The Ordinance is also subject to First Amendment review because it inherently restricts  
23 speech in a traditional public forum. The acts of making a recording, taking notes, or otherwise  
24

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25 <sup>1</sup> The law at issue in *Hernández-Gotay v. United States*, 985 F.3d 71 (1st Cir. 2021), banned  
26 “sponsor[ship]’ and ‘exhibit[ion]’ of cockfighting matches.” *Id.* at 75 (alteration in original).  
27 The court did not address the law against attending such matches, 7 U.S.C. § 2156(a)(2)(A), and  
28 this Court need not consider such laws, because they do not restrict access to a traditional public  
forum. *Foley v. Superior Court*, 117 Cal. App. 4th 206 (2004), held only that a sideshow  
ordinance was not preempted by state law; it did not consider any First Amendment issues.

1 reporting on events in a public forum are pure speech protected by the First Amendment.  
2 *See Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1203–04 (9th Cir. 2018); *Leigh v. Salazar*,  
3 677 F.3d 892, 897 (9th Cir. 2012); *ACLU of Ill. v. Alvarez*, 679 F.3d 583, 595–96 (7th Cir. 2012).  
4 It is impossible to record or report on events in a public forum without observing them. *Chestnut*  
5 *v. Wallace*, 947 F.3d 1085, 1090 (8th Cir. 2020); *Sanchez v. City of Atherton*, No. 22-cv-03106,  
6 2023 U.S. Dist. LEXIS 3763, at \*14 (N.D. Cal. 2023). The First Amendment protects both “the  
7 process of creating a form of *pure* speech” and “the product of these processes,” and the predicate  
8 act of observing events in a public forum is “inextricably intertwined with the purely expressive  
9 product” of a recording or story depicting them. *Anderson v. City of Hermosa Beach*, 621 F.3d  
10 1051, 1061–62 (9th Cir. 2010); *see also People for the Ethical Treatment of Animals, Inc. v. N.C.*  
11 *Farm Bureau Fed’n, Inc.*, 60 F.4th 815, 829 (4th Cir. 2023) (First Amendment “safeguard[s] the  
12 right to gather information as a predicate to speech.”).

13 By restricting access to a traditional public forum for the purpose of observing events  
14 therein, the Ordinance criminalizes an inherent part of creating pure speech about those events.  
15 The Ordinance thus “prohibits conduct that is a necessary precursor” to speech and has “an  
16 integral effect on the ability” of journalists and others “to express themselves” by recording or  
17 reporting on events in a public forum. *Nunez ex rel. Nunez v. City of San Diego*, 114 F.3d 935,  
18 950–51 (9th Cir. 1997). In other words, it targets activity that is intrinsic “to the creation of  
19 speech.” Opp’n at 15 n.6. The Ordinance is therefore subject to First Amendment scrutiny because  
20 it “is directed narrowly and specifically at expression or conduct commonly associated with  
21 expression” in a public forum. *Nunez*, 114 F.3d at 951 (citation omitted); *see also Brown v. Kemp*,  
22 86 F.4th 745, 779 (7th Cir. 2023) (holding First Amendment protects actions essential to  
23 “monitoring and recording” of public events, such as observing them from sufficient “visual or  
24 physical proximity”). The legislative history on “video recordings,” Cappetta Decl. ¶ 2 & Ex. 3,  
25 confirms the obvious—by restricting presence in a public forum with intent to observe events  
26 therein, the Ordinance’s text inherently restricts recording those events.

27 The First Amendment right to observe and record events in a public forum is not limited to  
28 “observing and recording police activity.” Opp’n at 15:3 (emphasis omitted). “The First



1 Amendment protects the right to photograph and record matters of public interest” in a public  
2 forum, including but not limited to “the right to record law enforcement officers.” *Askins v. U.S.*  
3 *Dep’t of Homeland Sec.*, 899 F.3d 1035, 1044 (9th Cir. 2018) (citations omitted); *see also, e.g.*,  
4 *Brown*, 86 F.4th at 779; *W. Watersheds Project v. Michael*, 869 F.3d 1189, 1196 (10th Cir. 2017).

5 For First Amendment purposes, there is no principled distinction between a law that  
6 prevents recording police activity in a public forum and a law that prevents recording other events  
7 in the same forum. Under the County’s rationale, the government could prevent all recording of  
8 any events in a public forum—for example, police activity, protests, or performances—through  
9 the mere subterfuge of omitting the word “recording” while prohibiting presence in the forum with  
10 intent to observe such events. That result would make a mockery of the First Amendment.

11 *See Jordan v. Adams Cnty. Sheriff’s Office*, 73 F.4th 1162, 1170 (10th Cir. 2023) (“If police  
12 could stop criticism or filming by asking onlookers to leave, then this would allow the government  
13 to simply proceed upstream and dam the source of speech” and thus “bypass the Constitution.”)  
14 (citations, quotation marks, and brackets omitted).

### 15 3. The County Misreads the Ordinance and Ignores Binding Precedent.

16 The County cannot avoid the First Amendment by repeatedly labeling all reporters or  
17 observers as “participants” or persons “joining a sideshow.” Opp’n at 13:24–25, 29:13; *see also*,  
18 *e.g., id.* at 17:2–3, 28:18, 29:8. As an initial matter, the County’s contention founders on the text  
19 of the Ordinance, which states that “‘spectator’ includes” but is not limited to “any person at the  
20 location of the sideshow event that may have participated in preparations and/or promoting the  
21 sideshow event.” ACC § 10.40.020. The term “spectator” is not limited to “participants,” because  
22 “includes” is a term of enlargement rather than limitation. *See People v. Ng*, 13 Cal. 5th 448, 540  
23 (2022); *Flanagan v. Flanagan*, 27 Cal. 4th 766, 774 (2002). Even if the County’s position were an  
24 “authoritative construction[.]” of the Ordinance, it could not prevent First Amendment scrutiny,  
25 because it is “precluded by the plain language of the ordinance.” *Comite de Jornaleros de*  
26 *Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 946 (9th Cir. 2011) (en banc).

27 In any event, the government “cannot foreclose the exercise of constitutional rights by  
28 mere labels.” *NAACP v. Button*, 371 U.S. 415, 429 (1963). Unlike “commerce or conduct” such as

1 building “outdoor fires,” renting property, selling firearms, “serving alcohol without a liquor  
2 license,” or “reckless driving,” Opp’n at 14:9–21, 17:13, the mere act of observing events in a  
3 public forum is protected by the First Amendment as a necessary predicate to recording or  
4 reporting on them. *Brown*, 86 F.4th at 779. This case does not call into question “generally  
5 applicable statutes” prohibiting “unlawful activity” that is unprotected by the First Amendment,  
6 such as trespassing, “speeding [or] reckless driving.” Opp’n at 17:1–9. Instead, this case is about a  
7 restriction on access to a traditional public forum that inherently prohibits the recording of events  
8 in that forum and thus targets pure speech.<sup>2</sup>

9       The fact that such events may involve unlawful conduct by some persons does not justify  
10 infringing the First Amendment rights of other persons. The Ninth Circuit is clear that  
11 “journalists” and “members of the public” who are peacefully observing or reporting on events in  
12 a public forum “cannot be punished for the violent acts of others,” and the “proper response to  
13 potential and actual violence is for the government to ensure an adequate police presence . . . and  
14 to arrest those who actually engage in such conduct, rather than to suppress legitimate First  
15 Amendment conduct as a prophylactic measure.” *Index Newspapers LLC v. U.S. Marshals Serv.*,  
16 977 F.3d 817, 834 (9th Cir. 2020) (alteration in original) (citation and quotation marks omitted).

17       In holding that violence by some did not justify infringing the First Amendment rights of  
18 others to observe a protest, *Index Newspapers* foreclosed the County’s attempt to legislate away  
19 the First Amendment rights of observers and reporters by contending a sideshow necessarily  
20 requires an audience. The same could be said of a violent protest, yet the First Amendment would  
21 clearly prohibit a law that punishes people for merely observing and thus recording the protest.

22       The County’s response is incoherent. On one hand, it contends that a “passerby or a  
23 neighbor may record a nearby sideshow” and Feroso “may film a sideshow he happens upon  
24 while present for other purposes.” Opp’n at 23:19, 28:1–2. On the other hand, it asserts that “a  
25 spectator knowingly present at the same time and place to observe the sideshow violates the  
26

27 <sup>2</sup> Stadiums are not necessarily “public forums,” *James v. City of Long Beach*, 18 F. Supp. 2d 1078,  
28 1082 (C.D. Cal. 1998), but even if they are, *James* conflicts with the rule that restrictions on  
access to a public forum are subject to First Amendment scrutiny. *McCullen*, 573 U.S. at 476.

1 Ordinance.” *Id.* at 23:20–21. The County cannot have it both ways. At the moment one begins  
2 recording a sideshow within 200 feet of it, one becomes a “spectator” who is violating the  
3 Ordinance by being knowingly “present at a sideshow event, . . . for the purpose of viewing,  
4 observing, watching, or witnessing” it, ACC § 10.40.020, because it is impossible to record an  
5 event without intending to view, observe, watch, or witness it. Therefore, the Ordinance inherently  
6 “prohibit[s] recording sideshows.” Opp’n at 23:18.

7         The County wrongly relies on irrelevant cases predicated on the speaker’s commission of  
8 unlawful conduct not protected by the First Amendment. In *Arcara v. Cloud Books, Inc.*, 478 U.S.  
9 697 (1986), the Court discussed an investigation into “illicit sexual activities” at a bookstore,  
10 which revealed “instances of masturbation, fondling, and fellatio” as well as “solicitation of  
11 prostitution,” all known to the management. *Id.* at 698–99. The government sought “closure of the  
12 premises” under a law defining “places of prostitution, lewdness, and assignation as public health  
13 nuisances.” *Id.* at 699. The First Amendment did not apply because “the sexual activity carried on  
14 in this case manifests absolutely no element of protected expression” and the “legislation  
15 providing the closure sanction was directed at unlawful conduct having nothing to do with books  
16 or other expressive activity.”<sup>3</sup> *Id.* at 705, 707.

17         Likewise, *Colten v. Kentucky*, 407 U.S. 104 (1972), did not involve protected speech.  
18 The defendant committed disorderly conduct that required “intent to cause public inconvenience,  
19 annoyance or alarm, or recklessly creating a risk thereof,” and he “had no purpose other than to  
20 cause inconvenience and annoyance” to an officer making a stop. *Id.* at 108–09. The defendant  
21 was not merely observing or recording the stop but was instead attempting “to engage the issuing  
22 officer in conversation,” which undermined the state’s “legitimate interest in enforcing its traffic

23 \_\_\_\_\_  
24 <sup>3</sup> Similar cases cited by the County are likewise irrelevant. *Wright v. City of St. Petersburg*, 833  
25 F.3d 1291, 1297 (11th Cir. 2016) (holding exclusion from public park did not implicate First  
26 Amendment because it resulted from previous commission of crime that “manifest[ed] absolutely  
27 no element of protected expression”) (alteration in original) (quoting *Arcara*, 478 U.S. at 705);  
28 *Doe v. City of Lafayette*, 377 F.3d 757, 763–64 (7th Cir. 2004) (holding First Amendment did not  
apply to exclusion from city parks of previously convicted sex offender who “went ‘cruising’ in  
the parks ‘looking for children’ to satisfy his sexual urges” because offender’s “urges and actions  
‘manifest[] absolutely no element of protected expression’) (alteration in original) (quoting  
*Arcara*, 478 U.S. at 705).

1 laws . . . free from possible interference or interruption from bystanders.” *Id.* at 109. Such activity  
2 is not “protected by the First Amendment.” *Id.* *Arcara* and *Colten* do not apply to this case, in  
3 which the Ordinance criminalizes journalism by prohibiting the mere observation and thus  
4 recording of events in a traditional public forum, which is protected by the First Amendment.<sup>4</sup>

5 **B. The Ordinance is Content Based Because Its Plain Language Inherently**  
6 **Prohibits Recording or Reporting on Sideshows but not Other Topics at the**  
7 **Same Time and Place.**

8 The Ordinance is content based because its application inherently “depend[s] on the topic  
9 or message” of speech about sideshows. Opp’n at 20:26. The Ordinance restricts presence with  
10 intent to observe only a sideshow and inherently restricts only the recording of a sideshow, not  
11 other topics at the same time and place, such as a building, sunset, or road sign.

12 The Ordinance is not like the law at issue in *McCullen*, which was content neutral because  
13 it restricted presence in certain areas near “a reproductive health care facility” regardless of  
14 purpose, intent, or subject matter. 573 U.S. at 471. Here, the Ordinance applies only to one who  
15 has “the purpose of viewing, observing, watching, or witnessing the sideshow event as it  
16 progresses.” ACC § 10.40.020. By targeting presence with purpose to observe a sideshow, which  
17 is inextricably intertwined with recording or reporting on the sideshow, the Ordinance inherently  
18 “prohibits the recording of a defined topic” and is therefore “a content-based regulation of  
19 speech.” *Animal Legal Def. Fund*, 878 F.3d at 1204 (citation omitted).

20 The County finds no comfort in *Hill v. Colorado*, 530 U.S. 703 (2000). In that case, a  
21 statute made it unlawful “to ‘knowingly approach’ within eight feet of another person,” without  
22 consent, “for the purpose of . . . engaging in oral protest, education, or counseling” within 100 feet  
23 of a health care facility. *Id.* at 707. The statute was content neutral because it applied “to all  
24 ‘protest,’ to all ‘counseling,’ and to all demonstrators whether or not the demonstration concerns  
25 abortion, and whether they oppose or support the woman who has made an abortion decision.” *Id.*  
26 at 708, 725. In *Hill*, oral protest, education, or counseling were means of speech that were  
27 regulated as to place and manner but not content. “*Hill* instructed that, when analyzing the face of

28 <sup>4</sup> *City of Seattle v. Abercrombie*, 85 Wash. App. 393 (1997), is similarly irrelevant, because this  
case does not involve “interfering with an investigation.” *Id.* at 399.

1 a statute to determine its content-neutrality, the relevant question is whether the statute draws  
2 distinctions among *subjects* of discussion, not among *means or types* of communication.” *Hoye v.*  
3 *City of Oakland*, 653 F.3d 835, 847 (9th Cir. 2011). Here, the Ordinance expressly targets only the  
4 subject of sideshows and inherently prohibits recording or reporting on that topic but not others  
5 such as buildings or sunsets. The Ordinance thus prohibits “reporting information only on certain  
6 topics.” *Project Veritas v. Ohio Election Comm’n*, 418 F. Supp. 3d 232, 258 (S.D. Ohio 2019).

7 **C. The Ordinance Fails Either Strict or Intermediate Scrutiny.**

8 **1. The Ordinance Does Not Meet Strict Scrutiny Because the County**  
9 **Retains Less Restrictive Alternatives to Serve Its Interest in Preventing**  
10 **Unlawful Conduct.**

11 The County does not seriously contend the Ordinance meets strict scrutiny. Any concern  
12 for the safety of bystanders is undermined by the fact that the Ordinance applies only to persons  
13 present for the purpose of observing the sideshow, not persons present for other purposes,  
14 although the risk of injury is similar for both. A “law cannot be regarded as protecting an interest  
15 of the highest order” when “it leaves appreciable damage to that supposedly vital interest  
16 unprohibited.”<sup>5</sup> *Republican Party v. White*, 536 U.S. 765, 780 (2002) (citation omitted).

17 The County admits that persons other than “spectators,” such as “passersby and local  
18 residents or workers, may be at risk of injury from sideshows,” but it contends “they do not  
19 present the same risks of increased unlawful behavior associated with spectators.” Culley Decl.  
20 ¶ 15. In doing so, the County concedes that its interest is not in protecting the safety of all but in  
21 preventing the unlawful behavior of some. That interest does not justify infringing the First  
22 Amendment rights of the press and public to record or report on events in a public forum, even if  
23 the events involve unlawful or violent conduct by others. *Index Newspapers*, 977 F.3d at 834.

24 The County retains abundant less restrictive means to prevent unlawful conduct without  
25 abridging First Amendment rights. It may enforce the plenitude of existing laws against  
26 committing, aiding and abetting, or conspiring to engage in crimes associated with sideshows.  
27 Pl.’s Mot. for Prelim. Inj. (“MPI”) at 6:9–14, 14:5–10. In addition, it may adopt an ordinance

28 <sup>5</sup> Also, bystander safety cannot justify the prohibition on observing mere “preparations,” which  
can be as minimal as the gathering of one or more vehicles or persons. ACC § 10.40.020.

1 similar to those adopted or proposed in Oakland or San Francisco that prohibit organizing or  
2 aiding and abetting a sideshow without punishing members of the press or public who are simply  
3 observing or documenting it.<sup>6</sup> See Oakland, Cal., Code §§ 10.74.010–10.74.090 (2023); Loy Decl.  
4 ¶ 4 & Ex. 6, at 7 (proposed San Francisco ordinance). Given these “less speech-restrictive  
5 alternatives to achieve public safety,” the Ordinance violates the First Amendment. *Meinecke v.*  
6 *City of Seattle*, 99 F.4th 514, 525 (9th Cir. 2024).

7 If sideshows have continued despite the abundance of legal means for preventing them, it  
8 is not for lack of tools available to the County. In such circumstances, the problem arises from the  
9 County’s allocation of resources, not the laws themselves. The government’s decisions on  
10 allocation of resources to enforce laws against unlawful conduct cannot excuse a restriction on  
11 protected speech. *Anderson*, 621 F.3d at 1065 (holding that alleged lack of resources to enforce  
12 “public health” rules could not justify ban on tattooing where “the provision *vel non* of such  
13 resources is a matter within the City’s control”).

14 Even if the County “intends to advance a compelling government interest, we will not  
15 permit speech-restrictive measures when the [County] may remedy the problem by implementing  
16 or enforcing laws that do not infringe on speech,” and “it does not matter” whether the Ordinance  
17 might “accomplish what it sets out to do,” because an “unconstitutional statute that could achieve  
18 positive societal results is nonetheless unconstitutional.” *IMDb.com Inc. v. Becerra*, 962 F.3d  
19 1111, 1125, 1128 (9th Cir. 2020) (citations omitted).

20 The County cannot rely on *Burson v. Freeman*, 504 U.S. 191 (1992), which upheld a  
21 buffer zone against campaigning withing 100 feet of polling places. First, *Burson* had no majority  
22 decision. Eight Justices participated. Four believed the zone was a content-based restriction on  
23 speech in a traditional public forum that met strict scrutiny, and three believed it did not. *Id.* at 211  
24 (plurality opinion); *id.* at 217 (Stevens, J., dissenting). One believed the zone did not impact a  
25 traditional public forum and met the standard for a nonpublic forum because it was “reasonable  
26 and viewpoint neutral.” *Id.* at 216 (Scalia, J., concurring in the judgment). The split decision

27 \_\_\_\_\_  
28 <sup>6</sup> Mere observation or recording of a sideshow cannot amount to aiding and abetting. See, e.g., *In*  
*re K.M.*, 75 Cal. App. 5th 323, 329 (2022); *People v. Lara*, 9 Cal. App. 5th 296, 322 (2017).



1 contains no “legal standard which, when applied, will necessarily produce results with which a  
2 majority of the Court from that case would agree.” *Lair v. Bullock*, 697 F.3d 1200, 1205 (9th Cir.  
3 2012) (citation omitted). Without such a common denominator, “the only binding aspect of a  
4 splintered decision is its specific result,” which is not relevant here. *Id.* (citation omitted). Second,  
5 even if it were binding, the plurality’s rationale turned on the unique circumstance that  
6 campaigning near polling places “conflicts with . . . the right to cast a ballot in an election free  
7 from the taint of intimidation and fraud.” *Burson*, 504 U.S. at 211 (plurality opinion).  
8 The Supreme Court rejected an attempt to invoke *Burson* in defense of a buffer zone not involving  
9 polling places. *McCullen*, 573 U.S. at 496. Therefore, *Burson* applies only to polling places.

10 **2. The Ordinance Fails Intermediate Scrutiny Because There Are**  
11 **Abundant Obvious Means to Prevent the Unlawful Conduct Involved**  
**in Sideshows Without Restricting Protected Speech.**

12 Assuming the Ordinance is somehow content neutral, “the government’s ability to  
13 permissibly restrict expressive conduct is very limited” in “traditional public fora.” *Long Beach*  
14 *Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1022 (9th Cir. 2009) (quoting *United*  
15 *States v. Grace*, 461 U.S. 171, 177 (1983)). Under intermediate scrutiny, a content-neutral  
16 restriction on the time, place, or manner of speech in a public forum must “serve a significant  
17 governmental interest,” be “narrowly tailored” to that interest, and “leave open ample alternative  
18 channels for communication.” *Id.* at 1023 (citations omitted). “The failure to satisfy any single  
19 prong of this test invalidates” the restriction.<sup>7</sup> *Grossman v. City of Portland*, 33 F.3d 1200, 1205  
20 (9th Cir. 1994) (citation omitted). Any “deference” owed to a legislature’s “factual predictions”  
21 does not relieve the Court of its “obligation to exercise independent judgment” on the ultimate  
22 legal issues “when First Amendment rights are implicated.” *Turner Broad. Sys., Inc. v. FCC*, 512  
23 U.S. 622, 666 (1994).

24 Although intermediate scrutiny does not require “a stringent least-restrictive-alternative  
25 test,” a court may not uphold a content-neutral restriction on speech in a traditional public forum if  
26

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27 <sup>7</sup> This test is substantively identical to *United States v. O’Brien*, 391 U.S. 367 (1968), which need  
28 not be discussed separately. *See, e.g., Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288,  
298 & n.8 (1984); *United States v. Swisher*, 811 F.3d 299, 312 & n.7 (9th Cir. 2016).

1 it “burden[s] substantially more speech than is necessary” to protect the government’s alleged  
2 interests. *Comite de Jornaleros*, 657 F.3d at 949 (quoting *Ward v. Rock Against Racism*, 491 U.S.  
3 781, 799 (1989)). A “narrowly tailored” time, place, or manner restriction “must ‘target[] and  
4 eliminate[] no more than the exact source of the “evil” it seeks to remedy.’” *Berger*, 569 F.3d at  
5 1041 (quoting *Frisby v. Schultz*, 487 U.S. 474, 485 (1988)). Under intermediate scrutiny, “the  
6 existence of obvious, less burdensome alternatives is a ‘relevant consideration.’” *Id.* (quoting *City*  
7 *of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 417 n.13 (1993)).

8 In *Comite de Jornaleros*, the Ninth Circuit held that a content-neutral ban on curbside  
9 solicitation was not narrowly tailored to serve a city’s asserted interests because “[t]he City has  
10 various other laws at its disposal that would allow it to achieve its stated interests while burdening  
11 little or no speech,” such as “laws against jaywalking . . . stopping in traffic alongside a red-  
12 painted curb . . . stopping a car so as to obstruct the normal movement of traffic . . . [or]  
13 interfer[ing] with the lawful movement of traffic.” 657 F.3d at 949 (citations and quotation marks  
14 omitted). “Even under the intermediate scrutiny ‘time, place, and manner’ analysis, we cannot  
15 ignore the existence of these readily available alternatives.” *Id.* at 950 (citations omitted).

16 This case is similar. The County has abundant alternative means to prevent sideshows.  
17 As discussed above, there are numerous existing or potential laws the County could enforce or  
18 adopt without infringing the First Amendment right to observe and record events in a traditional  
19 public forum. Given the significant “number of feasible, readily identifiable, and less-restrictive  
20 means of addressing the [County’s] concerns,” the “Ordinance is not narrowly tailored” even  
21 under intermediate scrutiny. *Id.* at 950.

22 The County’s only proof for the claim that enforcement of other laws is ineffective is the  
23 conclusory assertion that “Bay Area jurisdictions have struggled to address sideshows relying only  
24 on state laws criminalizing reckless driving, gun possession, and looting, and local laws  
25 criminalizing organizing sideshows.” Culley Decl. ¶ 13. That contention is insufficient to carry the  
26 County’s burden under intermediate scrutiny to “demonstrate that alternative measures that burden  
27 substantially less speech would fail to achieve the government’s interests, not simply that the  
28 chosen route is easier.” *McCullen*, 573 U.S. at 495.



1 First, it ignores multiple other laws at the County’s disposal. Second, it ignores tactics that  
2 have prevented sideshows elsewhere, such as investigating and arresting promoters on conspiracy  
3 charges before sideshows occur. MPI at 14:22–25. Third, it does not show the level of resources  
4 invested by the County in preventing sideshows; since resource allocation is within the County’s  
5 control, it cannot justify infringing First Amendment rights. *Anderson*, 621 F.3d at 1065. Fourth, it  
6 ignores that the County could adopt an ordinance that prohibits spectators from aiding and  
7 abetting sideshows without violating the First Amendment rights of the press and public to  
8 observe and document them. As a result, the Ordinance fails even intermediate scrutiny.<sup>8</sup>

9 **D. Feroso Has Standing and Is Suffering Irreparable Harm Because the**  
10 **Ordinance is Chilling His First Amendment Right to Observe and Record**  
**Events in a Traditional Public Forum.**

11 Feroso wants to observe and record sideshows in Alameda County, but he is censoring  
12 himself because of the Ordinance. As a result, he has standing to seek an injunction and is  
13 suffering irreparable harm as a matter of law. Standing “requires a plaintiff to have suffered an  
14 injury in fact, caused by the defendant’s conduct, that can be redressed by a favorable result.”  
15 *Tingley v. Ferguson*, 47 F.4th 1055, 1066 (9th Cir. 2022) (citation omitted). Feroso’s injury is  
16 ongoing self-censorship, which is caused by the Ordinance and redressable by an injunction  
17 prohibiting enforcement of the Ordinance against him as a reporter.

18 When a law chills speech, the danger is “one of self-censorship,” which is “a harm that can  
19 be realized even without an actual prosecution.” *Virginia v. Am. Booksellers Ass’n*, 484 U.S. 383,  
20 393 (1988). “That one should not have to risk prosecution to challenge a statute is especially true  
21 in First Amendment cases, ‘for free expression—of transcendent value to all society, and not  
22 merely to those exercising their rights—might be the loser.’” *Bland v. Fessler*, 88 F.3d 729, 736–  
23 37 (9th Cir. 1996) (quoting *Dombrowski v. Pfister*, 380 U.S. 479, 486 (1965)). For these reasons,  
24 the “Supreme Court has dispensed with rigid standing requirements” for First Amendment claims  
25 and has endorsed a “hold your tongue and challenge now” approach. *Cal. Pro-Life Council, Inc. v.*

26 \_\_\_\_\_  
27 <sup>8</sup> The existence of similar ordinances elsewhere does not validate the Ordinance. *See Aptive Env’t,*  
28 *LLC v. Town of Castle Rock*, 959 F.3d 961, 995 (10th Cir. 2020) (holding “fact that other cities  
have similar ordinances cannot, standing alone” justify ordinance violating First Amendment).

1 *Getman*, 328 F.3d 1098, 1094 (9th Cir. 2003) (citation omitted); *see also Lopez v. Candaele*, 630  
 2 F.3d 775, 781 (9th Cir. 2010) (noting “unique standing considerations” in First Amendment cases  
 3 “tilt[] dramatically toward a finding of standing”). Therefore, “a chilling of the exercise of First  
 4 Amendment rights is, itself, a constitutionally sufficient injury.” *Libertarian Party of L.A. Cnty. v.*  
 5 *Bowen*, 709 F.3d 867, 870 (9th Cir. 2013) (citations omitted).<sup>9</sup>

6 Standing to bring a pre-enforcement challenge requires “an intention to engage in a course  
 7 of conduct arguably affected with a constitutional interest” that is “arguably . . . proscribed by [the  
 8 challenged] statute” and subject to a “substantial” risk of enforcement. *Peace Ranch, LLC v.*  
 9 *Bonta*, 93 F.4th 482, 487 (9th Cir. 2024) (alterations in original) (quoting *Susan B. Anthony List v.*  
 10 *Driehaus*, 573 U.S. 149, 161, 162, 164 (2014)). Fermoso intends to engage in conduct affected  
 11 with a constitutional interest proscribed by the challenged law because he wishes to engage in  
 12 speech inherently prohibited by the Ordinance. *Id.* at 488 (holding “plaintiff need not plan to break  
 13 the law” and “courts must ask whether the plaintiff would have the intention to engage in the  
 14 proscribed conduct, were it not proscribed”). A substantial risk of enforcement exists when (1)  
 15 there is sufficient “likelihood that the law will be enforced”; (2) the record shows “some degree of  
 16 concrete detail” about the plaintiff’s intended expression; and (3) the law “applies to the plaintiff.”  
 17 *Italian Colors Rest. v. Becerra*, 878 F.3d 1165, 1172 (9th Cir. 2018) (citation omitted).

18 The record shows “adequate details” of Fermoso’s intended expression, *id.* at 1174, given  
 19 his declaration that wants to observe, record, and report on sideshows in the County but is chilled  
 20 from doing so by the fear of arrest and prosecution. Garcia Decl. ¶¶ 22–27. The Ordinance would  
 21 apply to Fermoso if he observes, records, or reports on a sideshow or related preparations within  
 22 200 feet of the same in unincorporated areas of Alameda County, and the County has not argued  
 23 otherwise. Accordingly, the issue is whether there is sufficient likelihood of enforcement.

24  
 25 \_\_\_\_\_  
 26 <sup>9</sup> It is irrelevant that Fermoso could potentially observe a sideshow “from the Oakland side” of an  
 27 intersection. Opp’n at 32 n.14. His “standing is not defeated” by that possibility because a First  
 28 Amendment right cannot be “abridged on the plea that it may be exercised in some other place.”  
*LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1153 n.6 (9th Cir. 2000) (quoting *Schneider v. New Jersey*, 308  
 U.S. 147, 163 (1939)). Nor does standing require that he previously “attended a sideshow” to  
 report on it. Opp’n. at 9:3. It is necessary only that he wants to do so but the Ordinance chills him.

1 Standing based on self-censorship does not require that the government has enforced the  
2 law in question. *Driehaus*, 573 U.S. at 158; *Italian Colors Rest.*, 878 F.3d at 1173–74; *Cal. Pro-*  
3 *Life Council, Inc.*, 328 F.3d at 1094–95; *Ariz. Right to Life Pol. Action Comm. v. Bayless*, 320  
4 F.3d 1002, 1006–07 (9th Cir. 2003); *Bland*, 88 F.3d at 737. A reasonable fear of prosecution exists  
5 “if the plaintiff’s intended speech arguably falls within the statute’s reach.” *Cal. Pro-Life Council*,  
6 328 F.3d at 1095 (citations omitted). “A plaintiff who mounts a pre-enforcement challenge to a  
7 statute that he claims violates his freedom of speech need not show that the authorities have  
8 threatened to prosecute him; the threat is latent in the existence of the statute.” *Id.* (quoting *Majors*  
9 *v. Abell*, 317 F.3d 719, 721 (7th Cir. 2003)).

10 Regardless of whether the County has “communicated any threat or warning of impending  
11 proceedings,” Feroso’s “self-censorship” is “sufficient injury” because his “fear is reasonable.”  
12 *Italian Colors Rest.*, 878 F.3d at 1173 (citation and quotation marks omitted). The County has not  
13 disavowed enforcing the Ordinance, which favors standing. *Holder v. Humanitarian L. Project*,  
14 561 U.S. 1, 15–16 (2010) (holding standing existed for First Amendment claim where government  
15 “has not argued to this Court that plaintiffs will not be prosecuted if they do what they say they  
16 wish to do”); *Peace Ranch*, 93 F.4th at 489–90 (noting issue of “substantial threat” of enforcement  
17 “often rises or falls with the enforcing authority’s willingness to disavow enforcement”); *Tingley*,  
18 47 F.4th at 1068 (noting court has “interpreted the government’s failure to *disavow* enforcement of  
19 the law as weighing in favor of standing).

20 When “the challenged law is relatively new,” as is the Ordinance, “the history of  
21 enforcement . . . carries little weight” in the standing analysis. *Tingley*, 47 F.4th at 1169; *see also*  
22 *Italian Colors Rest.*, 878 F.3d at 1173–74 (holding state’s reliance on “sparse enforcement history  
23 is misplaced” because “enforcement history alone is not dispositive”); *Bland*, 88 F.3d at 737  
24 (holding plaintiff had standing due to self-censorship although “Attorney General has never  
25 enforced the civil statute against anyone”).

26 No “speculation” is required to support Feroso’s standing. Opp’n at 31:19. Given the  
27 undisputed history of sideshows, and the fact that sideshows are continuing in the County, Lucas  
28 Decl. ¶¶ 3–5, it is likely that a sideshow will recur in the County. The bare statement that one



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

**DECLARATION OF DAVID LOY IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR PRELIMINARY INJUNCTION**

Date: October 3, 2024

Time: 1:30 p.m.

Judge: Honorable Richard Seeborg

Ctrm: Courtroom 3 – 17th Floor

1 I, DAVID LOY, declare as follows:

2 1. I am an attorney in good standing in California and one of Plaintiff's counsel in this  
3 action. I make this declaration based on personal knowledge, and if called as a witness I could and  
4 would testify competently to the facts stated herein.

5 2. According to the website of the San Francisco Board of Supervisors, proposed  
6 Ordinance No. 240844 relating to sideshows was introduced at the Board's meeting on September  
7 3, 2024, and referred to the Board's Public Safety and Neighborhood Services Committee.  
8 *Legislation Introduced at Roll Call*, City and County of San Francisco (Sept. 3, 2024),  
9 <https://sfbos.org/sites/default/files/LI090324.pdf> ). A true and correct copy of said document is  
10 attached hereto as Exhibit 4.<sup>1</sup>

11 3. The agenda for the Public Safety and Neighborhood Services Committee's meeting  
12 on September 20, 2024 lists proposed Ordinance No. 240844 and links to a page that links to the  
13 text of said proposed ordinance. Public Safety and Neighborhood Services Committee, *Special*  
14 *Meeting Agenda for Friday, September 20, 2024*, City and County of San Francisco (Sept. 13,  
15 2024, 11:36 AM), [https://sfbos.org/sites/default/files/psn092024\\_agenda.pdf](https://sfbos.org/sites/default/files/psn092024_agenda.pdf). A true and correct  
16 copy of said agenda is attached hereto as Exhibit 5.

17 4. The draft of proposed Ordinance No. 240844 and related materials are linked at  
18 [https://sfgov.legistar.com/LegislationDetail.aspx?ID=6852156&GUID=6E7E8776-15A1-4078-](https://sfgov.legistar.com/LegislationDetail.aspx?ID=6852156&GUID=6E7E8776-15A1-4078-8EFF-F18E0F393B6B)  
19 [8EFF-F18E0F393B6B](https://sfgov.legistar.com/LegislationDetail.aspx?ID=6852156&GUID=6E7E8776-15A1-4078-8EFF-F18E0F393B6B). The text of the draft ordinance itself is available at  
20 [https://sfgov.legistar.com/View.ashx?M=F&ID=13281912&GUID=8E6CDA99-6B3B-49A9-](https://sfgov.legistar.com/View.ashx?M=F&ID=13281912&GUID=8E6CDA99-6B3B-49A9-89EC-331888731BC5)  
21 [89EC-331888731BC5](https://sfgov.legistar.com/View.ashx?M=F&ID=13281912&GUID=8E6CDA99-6B3B-49A9-89EC-331888731BC5). A true and correct copy of proposed Ordinance No. 240844 is attached  
22 hereto as Exhibit 6.

23  
24  
25  
26

27 <sup>1</sup> The numbering of exhibits continues from Plaintiff's Exhibits 1–3, attached to the Declarations  
28 of Jose Feroso and Annie Cappetta, which were submitted with Plaintiff's opening brief on his  
motion for preliminary injunction.



# **EXHIBIT 4**



## Board of Supervisors



City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689  
Tel. No. 415-554-5184  
TDD No. 415-554-5227

### Legislation Introduced at Roll Call

Tuesday, September 3, 2024

#### Introduced by a Supervisor or the Mayor

*Pursuant to Charter Section 2.105, an Ordinance or Resolution may be introduced before the Board of Supervisors by a Member of the Board, a Committee of the Board, or the Mayor and shall be referred to and reported upon by an appropriate Committee of the Board.*

#### ORDINANCES

**240840 [Appropriation - \$30,500,000 of Certificates of Participation Refunding Proceeds and Operating Revenue - FY2024-2025]**

**Sponsor:** Mayor

Ordinance appropriating \$30,500,000 consisting of \$29,000,000 of one or more series of Certificates of Participation Series 2024A proceeds and \$1,500,000 of projected parking revenues from operation of Music Concourse Garage in the Recreation and Parks Department (REC), and placing these funds on Controller's Reserve pending the sale of the Certificates of Participation and acquisition of the Music Concourse Garage in Fiscal Year (FY) 2024-2025. ASSIGNED to Budget and Finance Committee.

**240841 [Delegation of Approval Authority for Contracts with OCII for Transbay Project]**

**Sponsor:** Mayor

Ordinance delegating Board of Supervisors approval authority under Charter, Section 9.118(a), to the Department of Public Works to enter into and amend contracts with the Office of Community Investment and Infrastructure ("OCII") for the Transbay Project; and authorizing the Department of Public Works to execute certain access agreements necessary to further the development of the Transbay Project. ASSIGNED to Budget and Finance Committee.

**240842 [Accept and Expend Grant - Retroactive - California Jobs First Catalyst Program - \$14,000,000]**

**Sponsor:** Mayor

Ordinance authorizing the Office of Economic and Workforce Development to retroactively accept and expend a grant in the amount of \$14,000,000 from the California Economic Development Department for the California Jobs First Catalyst Program, for the grant period of May 1, 2024, through September 30, 2026; and exempting the California Jobs First Catalyst Program subgrants from the grantmaking requirements under Administrative Code, Chapter 21G, and all other provisions in the Administrative, Environment, and Labor and Employment Codes imposing obligations or restrictions on subgrantees related to the program. (Department of Economic and Workforce Development). ASSIGNED UNDER 30 DAY RULE to Budget and Finance Committee.

**240843 [Administrative Code - Entertainment Zones]**

**Sponsors:** Mayor; Dorsey

Ordinance amending the Administrative Code to establish four Entertainment Zones: 1) on Maiden Lane between Kearny Street and Grant Avenue; 2) on Mark Lane and on Harlan Place between Grant Avenue and Mark Lane; 3) on Market Street between 5th Street and 6th Street, with eastern boundaries at Mason Street on the north side of Market Street and at 5th Street on the south side of Market Street, and western boundaries at the intersection of Golden Gate Avenue and Taylor Street on the north side of Market Street and at 6th Street on the south side of Market Street; and 4) the area bounded by Warriors Way on the north, Terry A. Francois Boulevard on the east, 16th Street on the south, and 3rd Street on the west; and affirming the Planning Department's determination under the California Environmental Quality Act. ASSIGNED UNDER 30 DAY RULE to Land Use and Transportation Committee.

**240844 [Police Code - Vehicle Sideshows]**

**Sponsors:** Mayor; Dorsey and Stefani

Ordinance amending the Police Code to 1) prohibit persons from promoting a Vehicle Sideshow or preparations for such a sideshow; 2) prohibit persons from assembling together to obstruct the streets, sidewalks, highways, other public right-of-ways, off-street parking facilities, or private property in connection with a Vehicle Sideshow or preparations for such a sideshow; 3) prohibit persons from knowingly being present at a Vehicle Sideshow or preparations for such a sideshow for purposes of participating in the Vehicle Sideshow; 4) prohibit persons present at a Vehicle Sideshow or preparations for such a sideshow from interfering with official performance of law enforcement duties; 5) seize and impound vehicles used in a Vehicle Sideshow or preparations for such a sideshow, and under certain conditions sell the vehicles; and 6) make violations of these provisions a misdemeanor, subject to imprisonment and/or fine. ASSIGNED to Public Safety and Neighborhood Services Committee.

**240845 [Building Code - Gas Infrastructure for EPCA Appliances in New Construction]**

**Sponsor:** Mandelman

Ordinance amending the Building Code to allow new construction that complies with the Design Guidelines for Electric-Ready Buildings to install gas infrastructure to serve appliances covered by the Energy Policy and Conservation Act (EPCA); adopting findings of local conditions under the California Health and Safety Code; affirming the Planning Department's determination under the California Environmental Quality Act; and directing the Clerk of the Board of Supervisors to forward this Ordinance to the California Building Standards Commission upon final passage. ASSIGNED UNDER 30 DAY RULE to Land Use and Transportation Committee.

**RESOLUTIONS**

**240846 [Accept and Expend Grant - Retroactive - California Department of Insurance - Workers' Compensation Insurance Fraud Program - \$1,154,519]**

**Sponsor:** Mayor

Resolution retroactively authorizing the Office of the District Attorney to accept and expend a grant in the amount of \$1,154,519 from the California Department of Insurance for the Workers' Compensation Insurance Fraud Program, for the grant period of July 1, 2024, through June 30, 2025. (District Attorney). RECEIVED AND ASSIGNED to Budget and Finance Committee.

**240847 [Ground Lease - Abode Property Management - 1174-1178 Folsom Street and 663 Clementina Street - 100% Permanent Supportive Housing - Rent Not to Exceed \$1]**

**Sponsor:** Mayor

Resolution 1) approving and authorizing the Director of Property and the Executive Director of the Department of Homelessness and Supportive Housing ("HSH") to enter into a Ground Lease with Abode Property Management for the real property owned by the City, located at 1174-1178 Folsom Street and 663 Clementina Street (collectively, the "Property"), for an initial lease term of five years with ten automatic extensions of the lease term for an additional period of five years each and a total rent not to exceed \$1 in order to operate the Property as permanent supportive housing; 2) determining in accordance with Administrative Code, Section 23.33, that the below market rent payable under the Ground Lease will serve a public purpose by providing permanent supportive housing for formerly homeless and low-income households; 3) adopting findings declaring that the Property is "exempt surplus land" under the California Surplus Land Act; 4) affirming the Planning Department's determination under the California Environmental Quality Act, and adopting the Planning Department's findings of consistency with the General Plan, and the eight priority policies of the Planning Code, Section 101.1; and 5) authorizing the Director of Property and/or the HSH Executive Director to execute and make certain modifications to the Ground Lease, as defined herein, and take certain actions in furtherance of this Resolution, as defined herein. RECEIVED AND ASSIGNED to Budget and Finance Committee.

**240848 [Grant Agreement - Abode Property Management - Property Management Services for Permanent Supportive Housing - Not to Exceed \$14,177,264]**

**Sponsor:** Mayor

Resolution approving the grant agreement between Abode Property Management and the Department of Homelessness and Supportive Housing ("HSH") for property management services for permanent supportive housing at 1174-1178 Folsom Street; approving a term of November 1, 2024, through June 30, 2029, and a total not to exceed amount of \$14,177,264; and authorizing HSH to enter into any amendments or other modifications to the agreement that do not materially increase the obligations or liabilities, or materially decrease the benefits to the City and are necessary or advisable to effectuate the purposes of the agreement. (Department of Homelessness and Supportive Housing). RECEIVED AND ASSIGNED to Budget and Finance Committee.

**240849 [Commercial Ground Lease - Broadway Davis Retail Associates LLC - 725 Davis Street - First Amendment to Residential Ground Lease - 735 Davis Senior, L.P. - 735 Davis - Annual Base Rent of \$1]**

**Sponsor:** Mayor

Resolution 1) approving and authorizing the Director of Property and the Mayor's Office of Housing and Community Development ("MOHCD") to enter into a Commercial Ground Lease for Real Property owned by the City and located at 725 Davis Street (the "Commercial Property") with Broadway Davis Retail Associates LLC, for a lease term of 70 years and one 24-year option to extend and an annual base rent of \$1 ("Commercial Ground Lease"), in order to develop ground floor commercial space for community-serving uses ("Commercial Project"); 2) approving and authorizing the Director of Property and the Director of MOHCD to enter into a First Amendment to Residential Ground Lease to remove the Commercial Property from the leased premises under the Ground Lease between the City and 735 Davis Senior, L.P., related to a 52-unit affordable housing development for low-income seniors, including 15 units for homeless seniors; 3) adopting findings that the Project and proposed transactions are consistent with the General Plan, and the eight priority policies of Planning Code, Section 101.1; 4) determining that the less than market rent payable under the Commercial Ground Lease will serve a public purpose by providing commercial spaces for community-serving spaces, in accordance with Administrative Code, Section 23.3; and 5) authorizing the Director of Property and/or the Director of MOHCD to execute the Commercial Ground Lease and the First Amendment to Residential Ground Lease and make certain modifications to such agreements, as defined herein, and take certain actions in furtherance of this Resolution, as defined herein. RECEIVED AND ASSIGNED to Budget and Finance Committee.

**240850 [Accept and Expend Grant - Retroactive - National Institutes of Health - Heluna Health - The Bridge Clinic: Optimizing Injectable PrEP Delivery for Transgender and Non-Binary People - \$160,074]**

**Sponsors:** Mayor; Mandelman, Dorsey and Engardio

Resolution retroactively authorizing the Department of Public Health to accept and expend a grant increase from the National Institutes of Health through Heluna Health for participation in a program, entitled "The Bridge Clinic: Optimizing Injectable PrEP Delivery for Transgender and Non-Binary People," in the amount of \$88,930 for the period of February 22, 2024, through January 31, 2025, for a total amount of \$160,074 for the total period of April 1, 2023, through January 31, 2025. (Public Health Department). RECEIVED AND ASSIGNED to Budget and Finance Committee.

**240851 [Setting Property Tax Rate and Establishing Pass-Through Rates for Residential Tenants - FY2024-2025]**

**Sponsor:** Chan

Resolution levying property taxes at a combined rate of \$1.17143563 on each \$100 valuation of taxable property for the City and County of San Francisco, San Francisco Unified School District, San Francisco County Office of Education, San Francisco Community College District, Bay Area Rapid Transit District, and Bay Area Air Quality Management District; and establishing pass-through rates per \$100 of assessed value for residential tenants and based on tenancy commencement dates pursuant to Administrative Code, Chapter 37, for the Fiscal Year (FY) ending June 30, 2025. RECEIVED AND ASSIGNED to Budget and Finance Committee.

**240852 [Transit Month - September 2024]**

**Sponsors:** Mandelman; Dorsey, Ronen, Melgar, Safai, Engardio, Stefani, Walton, Preston and Peskin

Resolution proclaiming September 2024 as the Ninth Annual San Francisco Transit Month in the City and County of San Francisco. REFERRED FOR ADOPTION WITHOUT COMMITTEE REFERENCE AGENDA AT THE NEXT BOARD MEETING.

**240853 [Use Agreement - CSUITEMUSIC, LLC - Documentary “SFPD Journey to Justice”]**  
**Sponsor:** Melgar  
Resolution retroactively authorizing the San Francisco Police Department (“SFPD”) to enter into a Use Agreement with CSUITEMUSIC, LLC (“Producer”) to develop and produce a documentary, entitled “SFPD Journey to Justice,” about Sojourn to the Past, a retracing of the Civil Rights Movement and its connection to the modern policing profession, granting all necessary trademark licenses and rights to traditional and digital networks. (Police Department). REFERRED FOR ADOPTION WITHOUT COMMITTEE REFERENCE AGENDA AT THE NEXT BOARD MEETING.

**240854 [Consolidation of Elections Scheduled for November 5, 2024]**  
**Sponsor:** Peskin  
Resolution consolidating the following elections, all of which will be held on November 5, 2024, the State of California General Election; the City and County of San Francisco Municipal Election; City and County of San Francisco’s Special Bond Election; the Bay Area Rapid Transit District Election; the San Francisco Unified School District Board of Education (School Board) Election; the School Board Special Election for General Obligation Bonds; and the San Francisco Community College Board of Trustees Election; and providing that the election precincts, voting places, and officers for these elections shall be the same as for the State General Election. REFERRED FOR ADOPTION WITHOUT COMMITTEE REFERENCE AGENDA AT THE NEXT BOARD MEETING.

**240855 [Approval of a 180-Day Extension for Planning Commission Review of New Rooftop Floor Area or Building Volume on Noncomplying Structure at 1896 Pacific Avenue (File No. 240729)]**  
**Sponsor:** Stefani  
Resolution extending by 180 days the prescribed time within which the Planning Commission may render its decision on an Ordinance (File No. 240729) amending the Planning Code to permit new floor area or building volume on the rooftop of a noncomplying structure located at 1896 Pacific Avenue, on Assessor’s Parcel Block No. 0576, Lot Nos. 27-44; affirming the Planning Department’s determination under the California Environmental Quality Act; making public necessity, convenience, and welfare findings under Planning Code, Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1. REFERRED FOR ADOPTION WITHOUT COMMITTEE REFERENCE AGENDA AT THE NEXT BOARD MEETING.

**240856 [National Service Dog Awareness Month - September 2024]**  
**Sponsor:** Stefani  
Resolution recognizing September 2024 as National Service Dog Awareness Month in the City and County of San Francisco. REFERRED FOR ADOPTION WITHOUT COMMITTEE REFERENCE AGENDA AT THE NEXT BOARD MEETING.

## **MOTIONS**

**240835 [Appointment, Child Care Planning and Advisory Council - Claudia Quinonez]**  
Motion appointing Claudia Quinonez (residency requirement waived), term ending March 19, 2027, to the Child Care Planning and Advisory Council (District 4). (Clerk of the Board). RECEIVED AND ASSIGNED to Rules Committee.

**240839 [Mayoral Appointment, Public Works Commission - Eleanor Blume]**

Motion approving/rejecting the Mayor's nomination for the appointment of Eleanor Blume to the Public Works Commission, for a term ending July 2, 2026. (Clerk of the Board). RECEIVED AND ASSIGNED to Rules Committee.

**Introduced at the Request of a Department**

*Pursuant to Rules of Order of the Board of Supervisors Section 2.7.1, Department Heads may submit proposed legislation to the Clerk of the Board, in which case titles of the legislation will be printed at the rear of the next available agenda of the Board.*

**PROPOSED ORDINANCES**

**240823 [Settlement of Lawsuit - San Francisco Apartment Association, San Francisco Association of Realtors, Coalition for Better Housing, and Small Property Owners of San Francisco Institute - \$93,000]**

Ordinance authorizing settlement of the lawsuit filed by San Francisco Apartment Association, San Francisco Association of Realtors, Coalition for Better Housing, and Small Property Owners of San Francisco Institute against the City and County of San Francisco for \$93,000; the lawsuit was filed on May 12, 2020, in San Francisco County Superior Court, Case No. CPF 20-517087; entitled San Francisco Apartment Association, et al. v. City and County of San Francisco; the lawsuit involves a Petition for Writ of Mandate challenging Ordinance No. 36-20, which amended San Francisco Administrative Code § 37.9E to revise the requirements that landlord must follow when engaging in buyout negotiations with tenants. (City Attorney). RECEIVED AND ASSIGNED to Government Audit and Oversight Committee.

**240824 [Settlement of Lawsuits - Park Hotels & Resorts Inc. - Stipulated Assessed Value of \$140,700,000 and Refund of \$943,740 Plus Statutory Interest]**

Ordinance authorizing settlement of two related lawsuits filed by Park Hotels & Resorts Inc. et al. against the City and County of San Francisco concerning the real property located at 555 North Point, San Francisco, CA (Assessor's Parcel Block No. 0029, Lot No. 007) (the "Subject Property") for a stipulated assessed value of the Subject Property of \$140,700,000 as of September 17, 2019, contingent upon the Assessment Appeals Board's approval, and a refund of \$943,740 plus statutory interest; the first lawsuit was filed on August 7, 2023, in San Francisco Superior Court, Case No. CGC-23-608156; entitled Park Hotels & Resorts Inc., et al. v. City and County of San Francisco; the second lawsuit was filed on June 27, 2023, in San Francisco Superior Court, Case No. CGC-23-607311; entitled Park Hotels & Resorts Inc. v. City and County of San Francisco, et al.; the lawsuits involve the assessed value of the Subject Property for property tax purposes as of the September 17, 2019 change in ownership date and a transfer tax refund. (City Attorney). RECEIVED AND ASSIGNED to Government Audit and Oversight Committee.



**240825 [Settlement of Lawsuits - Park Hotels & Resorts Inc. - Stipulated Assessed Value of \$93,237,202 and Refund of \$785,531 Plus Statutory Interest]**

Ordinance authorizing settlement of two related lawsuits filed by Park Hotels & Resorts Inc. et al. against the City and County of San Francisco concerning the real property located at 542-550 Geary Street, San Francisco, CA (Assessor's Parcel Block No. 0305, Lot No. 008 and Assessor's Parcel Block No. 0305, Lot No. 009) (the "Subject Property") for a stipulated assessed value of \$93,237,202 as of September 18, 2019, contingent upon the Assessment Appeals Board's approval, and a refund of \$785,531 plus statutory interest; the first lawsuit was filed on August 18, 2023, in San Francisco Superior Court, Case No. CGC-23-608476; entitled Park Hotels & Resorts Inc., et al. v. City and County of San Francisco; the second lawsuit was filed on June 27, 2023, in San Francisco Superior Court, Case No. CGC-23-607309; entitled Park Hotels & Resorts Inc. v. City and County of San Francisco, et al.; the lawsuits involve the assessed value of the Subject Property for property tax purposes as of the September 18, 2019 change in ownership date and a transfer tax refund. (City Attorney). RECEIVED AND ASSIGNED to Government Audit and Oversight Committee.

**240826 [Settlement of Lawsuits - Park Hotels & Resorts Inc. - Stipulated Assessed Value of \$222,145,336 and Refund of \$1,636,749 Plus Statutory Interest]**

Ordinance authorizing settlement of two related lawsuits filed by Park Hotels & Resorts Inc. et al. against the City and County of San Francisco concerning the real property located at 375 Battery Street, San Francisco, CA (Assessor's Parcel Block No. 0229, Lot No. 020) (the "Subject Property") for a stipulated assessed value of the Subject Property of \$222,145,336 as of September 18, 2019, contingent upon the Assessment Appeals Board's approval, and a refund of \$1,636,749, plus statutory interest; the first lawsuit was filed on August 18, 2023, in San Francisco Superior Court, Case No. CGC-23-608468; entitled Park Hotels & Resorts Inc., et al. v. City and County of San Francisco; the second lawsuit was filed on June 27, 2023, in San Francisco Superior Court, Case No. CGC-23-607304; entitled Park Hotels & Resorts Inc. v. City and County of San Francisco, et al.; the lawsuits involve the assessed value of the Subject Property for property tax purposes as of the September 18, 2019, change in ownership date and a transfer tax refund. (City Attorney). RECEIVED AND ASSIGNED to Government Audit and Oversight Committee.

**PROPOSED RESOLUTIONS**

**240828 [Participation Agreement - Retroactive - Federal Centers for Medicare & Medicaid Services - Innovative Dementia Care Program - Anticipated Revenue to the City \$3,500,000]**

Resolution retroactively authorizing the San Francisco Department of Public Health ("DPH") to enter into a Participation Agreement with the Federal Centers for Medicare & Medicaid Services to provide federal funding for an innovative dementia care program, for a term of 10 years and 26 days from June 5, 2024, through June 30, 2034, having anticipated revenue of \$3,500,000 and authorizing DPH to make necessary, non-material changes to the agreement that DPH determines, in consultation with the City Attorney, are necessary to correct clerical and/or administrative errors, as long as those changes are consistent with this Resolution. (Public Health Department). RECEIVED AND ASSIGNED to Budget and Finance Committee.

**240829 [Agreement Amendment - Hunters Point Family - Pit Stop Workforce Development Grant Program - Not to Exceed \$16,238,478.52]**

Resolution approving Amendment No. 5 to Contract No. 1000029167 between the City, acting by and through the Department of Public Works, and Hunters Point Family, to create employment opportunities, job training and workforce development programs, and ensure the availability of safe and clean public restrooms for the Pit Stop Workforce Development Grant Program, extending the term by 11 months for a total term of July 1, 2023, through June 30, 2025, increasing the contract amount by \$6,972,047.52 for a new total not to exceed amount from of \$16,238,478.52; and to authorize the Director of Public Works to make necessary, non-material changes to the Amendment before its execution. (Public Works Department). RECEIVED AND ASSIGNED to Budget and Finance Committee.

**240830 [Settlement of Unlitigated Claims - Maplebear, Inc. - \$8,250,342.21]**

Resolution approving the settlement of the unlitigated claims filed by Maplebear, Inc. against the City and County of San Francisco for \$8,250,342.21; the claims were filed on February 28, 2023, and February 9, 2024; the claims involve a refund of payroll expense, gross receipts, and homelessness gross receipts taxes, and business registration fees for the 2019 to 2022 tax years; other material terms of the settlement are that Maplebear, Inc. shall take certain filing positions with respect to its gross receipts, homelessness gross receipts, and overpaid executive gross receipts taxes, as applicable, for the 2023 and subsequent tax years, and the City will not impose penalties arising from those filing positions for the 2023 tax year. (City Attorney). RECEIVED AND ASSIGNED to Government Audit and Oversight Committee.

**240831 [Settlement of Unlitigated Claim - Bechtel Group, Inc. - \$43,235.10]**

Resolution approving the settlement of the unlitigated claim filed by Bechtel Group, Inc. against the City and County of San Francisco for \$43,235.10; the claim was filed on May 8, 2024; the claim involves a refund of commercial rents taxes. (City Attorney). RECEIVED AND ASSIGNED to Government Audit and Oversight Committee.

**240832 [Contract Agreement - Retroactive - Corporation for Network Initiatives in California - Fiber Optic Network Installation, Occupancy, and Maintenance - Anticipated Revenue to the City \$6,970,000]**

Resolution retroactively authorizing the Department of Technology to enter into a contract with Corporation for Education Network Initiatives in California ("CENIC") and to provide fiber optic cable strands to establish a fiber optic network in support of CENIC services to provide data connectivity for the University of California, San Francisco ("UCSF") for the period between May 25, 2011, through May 25, 2031, with an expected revenue of \$6,970,000. (Department of Technology). RECEIVED AND ASSIGNED to Budget and Finance Committee.



**Clerk to Act – September 3, 2024**

**Regular Board Meeting Minutes for July 2, 2024, July 9, 2024, July 16, 2024, and July 23, 2024, and the Special Board Meeting Minutes for July 23, 2024 (9:00 a.m.), and July 23, 2024 (9:05 a.m.) were approved.**

**Requests Granted**

None.

**In Memoriam**

Adam A. Banks - Board President Aaron Peskin

# **EXHIBIT 5**



# City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

## Meeting Agenda

### Public Safety and Neighborhood Services Committee

*Members: Catherine Stefani, Joel Engardio, Matt Dorsey*

*Clerk: Monique Crayton*

*(415) 554-7750 ~ [monique.crayton@sfgov.org](mailto:monique.crayton@sfgov.org)*

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Friday, September 20, 2024

1:00 PM

City Hall, Legislative Chamber, Room 250

### Special Meeting

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## ROLL CALL AND ANNOUNCEMENTS

## COMMUNICATIONS

## AGENDA CHANGES

## REGULAR AGENDA

1. [240844](#) **[Police Code - Vehicle Sideshows]**  
**Sponsors: Mayor; Dorsey and Stefani**  
Ordinance amending the Police Code to 1) prohibit persons from promoting a Vehicle Sideshow or preparations for such a sideshow; 2) prohibit persons from assembling together to obstruct the streets, sidewalks, highways, other public right-of-ways, off-street parking facilities, or private property in connection with a Vehicle Sideshow or preparations for such a sideshow; 3) prohibit persons from knowingly being present at a Vehicle Sideshow or preparations for such a sideshow for purposes of participating in the Vehicle Sideshow; 4) prohibit persons present at a Vehicle Sideshow or preparations for such a sideshow from interfering with official performance of law enforcement duties; 5) seize and impound vehicles used in a Vehicle Sideshow or preparations for such a sideshow, and under certain conditions sell the vehicles; and 6) make violations of these provisions a misdemeanor, subject to imprisonment and/or fine.  
  
9/3/24; ASSIGNED to the Public Safety and Neighborhood Services Committee.  
  
9/6/24; REFERRED TO DEPARTMENT.  
  
*The Chair intends to entertain a motion to refer this item to the full Board as a Committee Report for consideration on September 24, 2024.*

## ADJOURNMENT

*NOTE: Pursuant to Government Code Section 65009, the following notice is hereby given: if you challenge, in court, the general plan amendments or planning code and zoning map amendments described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.*

## **LEGISLATION UNDER THE 30-DAY RULE**

*NOTE: The following legislation will not be considered at this meeting. Board Rule 3.22 provides that when an Ordinance or Resolution is introduced which would CREATE OR REVISE MAJOR CITY POLICY, the Committee to which the legislation is assigned shall not consider the legislation until at least thirty days after the date of introduction. The provisions of this rule shall not apply to the routine operations of the departments of the City or when a legal time limit controls the hearing timing. In general, the rule shall not apply to hearings to consider subject matter when no legislation has been presented, nor shall the rule apply to resolutions which simply URGE action to be taken.*

*There are no items pending under the 30-day rule.*

### The Levine Act

Pursuant to California Government Code, Section 84308, Members of the Board who have received campaign contributions totaling more than \$250 may be required to disclose that fact on the record of the proceeding. Parties and their paid agents may also be required to disclose on the record any campaign contributions made to a Member of the Board that meets the following qualifications for disclosure. A Member of the Board of Supervisors is disqualified and must recuse themselves on any agenda item involving business, professional, trade, and land use licenses or permits and all other entitlements for use, if they received more than \$250 in campaign contributions from the applicant or contractor, an agent of the applicant or contractor, or any financially interested participant within the 12 months prior to the final decision; and for 12 months following the date of the final decision, a Member of the Board shall not accept, solicit, or direct a campaign contribution of \$250 or more from the applicant or contractor, an agent of the applicant or contractor, or any financially interested participant. The foregoing statements do not constitute legal advice. Parties, participants, and their agents are urged to consult their own legal counsel regarding the requirements of the law. For more information about these disclosures, visit [www.sfethics.org](http://www.sfethics.org).

### Agenda Item Information

Each item on the Consent or Regular agenda may include the following 1) Legislation; 2) Budget and Legislative Analyst report; 3) Department or Agency cover letter and/or report; 4) Public correspondence. These items are available for review at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244 or at [www.sfbos.org/legislative-research-center-lrc](http://www.sfbos.org/legislative-research-center-lrc).

### Meeting Procedures

The Board of Supervisors is the legislative body of the City and County of San Francisco. The Board has several standing committees where legislation is the subject of hearings at which members of the public are urged to testify. The full Board does not hold a second public hearing on measures which have been heard in committee.

Board procedures do not permit: 1) vocal or audible support or opposition to statements by Supervisors or by other persons testifying; 2) ringing and use of cell phones or electronic devices; 3) bringing in or displaying signs in the meeting room; or 4) standing in the meeting room. Each member of the public will be allotted the same maximum number of minutes to speak as set by the President or Chair at the beginning of each item or public comment, excluding City representatives; except that public speakers using interpretation assistance will be allowed to testify for twice the amount of time. Members of the public who want to display a document should place it on the overhead during their public comment and remove the document when they want the screen to return to live coverage of the meeting.

**IMPORTANT INFORMATION:** The public is encouraged to testify at Board and Committee meetings. Persons unable to attend the meeting may submit to the City, by the time the proceedings begin, written comments regarding agenda items for the official public record. Written communications should be submitted to the Clerk of the Board or the Clerk of the Committee: 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102. Communications not received prior to the hearing may be delivered to the Clerk of the Board or the Clerk of the Committee and will be shared with the Members.

**COPYRIGHT:** All system content that is broadcasted live during public proceedings is secured by High-bandwidth Digital Content Protection (HDCP), which prevents copyrighted or encrypted content from being displayed or transmitted through unauthorized devices. Members of the public who wish to utilize chamber digital, audio and visual technology may not display copyrighted or encrypted content during public proceedings.

**LANGUAGE INTERPRETERS:** Language services are available in Spanish, Chinese and Filipino for requests made at least two (2) business days in advance of the meeting, to help ensure availability. For more information or to request services, contact [bos@sfgov.org](mailto:bos@sfgov.org) or call (415) 554-5184.

傳譯服務：所有常規及特別市參事會會議和常務委員會會議將提供西班牙文，中文以及菲律賓文的傳譯服務，但必須在會議前最少兩（2）個工作日作出請求，以確保能獲取到傳譯服務。將因應請求提供交替傳譯服務，以便公眾向有關政府機構發表意見。如需更多資訊或請求有關服務，請發電郵至 [bos@sfgov.org](mailto:bos@sfgov.org) 或致電（415）554-5184 聯絡我們。

**INTÉRPRETES DE IDIOMAS:** Para asegurar la disponibilidad de los servicios de interpretación en chino, filipino y español, presente su petición por lo menos con dos (2) días hábiles de antelación previo a la reunión. Para más

información o para solicitar los servicios, envíe su mensaje a [bos@sfgov.org](mailto:bos@sfgov.org) o llame al (415) 554-5184.

TAGA SALIN-WIKA: Ipaabot sa amin ang mga kahilingan sa pag salin-wika sa Kastila, Tsino at Pilipino ng hindi bababa sa dalawang araw bago ang pulong. Makakatulong ito upang tiyakin na ang mga serbisyo ay nakalaan at nakahanda. Para sa dagdag kaalaman o para humiling ng serbisyo, maki pagugnayan po sa [bos@sfgov.org](mailto:bos@sfgov.org) o tumawag sa (415) 554-5184.

#### **Americans with Disabilities Act (ADA) and Reasonable Accommodations**

Title II of the ADA requires that all programs offered through the state and local government such as the City and County of San Francisco be accessible and usable to people with disabilities. The ADA and City policy require that people with disabilities have equal access to all City services, activities, and benefits. If you believe your rights under the ADA are violated, contact the ADA Coordinator. Ordinance No. 90-10 added Section 2A.22.3 to the Administrative Code, which adopted a Citywide Americans with Disabilities Act Reasonable Modification Policy.

Meetings are real-time captioned and cablecast open-captioned on SFGovTV ([www.sfgovtv.org](http://www.sfgovtv.org)) or Cable Channels 26, 28, 78 or 99 (depending on your provider). Board and Committee meeting agendas and minutes are available on the Board's website [www.sfbos.org](http://www.sfbos.org) and adhere to web development Federal Access Board's Section 508 Guidelines. For reasonable accommodations, please contact (415) 554-5184 or (415) 554-5227 (TTY). Board of Supervisors' Rules of Order 1.3.3 does not permit remote public comment by members of the public at meetings of the Board and its committees, except as legally required to enable people with disabilities to participate in such meetings. If you require remote access as a means of reasonable accommodation under ADA, please contact the Clerk's Office to request remote access, including a description of the functional limitation(s) that precludes your ability to attend in person. Requests made at least two (2) business days in advance of the meeting will help to ensure availability. For further assistance, please call (415) 554-5184.

#### **Know Your Rights Under The Sunshine Ordinance**

Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For information on your rights under the Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) or to report a violation of the ordinance, contact by mail Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102; phone at (415) 554-7724; fax at (415) 554-5163; or by email at [sotf@sfgov.org](mailto:sotf@sfgov.org). Citizens may obtain a free copy of the Sunshine Ordinance by printing the San Francisco Administrative Code, Chapter 67, on the Internet at [www.sfbos.org/sunshine](http://www.sfbos.org/sunshine).

#### **Ethics Requirements**

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (Campaign & Governmental Conduct Code, Section 2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; (415) 252-3100; fax (415) 252-3112; website [www.sfgov.org/ethics](http://www.sfgov.org/ethics).

Under Campaign and Governmental Conduct Code, Section 1.127, no person or entity with a financial interest in a land use matter pending before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Port Commission, or the Treasure Island Development Authority Board of Directors, may make a campaign contribution to a member of the Board of Supervisors, the Mayor, the City Attorney, or a candidate for any of those offices, from the date the land use matter commenced until 12 months after the board or commission has made a final decision, or any appeal to another City agency from that decision has been resolved. For more information about this restriction, visit [www.sfethics.org](http://www.sfethics.org).

## **EXHIBIT 6**

1 [Police Code - Vehicle Sideshows]

2

3 **Ordinance amending the Police Code to 1) prohibit persons from promoting a Vehicle**  
4 **Sideshow or preparations for such a sideshow; 2) prohibit persons from assembling**  
5 **together to obstruct the streets, sidewalks, highways, other public right-of-ways, off-**  
6 **street parking facilities, or private property in connection with a Vehicle Sideshow or**  
7 **preparations for such a sideshow; 3) prohibit persons from knowingly being present at**  
8 **a Vehicle Sideshow or preparations for such a sideshow for purposes of participating**  
9 **in the Vehicle Sideshow; 4) prohibit persons present at a Vehicle Sideshow or**  
10 **preparations for such a sideshow from interfering with official performance of law**  
11 **enforcement duties; 5) seize and impound vehicles used in a Vehicle Sideshow or**  
12 **preparations for such a sideshow, and under certain conditions sell the vehicles; and**  
13 **6) make violations of these provisions a misdemeanor, subject to imprisonment and/or**  
14 **fine.**

15 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
16 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
17 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
18 **Board amendment additions** are in double-underlined Arial font.  
19 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
20 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
21 subsections or parts of tables.

22 Be it ordained by the People of the City and County of San Francisco:

23

24 Section 1. Article 56 of the Police Code is hereby amended by revising Sections 5600  
25 and 5601, revising existing Section 5602 and renumbering it as Section 5609, and adding new  
Sections 5602, 5603, 5604, 5605, 5606, 5607, 5608, 5610, and 5611, to read as follows:

//





1 “doughnuts” and sending burnt rubber smoke from tires into the air as passengers hung out  
2 the window. Approximately 100 spectators cheered on the spinning vehicless. At one point,  
3 a pParticipating driver lost control of his vehicle, forcing spectators to move back  
4 unexpectedly. There were spectator vehicles that blocked all access to entry of the exhibition  
5 intersection. Nearby, gun shots were fired.

6 On September 6, 2020, an illegal Vehicle Sideshow~~motor vehicle stunt driving~~  
7 ~~exhibition~~ in San Francisco attracted hundreds of spectators and approximately 50 vehicles.  
8 There were approximately 100 calls for police service for this event from residents concerned  
9 about public safety. A man was shot to death in the immediate vicinity of the reckless stunt  
10 driving exhibition.

11 (c) Since 2020, Vehicle Sideshows have continued to occur in the San Francisco Bay Area.  
12 They have been increasing in severity and size, and are becoming a greater community safety concern.  
13 The majority of Vehicle Sideshow occur late at night or during the early morning hours. But San  
14 Francisco experienced a Vehicle Sideshow on Sunday, August 25, 2024 in the afternoon, creating a  
15 bigger public safety concern as there were more people and law-abiding drivers using the public  
16 streets and sidewalks at that time. In 2024, there have been at least 25 Vehicle Sideshows reported in  
17 San Francisco and as of September 2024 the Police Department (“SFPD”) had seized 67 vehicles in  
18 connection with these incidents during the year. Some of the most notable Vehicle Sideshows of 2024  
19 were:

20 On June 9, 2024, several Vehicle Sideshows occurred across the San Francisco Bay Area that  
21 involved huge crowds of spectators who followed the Sideshows to various locations. In San Francisco,  
22 a Vehicle Sideshow occurred on the Embarcadero and drew over 200 spectators event. The crowd of  
23 people blocked streets and sidewalks as they encouraged the drivers who engaged in the dangerous  
24 vehicle stunts. During the Vehicle Sideshow, a vehicle was engulfed in flames near the Embarcadero,  
25 which presented a huge public safety risk and required an enormous amount of resources to contain.

1 SFPD seized five vehicles at the scene and dispersed the large crowd. Following the Vehicle Sideshow,  
2 splinter Vehicle Sideshows occurred at Alemany Boulevard and Geneva Avenue, on Valencia Street,  
3 and on Cesar Chavez Street. SFPD eventually dispersed the splinter Sideshows.

4 On August 25, 2024, a huge Vehicle Sideshow of dirt bikes and all-terrain vehicles (“ATVs”)  
5 took place throughout various neighborhoods in San Francisco drawing 200-250 spectators  
6 encouraging and instigating the illegal activity. The spectators, ATVs, and dirt bikes collectively  
7 overtook several streets in San Francisco. The riders ignored traffic laws, performed stunts, and  
8 caused widespread disruption by blocking streets and sidewalks that impacted our neighborhoods.

9 (d) According to SFPD, there have been other illegal activities associated with Vehicle  
10 Sideshows, including shootings, weapons possession, explosives, illegal fireworks, assaults, vandalism,  
11 and public intoxication. Sideshow participants and spectators are often hostile, aggressive, and  
12 uncooperative with law enforcement officers and have on occasion been assaultive towards officers  
13 attempting to contain and dismantle the illegal activity.

14 (ee) There is no place for this type of motorized misconduct in a heavily populated  
15 urban environment such as San Francisco. At a minimum, ~~Vehicle Sideshows~~~~motor vehicle stunt~~  
16 ~~driving~~ in the City creates chaos, inconvenience, and in some cases fear, among those who  
17 live in neighborhoods where ~~it~~they occurs; and ~~it~~they presents challenges for law-abiding  
18 drivers whose routes unfortunately take them to an area where such irresponsible antics are  
19 occurring. Of even greater concern, the possibility that serious injury or death may result from  
20 ~~Vehicle Sideshows~~~~motor vehicle stunt driving~~ is ever-present.

21 (f) Vehicle Sideshow participants and spectators do not stay in one area. They travel on our  
22 highways and bridges to come into our city and cause havoc in San Francisco and the Bay Area. The  
23 SFPD works closely with its law enforcement partners in the region to address the illegal activities.  
24 The SFPD uses technology, such as automatic license plate readers, commonly known as “ALPRs,”  
25 and unassisted aerial vehicles, “commonly known as “UAVs” or “drones,” to combat Vehicle

1 Sideshows and their attendant ills. This Article 56 provides additional legal tools for the City to  
2 combat Vehicle Sideshows.

3 **SEC. 5601. ~~MOTOR VEHICLE~~ SIDESHOW STUNT DRIVING: DECLARATION OF**  
4 **POLICY.**

5 It is the policy of the City and County of San Francisco to protect the health and  
6 safety of residents by enforcing state and local laws that prohibit persons from engaging in  
7 Vehicle Sideshows~~reckless driving, motor vehicle speed contests, and exhibitions that involve stunts~~  
8 ~~and tricks with vehicles,~~ and that prohibit persons from aiding and abetting such activities.

9 **SEC. 5602. DEFINITIONS.**

10 For purposes of this Article 56, the following terms have the following meanings:

11 “Motor Vehicles” means cars, trucks, vans, motorcycles, mopeds, dirt bikes, all-terrain  
12 vehicles, other off-highway vehicles, and all other vehicles covered by California Vehicle Code  
13 Sections 415 and 670, as they may be amended from time to time.

14 “Off-street Parking Facility” means any off-street facility held open for use by the public for  
15 parking vehicles and includes any publicly owned facilities for offstreet parking, and privately-owned  
16 facilities for off-street parking where no fee is charged for the privilege to park and which are held  
17 open for the common public use of retail customers covered by California Vehicle Code Section 12500,  
18 as may be amended from time to time.

19 “Participate” means knowingly engage in one or more acts to conduct, or aid in or abet, a  
20 Vehicle Sideshow, or knowingly engage in Preparation of a Vehicle Sideshow;

21 “Preparation” means engaging in any of the following acts with the purpose of Participating  
22 in or aiding in or abetting a Vehicle Sideshow:

23 (1) One or more motor vehicles and persons arriving at a predetermined location on a public  
24 street or highway or in an Off-street Parking Facility;

25 //

1 (2) Two or more persons gathering on, or adjacent to, a public street or highway or gathering  
2 in an Off-street Parking Facility;

3 (3) One or more persons impeding the free public use of a public street, highway,  
4 or Off-street Parking Facility by acts, words, or physical barriers;

5 (4) One or more motor vehicles lining up on a public street or highway, or at an Off-street  
6 Parking Facility with motors running;

7 (5) One or more drivers revving a Motor Vehicle’s engine or causing the Motor Vehicle’s tires  
8 to spin; or

9 (6) A person standing or sitting in a location to act as a race starter.

10 “Present” means any person (1) within 200 feet of the location of a Vehicle Sideshow, or (2)  
11 within 200 feet of the site of the Preparation of a Vehicle Sideshow.

12 “Promote” means the act of a person that assists, encourages, or incites persons to plan,  
13 organize, Participate in, attend, or gather at the Preparation of a Vehicle Sideshow, or that assists,  
14 encourages, or incites persons to plan, organize, Participate in, attend, or gather at a Vehicle  
15 Sideshow.

16 “Vehicle Sideshow” means an event in which two or more persons block or impede traffic on a  
17 public street or highway or in an Off-street Parking Facility, for the purpose of performing motor  
18 vehicle stunts, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving  
19 covered by California Vehicle Code section 23109, as may be amended from time to time.

20 **SEC. 5603. PROHIBITING THE PROMOTING OF VEHICLE SIDESHOWS AND THEIR**  
21 **PREPARATION.**

22 No person shall Promote the Preparation of a Vehicle Sideshow or Promote a Vehicle  
23 Sideshow.

24 //

25 //

1           **SEC. 5604. PROHIBITING UNLAWFUL ASSEMBLY.**

2           No person shall assemble with others to block or obstruct the street, sidewalk, highway, other  
3 public right-of-ways, or private property absent consent of the private property owner, operator, or  
4 agent, in connection with Preparation of a Vehicle Sideshow or in connection with a Vehicle Sideshow.

5           **SEC. 5605. PROHIBITING UNLAWFUL PRESENCE.**

6           No person shall knowingly be Present at a Vehicle Sideshow or the Preparation of a Vehicle  
7 Sideshow for the purpose of Participating in or aiding and abetting the Vehicle Sideshow or  
8 Preparation of the Vehicle Sideshow. For purposes of this Section 5605, aiding and abetting may  
9 include promoting, encouraging, supporting, or instigating the unlawful activity.

10           **SEC. 5606. EXEMPTIONS.**

11           Sections 5603, 5604, 5605 do not apply to:

12           (a) law enforcement officials engaged in the course and scope of their duties;

13           (b) members of the media engaged in the course and scope of their duties; and

14           (c) members of the public who are merely observing and/or reporting on the Preparation of a  
15 Vehicle Sideshow, or on a Vehicle Sideshow, provided they are not Participating or aiding and abetting  
16 in the Preparation of a Vehicle Sideshow or in a Vehicle Sideshow.

17           **SEC. 5607. INTERFERENCE WITH LAW ENFORCEMENT.**

18           No person shall willfully obstruct, impede, delay, or interfere with law enforcement's  
19 performance of official duties in connection with Preparation of a Vehicle Sideshow or in connection  
20 with a Vehicle Sideshow.

21           **SEC. 5608. PENALTY.**

22           Any person who violates Sections 5603, 5604, 5605, or 5607 is guilty of a misdemeanor and  
23 upon conviction thereof shall be punishable by a fine not to exceed \$500, or by imprisonment for a  
24 period of not to exceed six months, or by both such fine and imprisonment.

25           //

1           **SEC. 56025609. AUTHORITY TO ~~REMOVE~~ IMPOUND VEHICLES.**

2           (a) Any ~~peace officer~~ law enforcement official who arrests any person engaged in conduct  
3 that violates the operator of a vehicle for conduct in violation of subsection (2) of Section 23109.2 of  
4 the California Vehicle Code, as may be amended from time to time, shall impound the vehicle  
5 for. For the first incident, a motor vehicle so removed shall be impounded for no less than 14 days but  
6 not more than 30 days. For the second incident, a motor vehicle so removed shall be impounded for no  
7 less than 15 days but not more than 30 days. Thereafter, the motor vehicle so removed shall be  
8 impounded for at least 29 days but not more than 30 days.

9           (b) Except as specified in California Vehicle Code Section 23109.2(c)-(d), any vehicle  
10 impounded under subsection (a), above, shall be released only (1) if the District Attorney fails to  
11 charge the registered owner or operator of the vehicle with violating Section 23109 et. seq. of the  
12 California Vehicle Code, (2) the District Attorney or the court directs the law enforcement official to  
13 release the vehicle, or (3) there is no other legal basis to hold the vehicle.

14           (c) If the District Attorney charges a person with a violation of Section 23109 et. seq. of the  
15 California Vehicle Code, law enforcement official shall retain the vehicle used in the Vehicle Sideshow  
16 at least until the conclusion of the criminal action unless the District Attorney or the court orders the  
17 release of the vehicle.

18           (d) If the defendant is charged with and convicted of violating Section 23109 et. seq. of the  
19 California Vehicle Code and the defendant's vehicle was impounded and not subject to return under  
20 23109.2 of the California Vehicle Code, law enforcement officials may either sell the vehicle at a public  
21 auction or destroy it if the vehicle has little to no value.

22           ~~(be)~~ Nothing in this Article 56 shall override any applicable provisions in the California  
23 Vehicle Code.

24           (f) Nothing in this Article 56 shall be construed and enforced consistent with the First  
25 Amendment of the United States Constitution.



1           **SEC. 5610. PROMOTION OF THE GENERAL WELFARE.**

2           In enacting and implementing this Article 56, the City is assuming an undertaking only to  
3 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an  
4 obligation for breach of which it is liable in money damages to any person who claims that such breach  
5 proximately caused injury.

6           **SEC. 5611. SEVERABILITY.**

7           If any section, subsection, sentence, clause, phrase, or word of this Article 56, or any  
8 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a  
9 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining  
10 portions or applications of the Article. The Board of Supervisors hereby declares that it would have  
11 passed this Article and each and every section, subsection, sentence, clause, phrase, and word not  
12 declared invalid or unconstitutional without regard to whether any other portion of the Article or  
13 application thereof would be subsequently declared invalid or unconstitutional.

14  
15           Section 2. Effective Date. This ordinance shall become effective 30 days after  
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
18 of Supervisors overrides the Mayor’s veto of the ordinance.

19 //  
20 //  
21 //  
22 //  
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24 //  
25 //



1 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the "Note" that appears under  
6 the official title of the ordinance.

7 APPROVED AS TO FORM:  
8 DAVID CHIU, City Attorney

9 By: /s/ Alicia Cabrera  
10 ALICIA CABRERA  
Deputy City Attorney

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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.

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

**DECLARATION OF VIJOA LUCAS IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR PRELIMINARY INJUNCTION**

Date: October 3, 2024

Time: 1:30 p.m.

Judge: Honorable Richard Seeborg

Ctrm: Courtroom 3 – 17th Floor

1 I, VIJOA LUCAS, declare as follows:

2 1. I am a resident of unincorporated Alameda County. I make this declaration based  
3 on personal knowledge, and if called as a witness I could and would testify competently to the  
4 facts stated herein.

5 2. I work and reside at Kheystone Stables, in unincorporated Alameda County, which  
6 is located approximately 880 feet away from the intersection of Skyline Boulevard and Keller  
7 Avenue.

8 3. From my workplace and residence, I have seen and heard many sideshows occur at  
9 or near the intersection of Skyline Boulevard and Keller Avenue.

10 4. Since August 1, 2023, sideshows at or near the Skyline and Keller intersection have  
11 occurred at a rate of approximately one to two sideshows per week.

12 5. From my workplace and residence in unincorporated Alameda County,  
13 approximately 880 feet away from the intersection, I can see that these sideshows would be  
14 visible, within 200 feet, from areas of unincorporated Alameda County.

15 I declare under penalty of perjury under the laws of the United States of America that the  
16 foregoing is true and correct and that this declaration was executed in Alameda County, California  
17 on September 18, 2024.

18

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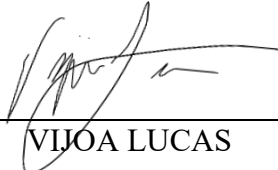
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\_\_\_\_\_  
VIJOA LUCAS

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Attorneys for Defendants  
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

**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

**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

TABLE OF AUTHORITIES ..... 3

INTRODUCTION ..... 8

FACTUAL BACKGROUND ..... 10

    A.    Sideshows, including spectators, present a growing hazard to public safety and quality of life in Bay Area communities. .... 10

    B.    Prior interventions have not successfully deterred sideshows. .... 11

    C.    The Ordinance seeks to protect public safety and improve quality of life by penalizing participating in sideshows as a spectator..... 11

    D.    Garcia reports on sideshows but does not state that he has ever attended one. No sideshows have been reported in unincorporated Alameda County since the Ordinance was adopted..... 12

PRELIMINARY INJUNCTION STANDARD ..... 13

ARGUMENT ..... 13

    I.    Garcia cannot succeed on the merits of his claims. .... 13

        A.    The Ordinance is not subject to First Amendment scrutiny. It is a generally applicable regulation of conduct that at most marginally burdens expressive conduct. .... 13

        B.    If it were subject to First Amendment review, the Ordinance would satisfy intermediate scrutiny. .... 19

            1.    If the Ordinance could be said to directly regulate speech, it would be a legitimate and content-neutral time, place, and manner restriction. .... 19

            2.    The Ordinance is a valid regulation of the non-expressive aspect of conduct with expressive and non-expressive elements under *United States v. O'Brien*..... 29

    II.   Garcia has not shown that he would be irreparably harmed by the Ordinance absent a preliminary injunction. .... 30

CONCLUSION..... 32

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878 F.3d 1184 (9th Cir. 2018)..... 14, 17, 23

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478 U.S. 697 (1986)..... 14, 16, 18

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104 F.4th 108 (9th Cir. 2024) ..... 14, 23

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81 F.4th 1036 (9th Cir. 2023) ..... 13

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501 U.S. 560 (1991)..... 29

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822 F.3d 1011 (9th Cir. 2016)..... 13, 31

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408 U.S. 665 (1972)..... 17, 28

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86 F.4th 745 (7th Cir. 2023) ..... 15, 23

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504 U.S. 191 (1992)..... 28

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947 F.3d 1085 (8th Cir. 2020)..... 15

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596 U.S. 61 (2022)..... 20

*Clark v. Cmty. for Creative Non-Violence*,  
468 U.S. 288 (1984)..... 19, 25

*Cohen v. Cowles Media Co.*,  
501 U.S. 663 (1991)..... 17

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407 U.S. 104 (1972)..... 15, 29

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657 F.3d 936 (9th Cir. 2011)..... 25

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869 F.3d 848 (9th Cir. 2017)..... 13

2

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377 F.3d 757 (7th Cir. 2004)..... 18

4 *Hernandez-Gotay v. United States*,  
985 F.3d 71 (1st Cir. 2021) ..... 18

5

6 *Hill v. Colorado*,  
530 U.S. 703 (2000)..... 24

7 *HomeAway.com, Inc. v. City of Santa Monica*,  
918 F.3d 676 (9th Cir. 2019)..... 14

8

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438 U.S. 1 (1978)..... 17

10 *Index Newspapers, LLC v. City of Portland*,  
No. 3:20-cv-1035-SI, 2022 WL 72124 (D. Or. Jan. 7, 2022)..... 31

11

12 *James v. City of Long Beach*,  
18 F. Supp. 2d 1078 (C.D. Cal. 1998) ..... 29

13 *Kreimer v. Bur. of Police*,  
958 F.2d 1242 (3d Cir. 1992) ..... 18

14

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630 F.3d 775 (9th Cir. 2010)..... 31

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573 U.S. 464 (2014)..... 19, 20, 21

17

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409 F.3d 1113 (9th Cir. 2005)..... 25

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460 U.S. 575 (1983)..... 16

20

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509 F. Supp. 3d 1195 (C.D. Cal. 2020) ..... 14

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90 F.4th 770 (5th Cir. 2024) ..... 15, 16

23

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No. 3:23-cv-744 DRL, 2024 WL 139248 (N.D. Ind. Jan. 12, 2024)..... 28

25 *Oakland Tribune, Inc. v. Chronicle Publ’g Co.*,  
762 F.2d 1374 (9th Cir. 1985)..... 31

26

27 *Patagonia Corp. v. Bd. of Governors of the Fed. Reserve Sys.*,  
517 F.2d 803 (9th Cir. 1975)..... 22

28

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 418 F. Supp. 3d 232 (S.D. Ohio 2019) ..... 21, 29, 30

2

3 *R.A.V. v. City of St. Paul*,  
 505 U.S. 377 (1992) ..... 14

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 576 U.S. 155 (2015) ..... 20, 21

5

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 No. 22-cv-03106, 2023 WL 137475 (N.D. Cal. Jan. 9, 2023) ..... 15

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 564 U.S. 552 (2011) ..... 14

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 No. 13CV296-WQH-BLM, 2013 WL 3467435 (S.D. Cal. July 9, 2013) ..... 31

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 No. 09-cv-2862 IEG, 2010 WL 3489335 (S.D. Cal. Sep. 3, 2010) ..... 31

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 118 F. Supp. 3d 1182 (E.D. Cal. 2015) ..... 32

14

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 472 U.S. 675 (1985) ..... 25

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17

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 491 U.S. 781 (1989) ..... passim

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 869 F.3d 1189 (10th Cir. 2017) ..... 15

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 833 F.3d 1291 (11th Cir. 2016) ..... 18

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 381 U.S. 1 (1965) ..... 16

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24

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 85 Wash. App. 393 (1997) ..... 24

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 117 Cal. App. 4th 206 (2004) ..... 18, 27

28



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 883 P.2d 532 (Colo. App. 1994)..... 17, 18, 29

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8

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10 7 U.S.C. § 2156(a)(2)..... 17

11

12 **STATE STATUTES**

13 Cal. Pen. Code § 413 ..... 17

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27

28

1 **ALAMEDA COUNTY CODE**

2 § 10.40.010 ..... 12, 22, 23  
3 § 10.40.020 ..... 12, 16, 21, 22  
4 § 10.40.030 ..... 12, 21

5  
6 **MUNICIPAL CODES**

7 City of Los Angeles Municipal Code § 47.15..... 17  
8 City of San Diego Municipal Code § 52.5203..... 17, 27  
9 City of San Jose Code of Ordinances § 10.50.020..... 17  
10 City of Santa Clara Municipal Code § 10.06.020 ..... 17  
11 City of Santa Rosa Municipal Code § 10-26.040..... 17  
12 City of Turlock Municipal Code § 4-20-102 ..... 17  
13 County of Sonoma Code of Ordinances § 19-80 ..... 17

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1 INTRODUCTION

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,<sup>1</sup> looting, arson,<sup>2</sup> and  
13 substance use. Many spectators have been injured or killed,<sup>3</sup> 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 <sup>1</sup> 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 <sup>2</sup> 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 <sup>3</sup> 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.

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.<sup>4</sup> 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.<sup>5</sup>

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

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

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

28 <sup>5</sup> 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).<sup>6</sup> 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-

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21 <sup>6</sup> *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.<sup>7</sup>

25 \_\_\_\_\_  
26 <sup>7</sup> 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.<sup>8</sup> 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

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27 <sup>8</sup> *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.

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28



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.<sup>9</sup>

24  
25  
26 <sup>9</sup> 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.<sup>10</sup>

19  
20  
21 <sup>10</sup> 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).<sup>11</sup> 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

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24 <sup>11</sup> 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.<sup>12</sup> *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.<sup>13</sup> *Id.*

20  
21  
22 <sup>12</sup> 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 <sup>13</sup> 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.<sup>14</sup> 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 <sup>14</sup> 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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**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 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

I, Fenton Culley, declare as follows:

1. I am a Sergeant in the Alameda County Sheriff's Office. 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. I make this declaration in support of the County's Opposition to Plaintiff's Motion for Preliminary Injunction.

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*

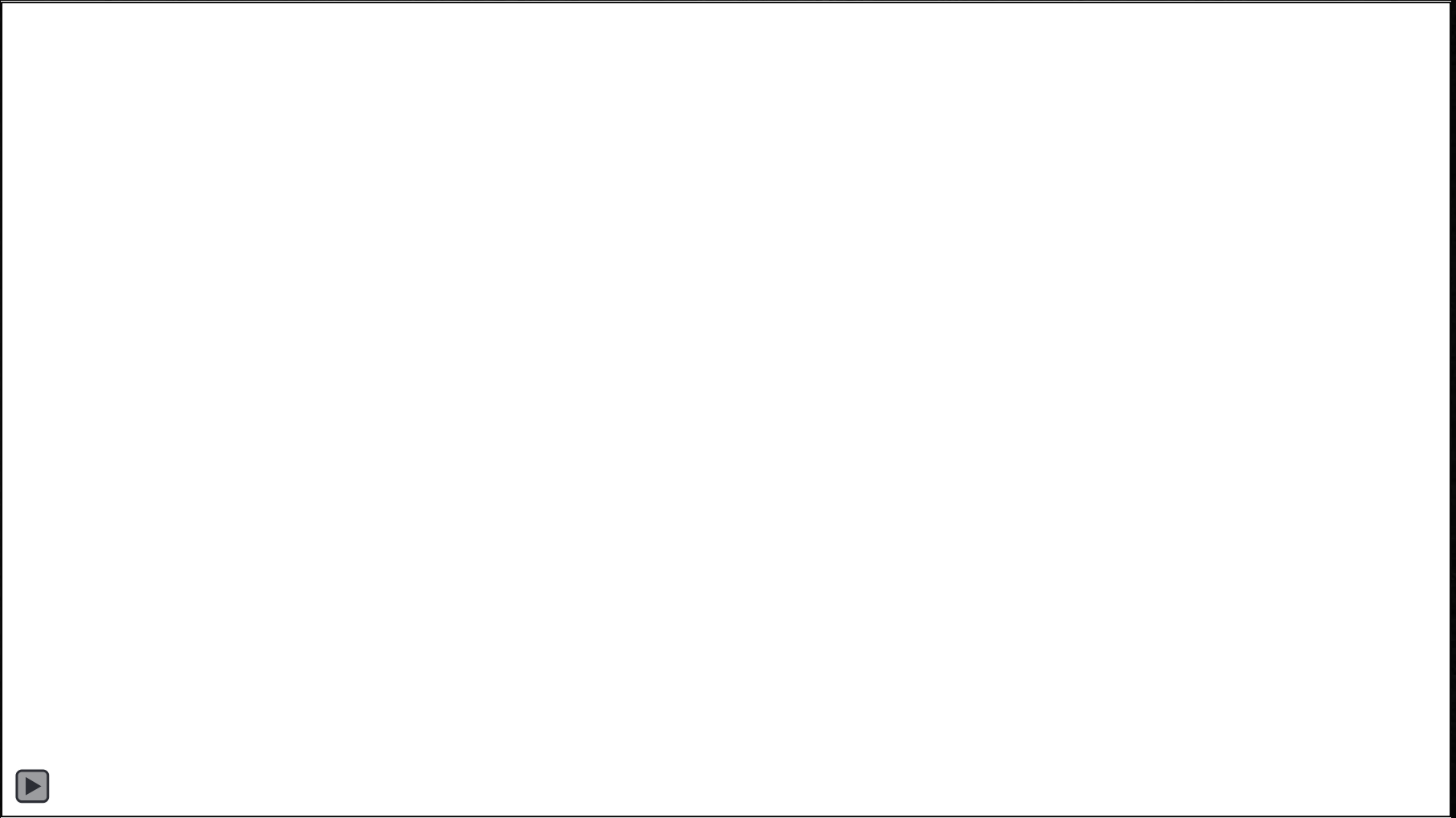




# PUBLIC SAFETY

- 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.







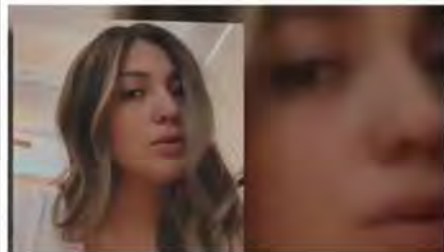


# PUBLIC SAFETY RISKS

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

## Nursing student killed by doing donuts during Calif sideshow

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



## Sideshowes 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

# THE OAKLANDSIDE

## 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.



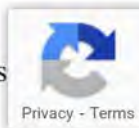
by **Jose Feroso**

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.

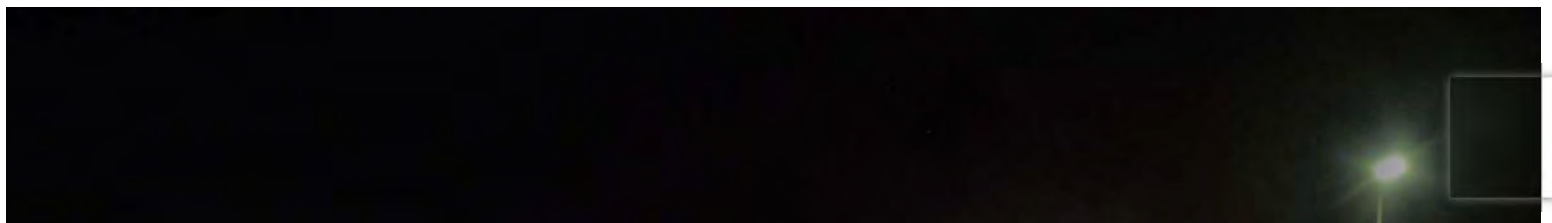
Other cities and counties, like San Francisco, have tried to reduce sideshows through tougher laws such as [mandating 30-day car seizures](#) of sideshow participants. In April, Pico Rivera, a Los Angeles suburb, [made it illegal](#) for spectators to be present within 500 feet of sideshows, fining violators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

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

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## 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.

Originally Published: September 6, 2022 at 8:45 p.m.

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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.  
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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

**TABLE OF CONTENTS**

	<u>Page</u>
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	

**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.*  
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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*  
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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

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1 **NOTICE OF MOTION AND MOTION**

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

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

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

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27 <sup>1</sup> Garcia writes under his maternal family surname, “Jose Feroso,” and will be referred to by this  
28 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 Fermoso 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 Fermoso’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, Fermoso 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 Fermoso 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 Fermoso 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**  
14 **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-*



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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  
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## **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](mailto:jose@oaklandside.org).

## Index

- [85th percentile speed](#)
- [Alameda County Transportation Commission](#)
- [Alignment](#)
- [Arterial road](#)
- [Bicycle lane](#)
- [Bicyclist and Pedestrian Advisory Commission](#)
- [Bike box](#)
- [Botts dotts](#)
- [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

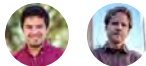
A controversial event where drivers take over city intersections with their cars as they skid in circles while performing stunts. **Sideshows** can last seconds or hours at a time, and they can be performed by a single individual without a crowd or by multiple people with hundreds of onlookers rallying 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.



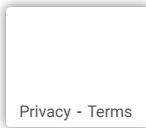
by **Jose Feroso** and **Darwin BondGraham**  
May 30, 2023, 4:03 p.m.

Sideshowes 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.

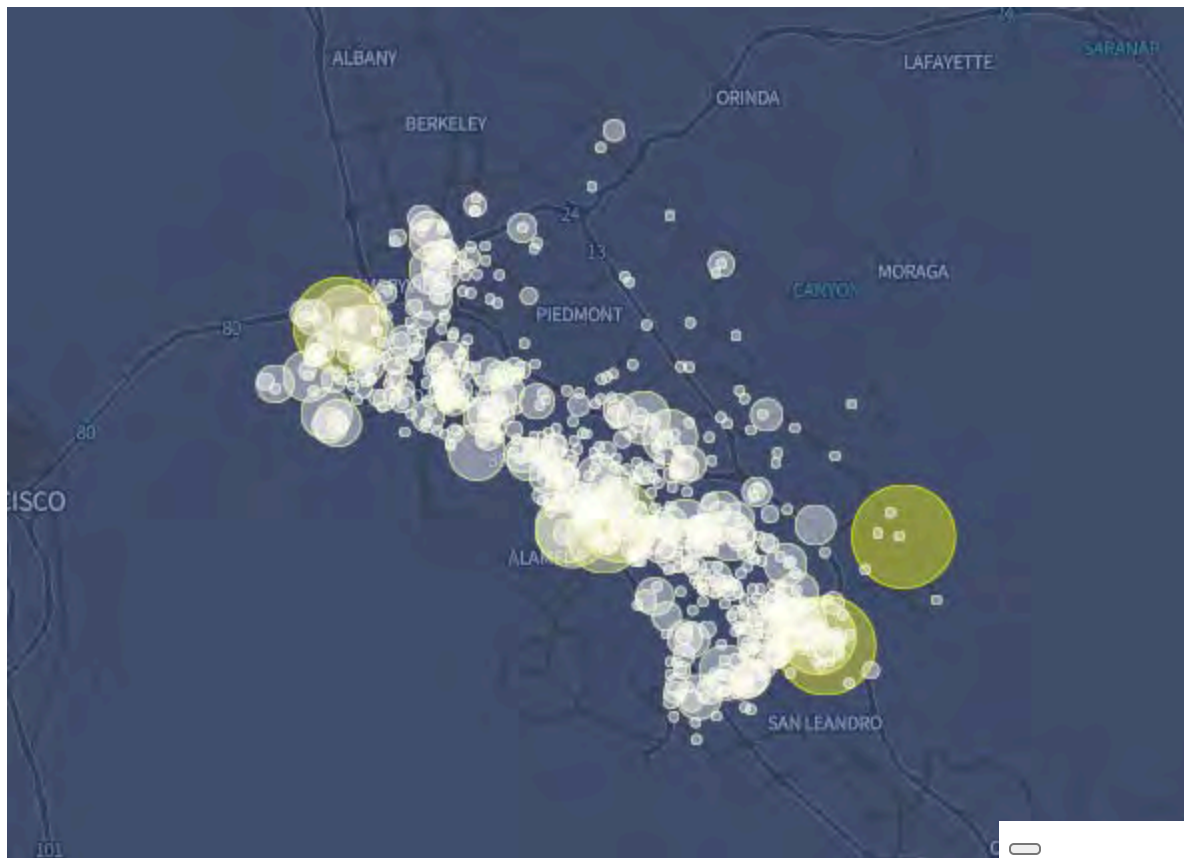
Some Oaklanders defend sideshows as a form of youthful culture, perhaps needing a more constructive and legal outlet. Others see them as a dangerous nuisance, particularly because some feature gunfire, vandalism, and violence—and because some intersections and neighborhoods see sideshows over and over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

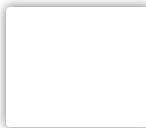
One other hotspot is the nearly half-mile stretch of 42nd Avenue between International Boulevard and I-880 in Fruitvale. This span of road sees a massive number of sideshows. It’s so popular with sideshows enthusiasts that the

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

Page 1 of 3 >

	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.

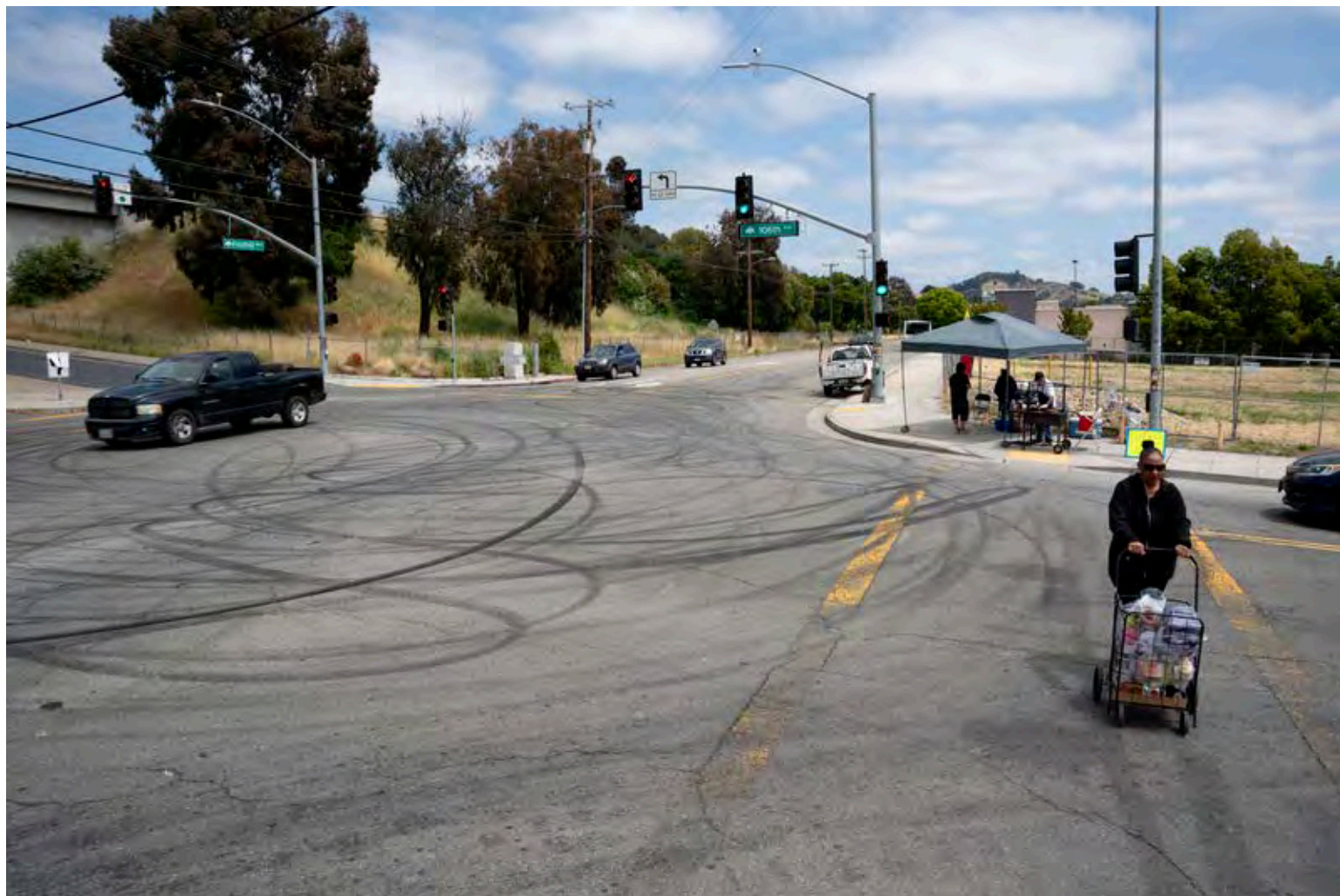
“There are a lot of stolen cars that come up here,” one of the neighbors told us. They did not want to provide their name due to safety concerns.

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



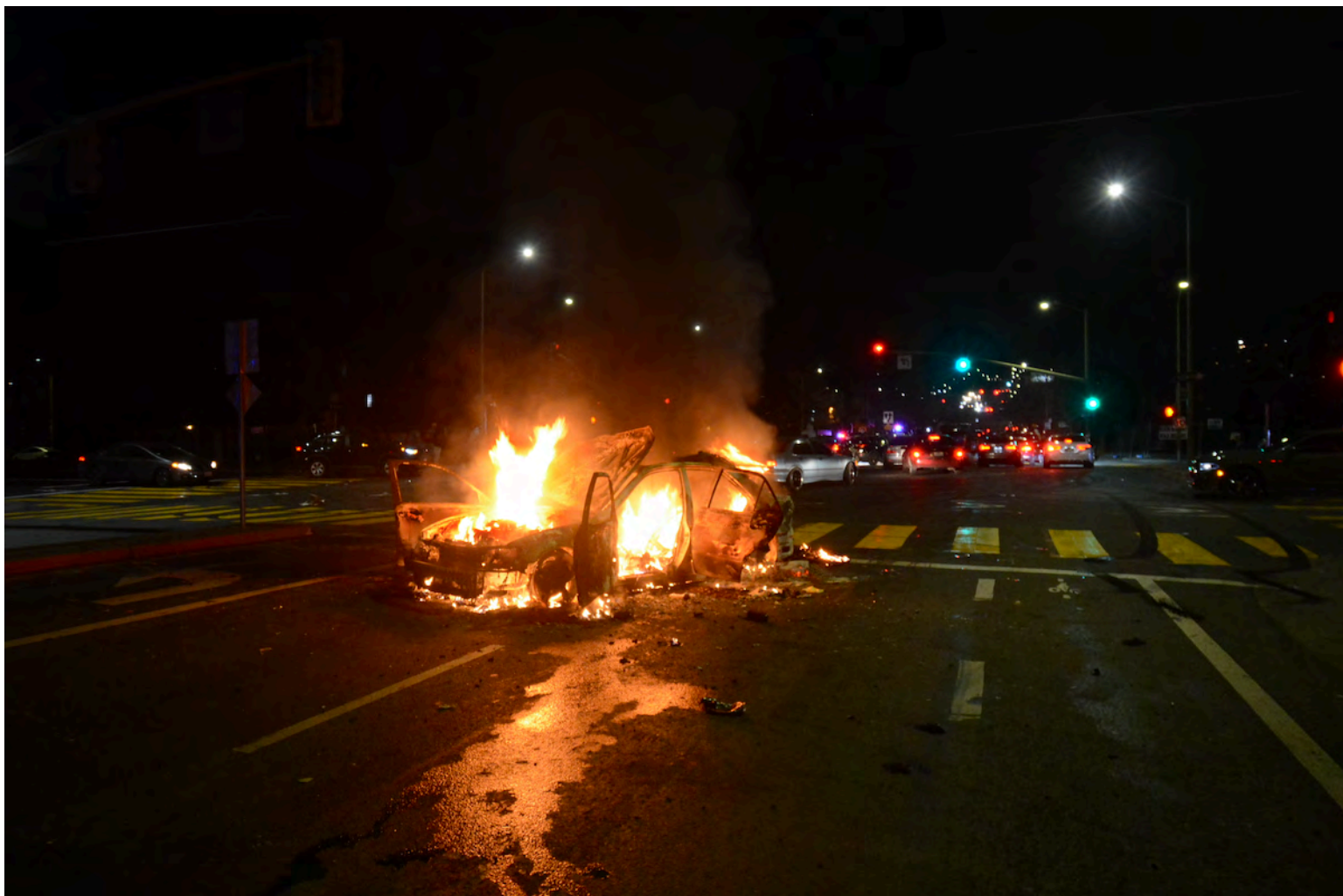
The city has been trying to stop sideshows for years, and its efforts fall into basically two categories: enforcement and street design interventions.

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 Landro, 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.*

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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

Ctrm: 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.<sup>1</sup> 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.

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8 ANN CAPPETTA  
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28 <sup>1</sup>[https://www.acgov.org/board/bos\\_calendar/documents/DocsAgendaReg\\_06\\_13\\_23/GENERAL%20ADMINISTRATION/Regular%20Calendar/President%20Miley\\_Sheriff\\_352075.pdf](https://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

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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.  
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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

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7  
8 UNITED STATES DISTRICT COURT  
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14 COUNTY OF ALAMEDA and YESENIA L.  
SANCHEZ, Sheriff of Alameda County, in her  
15 official capacity,

16 Defendants.

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

**CERTIFICATE OF SERVICE**

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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

1 DAVID LOY, Cal. Bar No. 229235  
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5 Attorneys for Plaintiff JOSE ANTONIO  
6 GARCIA

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 JOSE ANTONIO GARCIA,

12 Plaintiff,

13 v.

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

16 Defendants.  
17

Case No. 4:24-cv-3997

**COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF AND  
NOMINAL DAMAGES**

18 **INTRODUCTION**

19 1. The First Amendment guarantees the right to observe, record, and report on matters  
20 of public concern in public places.

21 2. The public depends on robust reporting by a free press to guarantee the unimpeded  
22 flow of information necessary for an engaged community to discuss and debate issues of public  
23 interest and petition the government for enforcement or improvement of the law.

24 3. In particular, the people have a compelling interest in timely, accurate, and  
25 complete reporting on matters relating to public safety.

26 4. When reporting on such matters, journalists may observe, record, or report on  
27 persons engaging in unlawful conduct in public places.  
28

1           5.       Others may also observe, record, or report on such conduct, for example residents  
2 or bystanders who wish to expose or protest the conduct by alerting the press, posting to the  
3 internet or social media, reporting to law enforcement, or petitioning the government.

4           6.       The observation or recording of such events is speech covered by the First  
5 Amendment, which protects speech about or reporting on unlawful conduct.

6           7.       Journalism that reports on unlawful conduct serves the compelling interest in  
7 informing the public about the causes and consequences of such conduct and contributing to  
8 important public policy debates on whether or to what extent such conduct should be criminalized  
9 or punished.

10          8.       The County of Alameda (“County”) has adopted Ordinance No. 2023-31  
11 (“Ordinance”), which criminalizes the mere observation of “sideshow events” occurring on public  
12 streets.

13          9.       In doing so, the Ordinance criminalizes journalism by making it illegal to report on  
14 or record such events.

15          10.      The Ordinance violates the First Amendment because it is a content-based  
16 restriction on protected speech that is not the least restrictive means to serve a compelling  
17 governmental interest.

18          11.      While the government may have compelling interests in preventing or responding  
19 to unlawful and dangerous conduct of drivers who participate in sideshows or others who engage  
20 in acts such as vandalism or violence, it may not punish the protected speech of reporters or  
21 community members who observe, record, or report on such events to inform and educate the  
22 public. The government may and should serve its interests with laws directly addressing unlawful  
23 conduct itself instead of punishing protected speech.

24          12.      The County may thus enforce laws against unlawful and dangerous conduct, but it  
25 may not criminalize journalism or punish observing, reporting on, or recording events of public  
26 concern, which is speech protected by the First Amendment.

27          13.      As an award-winning reporter who specializes in road safety, transportation, and  
28 public health, Plaintiff Jose Antonio Garcia brings this action to prevent the County from

1 enforcing the Ordinance against him and violating his First Amendment rights to observe, record,  
2 and report on sideshows as events of public concern occurring in public places.

3 **JURISDICTION AND VENUE**

4 14. The Court has jurisdiction under 28 U.S.C. § 1331 because this action arises under  
5 the United States Constitution and 42 U.S.C. § 1983.

6 15. The Court has supplemental jurisdiction over Garcia’s state law claims under 28  
7 U.S.C. § 1367(a) because they form part of the same case or controversy as Garcia’s federal  
8 claims.

9 16. The Court may grant declaratory and injunctive relief for constitutional violations  
10 pursuant to 28 U.S.C. § 2201 and Federal Rules of Civil Procedure 57 and 65.

11 17. Venue is proper in this district under 28 U.S.C. § 1391(b) because the events that  
12 give rise to this action occurred within this district.

13 18. The Court has personal jurisdiction over Defendants, because the County is located  
14 within the State of California and this district.

15 **DIVISIONAL ASSIGNMENT**

16 19. The events giving rise to the claims stated herein occurred substantially or fully in  
17 the County of Alameda.

18 20. Garcia is a resident of Alameda County and serves Oakland and surrounding  
19 communities, and the County’s administrative offices are located in the City of Oakland, so  
20 assignment of this case to the Oakland Division of the Northern District of California is  
21 appropriate pursuant to Civil Local Rule 3-2(c)–(d).

22 **PARTIES**

23 21. Plaintiff Jose Antonio Garcia is an award-winning reporter who writes on the road  
24 safety, transportation, and public health beat for *The Oaklandside*. He writes under his maternal  
25 family surname, “Jose Feroso,” and will be referred to by this professional pen name in the  
26 remainder of this Complaint.

27  
28





1 *Genius Behind Apple’s Greatest Products*. The Knight-Wallace Reporting Fellowship is  
2 considered among the three most prestigious reporting fellowships in the United States.

3 29. Feroso reports on road safety matters both within the City of Oakland and in parts  
4 of unincorporated Alameda County, among other areas, when issues important to Oakland  
5 communities arise outside the geographical boundaries of the City.

6 30. As Feroso has reported, a “sideshow” is:

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

14 A true and correct excerpt of the article containing this reporting is attached hereto as **Exhibit 1**  
15 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)  
16 [glossary-terms-definitions/#h-sideshows](https://oaklandside.org/2023/11/30/road-safety-transportation-infrastructure-glossary-terms-definitions/#h-sideshows).

17 31. Feroso sees his role as neutrally informing Oakland communities on the facts and  
18 circumstances of sideshows, so that they are empowered with the knowledge necessary to  
19 understand the history of and problems associated with these events and may make fact-based  
20 decisions regarding sideshow attendance, policing, and policy reform.

21 32. On May 30, 2023, Feroso published an article entitled “Map: These Oakland  
22 intersections are hotspots for sideshows” (“Mapping Article”). In reporting this article, Feroso  
23 and his co-author mapped every report of a sideshow made to Oakland police from January 2019  
24 to November 2022. A true and correct copy of the Mapping Article is attached hereto as **Exhibit 2**  
25 and is available at <https://oaklandside.org/2023/05/30/oakland-sideshow-hotspots-map/>.

26 33. As reported in the Mapping Article, Feroso found not only that sideshows occur  
27 throughout Oakland and the County, but also that the intersection most frequently taken over by  
28 sideshows, according to reports to police, was Keller Avenue and Skyline Boulevard, with 55 days  
of sideshow activity reported between January 2019 and November 2022.

1           34.     The intersection of Keller Avenue and Skyline Boulevard is on the border between  
2 the City of Oakland and unincorporated parts of the County. Sideshows occurring at this  
3 intersection are visible, within 200 feet, from areas of unincorporated parts of the County.

4           35.     While only 55 days of sideshow activities were reported to Oakland Police at the  
5 Keller-Skyline intersection from January 2019 to November 2022, Fermoso interviewed Vijoja  
6 Lucas, the manager of the Anthony Chabot Equestrian Center, which is in an unincorporated part  
7 of the County, about 500 feet from the intersection. As reported in the Mapping Article, Lucas  
8 stated that sideshows were happening “nearly every night” at the intersection between 2018 and  
9 2020, and she still hears them “four or five times a month.”

10          36.     Other sideshows Fermoso listed in the Mapping Article occurred directly in  
11 unincorporated areas of the County. For example, one day of sideshow activities was reported at  
12 the intersection of Grass Valley Road and Skyline Boulevard, as well as at 7861 Redwood Road.

13          37.     Without reports of sideshows to police, Fermoso would not have been able to  
14 report the Mapping Article.

15          38.     To cover sideshows, it is important to photograph, film, and record audio of the  
16 events within 200 feet of the intersections where they occur, to convey adequately detailed visual  
17 and auditory context that can enhance readers’ comprehension of the matters reported. For  
18 example, one image published in the Mapping Article showed cars lining up on 98th Avenue near  
19 an East Oakland intersection taken over for a sideshow, giving visual context to how the event  
20 impacted traffic.

21          39.     The public’s interest in and response to the Mapping Article was substantial. As of  
22 or about June 18, 2024, this article has been viewed approximately 13,000 times.

23          40.     The public has a compelling interest in reliable and thorough firsthand reporting of  
24 sideshows to understand how these events are impacting their communities’ traffic, noise,  
25 pollution, and safety as they are occurring, and use this information to make fact-based decisions  
26 regarding sideshow attendance, policing, and policy reform and advocate for their communities  
27 needs and interests.

28

1                   **Adoption of Ordinance and Alternatives for Addressing Unlawful Conduct**

2           41.     The Ordinance was adopted as Alameda County Ordinance No. 2023-31 on August  
3 1, 2023, and codified as Chapter 10.40 of the Alameda County Code (“ACC”).

4           42.     The Ordinance applies in unincorporated areas of the County and makes it  
5 “unlawful for any person to knowingly be a spectator at a sideshow event conducted on a public  
6 street or highway or off-street parking facility” and “unlawful for any person to knowingly be a  
7 spectator at the location of preparations for a sideshow event on a public street or highway or off-  
8 street parking facility.” ACC § 10.40.030(A)–(B).

9           43.     “Spectator” means “any person who is present at a sideshow event, or the site of  
10 the preparations for a sideshow event, for the purpose of viewing, observing, watching, or  
11 witnessing the sideshow event as it progresses.” *Id.* § 10.40.020.

12           44.     “Spectator” may include but is not limited to “any person at the location of the  
13 sideshow event that may have participated in preparations and/or promoting the sideshow event.”  
14 *Id.*

15           45.     A person is “present” at “a sideshow event if that person is within two hundred  
16 (200) feet of the location of the sideshow event, or within two hundred (200) feet of the site of the  
17 preparations for any sideshow event.” *Id.*

18           46.     “Sideshow” means “an occasion where one or more persons, for the purpose of  
19 performing a street race or reckless driving exhibition for one or more spectator(s) either blocks or  
20 impedes traffic on a street or highway or impedes access to an off-street parking facility.” *Id.*

21           47.     “Sideshow event” means “a sideshow, street race, or reckless driving exhibition.”  
22 *Id.*

23           48.     According to ACC § 10.40.020, “Preparations” for a “sideshow event” include, but  
24 are not limited to, certain specified “acts done for the purpose of facilitating, aiding, abetting,  
25 encouraging, assisting, or instigating a sideshow event,” such as:

26                 a.     “One or more motor vehicles and persons have arrived at a predetermined  
27 location.”

28

- 1           b.        “One or more persons have gathered on, or adjacent to, a public street or
- 2 highway or at an off-street parking facility.”
- 3           c.        “One or more persons have impeded the free public use of a street or
- 4 highway, or off-street parking facility by acts, words, or physical barriers.”
- 5           d.        “One or more motor vehicles have lined up on a public street, highway, or
- 6 off-street parking facility with motors running.”
- 7           e.        “One or more drivers is revving a motor vehicle's engine or causing the
- 8 motor vehicle’s tires to spin.”
- 9           f.        “A person is standing or sitting in a location in the vicinity of a sideshow
- 10 event to act as a race starter.”

11           49.       According to the Ordinance, “Evidence of prior acts may be admissible to show the

12 propensity of the person to be present at or attend a sideshow event if the prior act or acts occurred

13 within three years of the presently charged offense. These prior acts may always be admissible to

14 show knowledge on the part of the person that a sideshow event was taking place at the time of the

15 presently charged offense. Prior acts are not limited to those that occurred within the

16 unincorporated Alameda County.” *Id.* § 10.40.040(B).

17           50.       Such “prior acts may include, but are not limited to . . . [t]he person charged has

18 previously attended or been a spectator at a sideshow event” and “[t]he person charged was

19 previously present at a location where preparations were being made for any sideshow event or

20 where a sideshow event was in progress.” *Id.*

21           51.       A violation of the Ordinance is “a misdemeanor punishable by imprisonment not

22 exceeding three months or by fine not exceeding one thousand dollars (\$1,000.00) or by both.” *Id.*

23 § 10.40.050.

24           52.       Under the Ordinance, the crime of being a “spectator” at a “sideshow” requires no

25 intent to aid, abet, solicit, incite, or conspire to engage in any unlawful conduct. *Id.* §§ 10.40.20–

26 30.

27           53.       Instead, the Ordinance punishes the mere observation of a sideshow or related

28 preparations, or even mere presence with intent to engage in such observation.

1           54. By prohibiting being “present” at a sideshow for purposes of viewing, observing,  
2 watching, or witnessing the sideshow, the Ordinance effectively prohibits recording or reporting  
3 on the sideshow, because viewing, observing, watching, or witnessing an event is inherently  
4 necessary to recording or reporting on it.

5           55. The Ordinance thus makes it a crime to engage in the protected speech of  
6 observing, recording, and reporting on sideshows or related preparations.

7           56. The Ordinance does not prohibit the protected speech of observing, recording, or  
8 reporting on other matters or events at the same time and place, and therefore the Ordinance  
9 punishes speech based on its content.

10           57. The Ordinance criminalizes journalism about matters of public concern related to  
11 sideshows by prohibiting reporters from observing, recording, or reporting on them from  
12 anywhere within 200 feet of a sideshow or related preparations.

13           58. The Ordinance’s prohibition of observing a sideshow or related preparations from  
14 anywhere within 200 feet of the sideshow or preparations makes it effectively impossible to  
15 observe, report on, or record the sideshow or preparations in any meaningful manner.

16           59. By making it unlawful merely to be present within 200 feet of a “sideshow event”  
17 for the purpose of “viewing, observing, watching, or witnessing the sideshow event as it  
18 progresses,” *id.* § 10.40.20, the Ordinance violates the First Amendment right to observe, record,  
19 or report on such an event, especially to the extent it is unclear how the 200-foot perimeter is  
20 measured, given that a “sideshow event” and its “preparations” are inherently fluid.

21           60. However it is measured, a 200-foot perimeter is far broader than necessary to  
22 address any risks to observers, especially as to observing “preparations,” which can include  
23 merely the arrival of one or more persons at a given location.

24           61. Indeed, one could be “present” within the 200-foot perimeter while observing the  
25 sideshow or its preparations from indoors or behind a fence or barrier, further illustrating the  
26 excessive breadth of the perimeter.

27           62. The Ordinance especially threatens reporters who have previously covered  
28 sideshows by making their prior reporting on sideshows admissible evidence of a “prior act”



1 relevant to show “propensity” for observing sideshows or “knowledge” that a sideshow is  
2 occurring.

3 63. The actions involved in conducting a sideshow, such as blocking or impeding  
4 traffic, street racing, or reckless driving, are already prohibited by California law, as  
5 acknowledged in the Ordinance itself.

6 64. As admitted in the letter of the Sheriff and President of the Board of Supervisors  
7 proposing the Ordinance, “California law already prohibits drivers and passengers from engaging  
8 in Sideshow Events by criminalizing illegal street racing and illegal exhibitions of reckless  
9 driving.” A true and correct copy of this letter is attached as **Exhibit 3**.

10 65. Existing laws also prohibit the conduct causing alleged problems associated with  
11 sideshows that are referred to the Ordinance’s findings, such as the “discharge of firearms,” Cal.  
12 Penal Code § 246.3; driving “under the influence of drugs and alcohol,” Cal. Veh. Code. § 23152;  
13 littering, Penal Code § 374; “vandalism,” *id.* § 594; “harming or destroying” infrastructure or  
14 other property, *id.*; blocking or preventing access, Cal. Veh. Code § 22500; “burning rubber tires,”  
15 *id.* § 23109; Cal. Health & Safety Code § 41800; and “noise pollution,” Cal. Penal Code § 415(2).

16 66. The County may also adopt alternative laws that address problems associated with  
17 sideshows without criminalizing the protected speech of observing and recording sideshows for  
18 the purpose of reporting on them.

19 67. For example, the City of Oakland adopted an ordinance prohibiting the organizing  
20 or facilitating of sideshows without making it unlawful for journalists or others to observe, record,  
21 and report on them. *See* Oakland, Cal., Code §§ 10.74.010–10.74.090 (2023).

### 22 **Ordinance Prevents Feroso from Reporting on Sideshows**

23 68. Feroso planned to personally observe, record, and report on the occurrence of  
24 sideshows in Oakland and unincorporated Alameda County, with particular interest in observing,  
25 recording, and reporting on sideshows at the most frequently reported intersection of Keller  
26 Avenue and Skyline Boulevard.

27 69. To document and report on these sideshows and provide his readers and viewers  
28 with the most accurate account, Feroso planned such observation and reporting to include audio

1 and video recording and photographing the intersection and sideshow event from all angles,  
2 including from unincorporated parts of the County, within 200 feet of the sideshow or related  
3 preparations, to best capture images and audio for purposes of newsgathering and reporting.

4 70. However, Feroso learned that the County had adopted the Ordinance, making it a  
5 crime to be a “spectator” at a “sideshow” or related “preparations.”

6 71. After learning of the Ordinance, Feroso canceled all future plans to report on-site  
7 at sideshows in the unincorporated areas of the County because he reasonably feared citation,  
8 arrest, or criminal prosecution under the Ordinance for engaging in such reporting.

9 72. Because of his reasonable fear of citation, arrest, or criminal prosecution for  
10 observing sideshows, Feroso has been unable to engage in effective firsthand observation,  
11 reporting, and recording of sideshows in the unincorporated areas of the County since the  
12 Ordinance was passed.

13 73. Observing, recording, and reporting on these events enables the dissemination of  
14 critical information to Oakland and County communities, which facilitates more widespread  
15 awareness of sideshows and associated problems, policing, and policy.

16 74. Feroso’s readers and Oakland communities need and want more news on  
17 sideshows, including the kind of reporting he planned before the County enacted the Ordinance.

18 75. There are numerous examples of journalism about road safety prompting reform  
19 and improvements that have benefitted the public at large. For example, as Feroso reported in  
20 May 2023, *The Oaklandside*’s “impact was reflected in the budget priorities Councilmembers  
21 published last month. For the first time in years, all of them prioritized traffic safety by asking for  
22 barricades at intersections and sidewalks, hardened medians to stop sideshows, and faster repairs  
23 to potholed streets.” A true and correct copy of this article is attached hereto as **Exhibit 4** and is  
24 available at [https://oaklandside.org/2023/05/17/sharing-our-traffic-violence-reporting-castlemont-  
25 ousd-high-school-public-health/](https://oaklandside.org/2023/05/17/sharing-our-traffic-violence-reporting-castlemont-ousd-high-school-public-health/).

26 76. Reporters, including Feroso, regularly rely on photographs, as well as video and  
27 audio recordings, in order to gather news and information and keep the public informed. The  
28 making and publication of such documentary materials enhances the accuracy and credibility of

1 reporting, increases transparency and reader trust, and enriches news stories, allowing reporters to  
2 convey more than can be said based on the written word alone.

3 77. Without this type of reporting, the documentary evidence that supports it, and the  
4 right to observe firsthand, the public is often left only with the limited information police will  
5 disclose, which does not describe the full impact of sideshows on communities due to limited law  
6 enforcement resources, the public records exemption for investigatory records, Cal. Gov't Code §  
7 7923.600, and underreporting of concerns to police.

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

18 79. CBS News Bay Area reported on another June 2024 sideshow at which “[s]tunning  
19 video of the incident showed the dangerous scene on the Embarcadero with cars doing donuts  
20 surrounding a burning vehicle” while others “launch[ed] fireworks into the sky.” Kevin Ko, *San*  
21 *Francisco police chief promises accountability, but so far no arrests in Sunday sideshows*, CBS  
22 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/)  
23 [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  
24 Francisco Police Department Chief William Scott “urged the public to call 911 if they ever  
25 witness a side show, while also asking witnesses to share videos with police to assist in  
26 investigations.” *Id.*

27 80. Without the right to observe a sideshow, there can be no effective recording or  
28 reporting on the event. Without observation or recordings, police may lack evidence to effectively

1 prosecute sideshow participants, reporters cannot inform their audience on what happens in their  
2 communities as effectively, and communities lack reliable information based on which they might  
3 advocate for reforms.

4 **FIRST CLAIM**  
5 **42 U.S.C. § 1983**  
6 **First Amendment: Freedom of Speech**

7 81. The allegations of paragraphs 1 through 80 above are incorporated by reference as  
8 though fully set forth herein.

9 82. On its face or as applied to Feroso, the Ordinance violates the Free Speech Clause  
10 of the First Amendment by criminalizing protected speech based on its content because it prohibits  
11 recording or reporting on a defined topic or subject.

12 83. Given that enforcement of existing or potential alternative laws is available to  
13 address the problems allegedly associated with sideshows, the Ordinance is not the least restrictive  
14 means to address any compelling governmental interest.

15 84. Assuming the Ordinance could be treated as content-neutral or otherwise subject to  
16 intermediate scrutiny, it violates the Free Speech Clause of the First Amendment on its face or as  
17 applied to Feroso by criminalizing protected speech.

18 85. Given that enforcement of existing or potential alternative laws is a readily  
19 available alternative to address the problems allegedly associated with sideshows, the Ordinance  
20 burdens substantially more speech than necessary to further any significant governmental interests  
21 and is far from narrowly tailored to serve any such interests.

22 86. By making it unlawful to observe, record, or report on sideshows or related  
23 preparations from anywhere within a constantly shifting 200-foot radius, the Ordinance does not  
24 leave open ample and adequate alternatives for such observation, recording, or reporting.

25 **SECOND CLAIM**  
26 **42 U.S.C. § 1983**  
27 **First Amendment: Freedom of the Press**

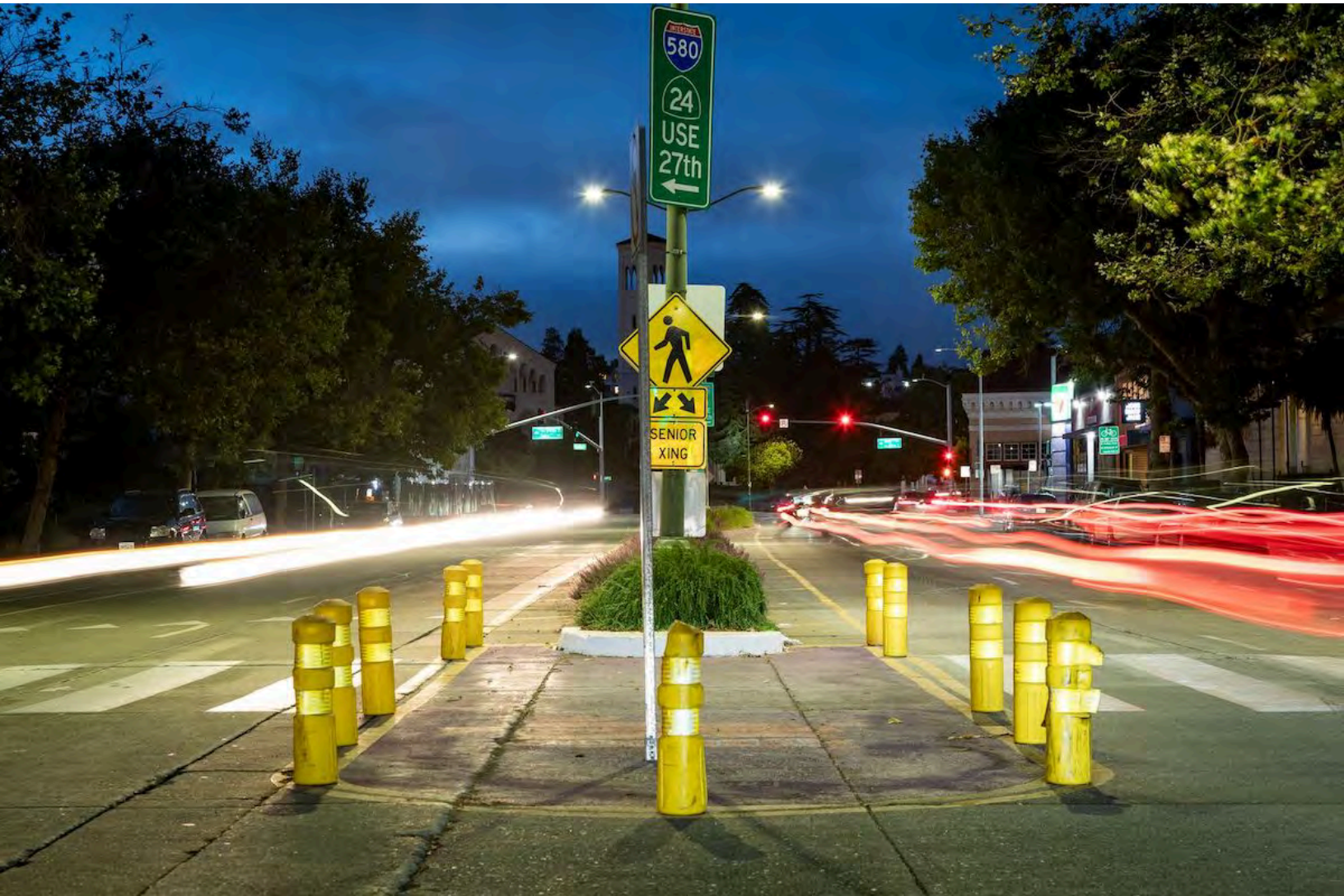
28 87. The allegations of paragraphs 1 through 80 above are incorporated by reference as  
though fully set forth herein.







## **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](mailto:jose@oaklandside.org).

## Index

- [85th percentile speed](#)
- [Alameda County Transportation Commission](#)
- [Alignment](#)
- [Arterial road](#)
- [Bicycle lane](#)
- [Bicyclist and Pedestrian Advisory Commission](#)
- [Bike box](#)
- [Botts dotts](#)
- [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.

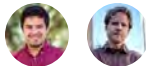
**Exhibit 2**



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.



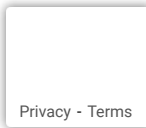
by **Jose Feroso** and **Darwin BondGraham**  
May 30, 2023, 4:03 p.m.

Sideshowes 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.

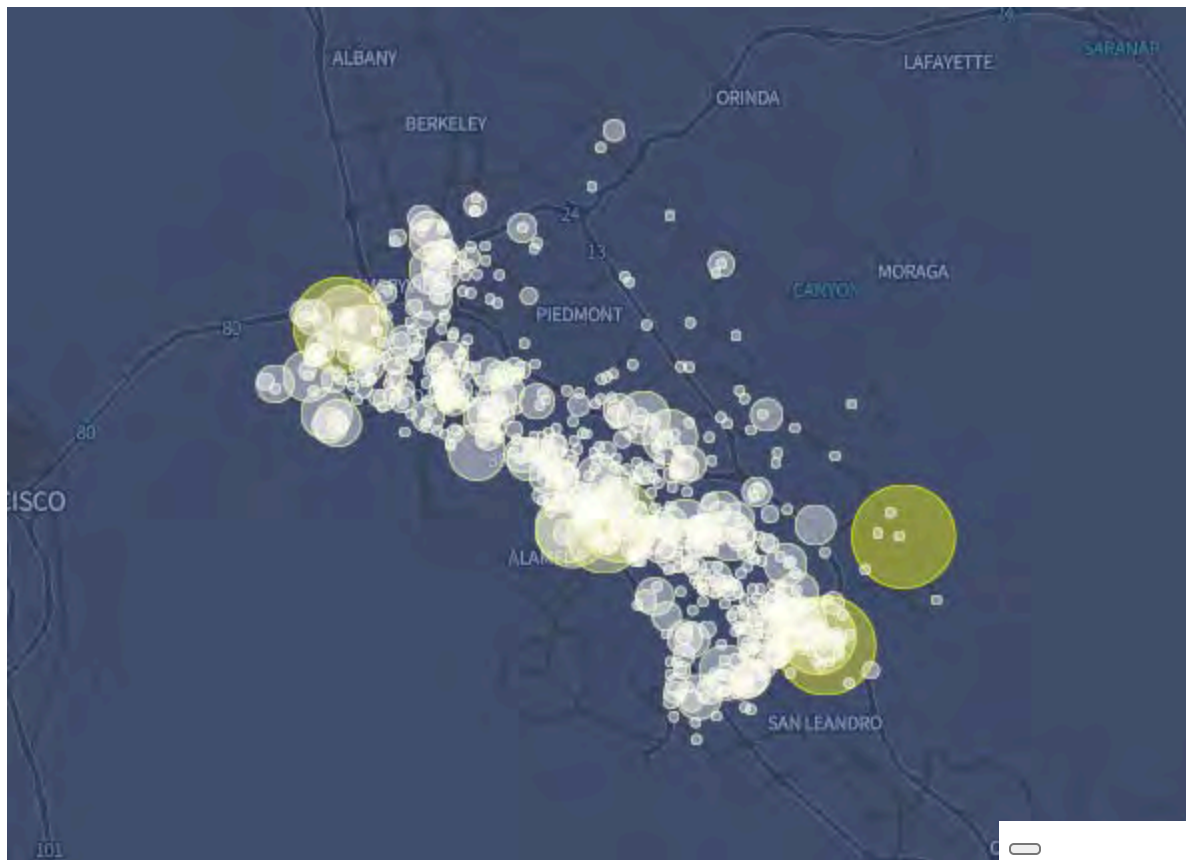
Some Oaklanders defend sideshows as a form of youthful culture, perhaps needing a more constructive and legal outlet. Others see them as a dangerous nuisance, particularly because some feature gunfire, vandalism, and violence—and because some intersections and neighborhoods see sideshows over and over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

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.

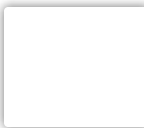
# The top 50 sideshow hotspots

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

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## 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.

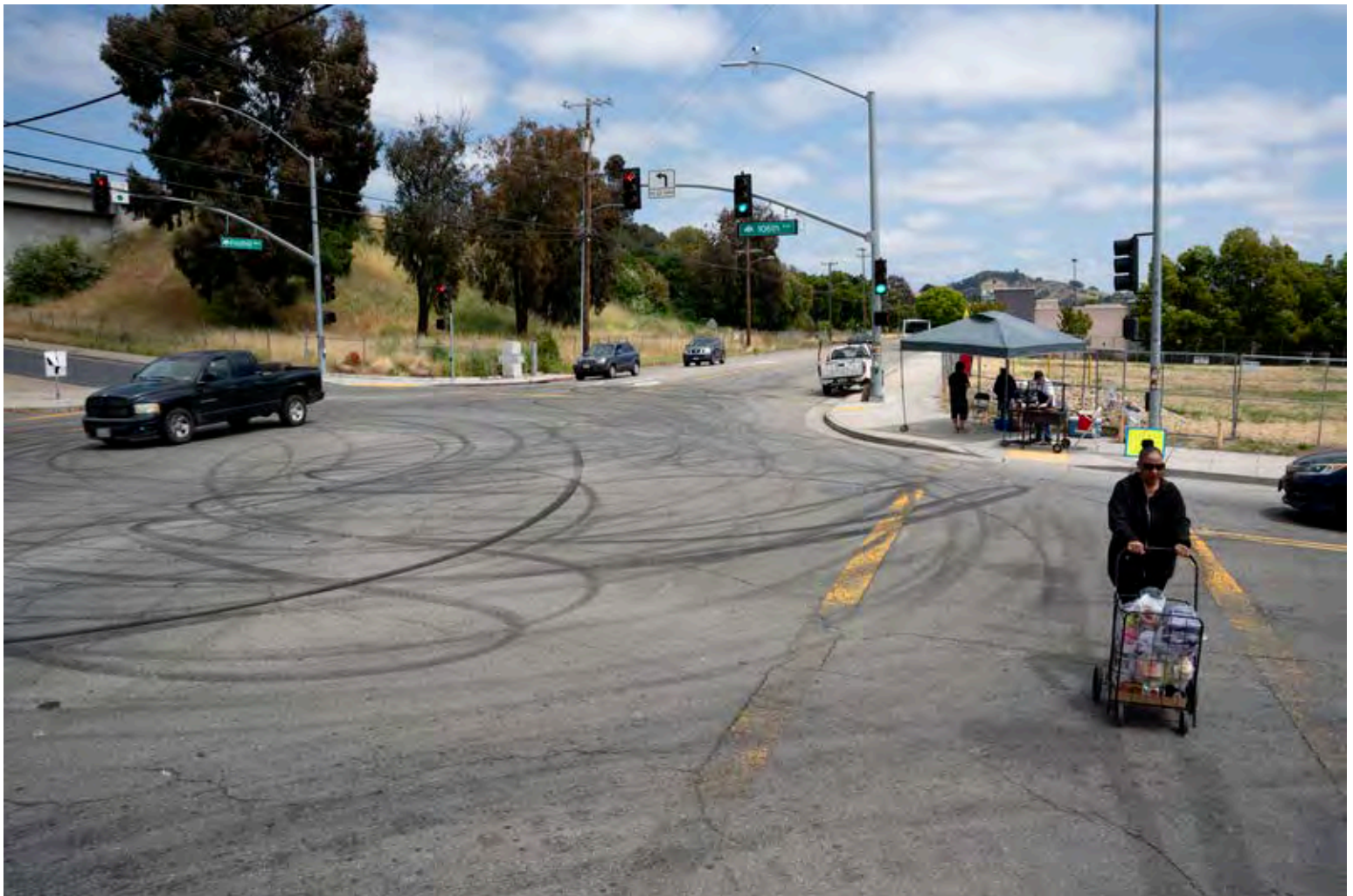
The neighbor said sideshows around here usually feature just one or two cars but that on a few occasions, there were hours-long street parties with cars lining up on Keller. When the police were called, it would often take OPD 3-5 hours to respond. “There were so many people one time they had to bring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

Map: These Oakland intersections are hotspots for sideshows.  
*With data editing by Ally Markovich.*

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Powered by Newspaper

## **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.

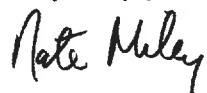
**FINANCING:**

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

## **Exhibit 4**

HOW WE WORK

# Sharing our reporting on traffic safety and systems with high schoolers

The Oaklandside’s Jose Feroso recently attended a public health summit at Castlemont High School.

by **Jose Feroso**  
May 17, 2023, 10:08 a.m.



Our traffic violence reporter Jose Feroso showed students at Castlemont High School how to use collision data to learn more about safety issues in their community. Credit: Courtesy of OUSD/Castlemont High School

Oakland’s roads are so dangerous that, for many residents, risking their lives to get around is a regular part of life in the city. But this doesn’t mean people accept the conditions of Oakland’s roads and traffic.

Privacy - Terms

Rather, in recent years the city's residents have become aware of their power to make roads safer. They've pressured the City Council to add [protected bike lanes](#), lobbied state and federal agencies to award money to the transportation department for new stop lights, and [educated their neighbors](#) about the lives lost from traffic violence.

The Oaklandside has closely covered this progress. Starting in 2021, our newsroom has reported on the [dangers prevalent in Oakland](#) through a systemic lens, looking at how street designs and decades of underinvestment in infrastructure and maintenance have created the current conditions. The University of Michigan supported the first year of this work through the [Knight-Wallace fellowship](#) program and last month, we announced the [Chan Zuckerberg Initiative](#) will fund two more years of reporting focused on engineering solutions.

Our work's impact was reflected in the budget priorities Councilmembers published last month. For the first time in years, all of them prioritized [traffic safety](#) by asking for barricades at intersections and sidewalks, hardened medians to stop sideshows, and faster repairs to potholed streets.

Oaklandside readers have taken notice and pushed us to look deeper into ways to improve the community's understanding of systemic traffic violence. One of these people is Emily Frank, an Oakland resident, UCSF pediatrician, and science teacher at Oakland public schools.

Frank helped create the Public Health Summit at Castlemont High School, in East Oakland, an event that exposes students to potential careers in public health and science. The summit is part of the greater [College and Career for All Initiative](#), a program funded by Oakland taxpayers that has increased [OUSD graduation rates](#) in the last eight years. This initiative encourages students to [choose pathways](#) in health science, engineering, law and social justice based on their passions and interests.

OUSD has seven high schools with Health Pathways. Castlemont High School, where this year's summit occurred on April 28, has a [Community Health Equity Academy](#).

"We wanted to connect these students [through this event] to professionals from the expansive field of public health specifically for hands-on experiences and interactions with folks they see themselves reflected in," said Katie Cugno, a career technical education coach for OUSD.

This year's event included local public health organizations like [Expecting Justice](#), the [Native American Health Center](#), and the [California Bridge/Opioid Harm Reduction Center](#), and 12 workshops about everything from mental health to design thinking.

"We want students to walk away with two things: That public health is awesome, and anything and everything is public health," said Frank. "Our motto is 'Public Health Is Everything.' Journalism can be public health, as is construction. If you help build good roads that [helps save lives]."

As a reporter focused on transportation as a public health issue, Frank asked me to present a 45-minute workshop for students. I was excited to do so.

It would be an opportunity to explain to students how journalism works, how the history of transportation systems has led to high rates of collisions, and how reporting on those systems can impact public health itself. Most importantly, it might help some students pursue journalism or public health as a career.

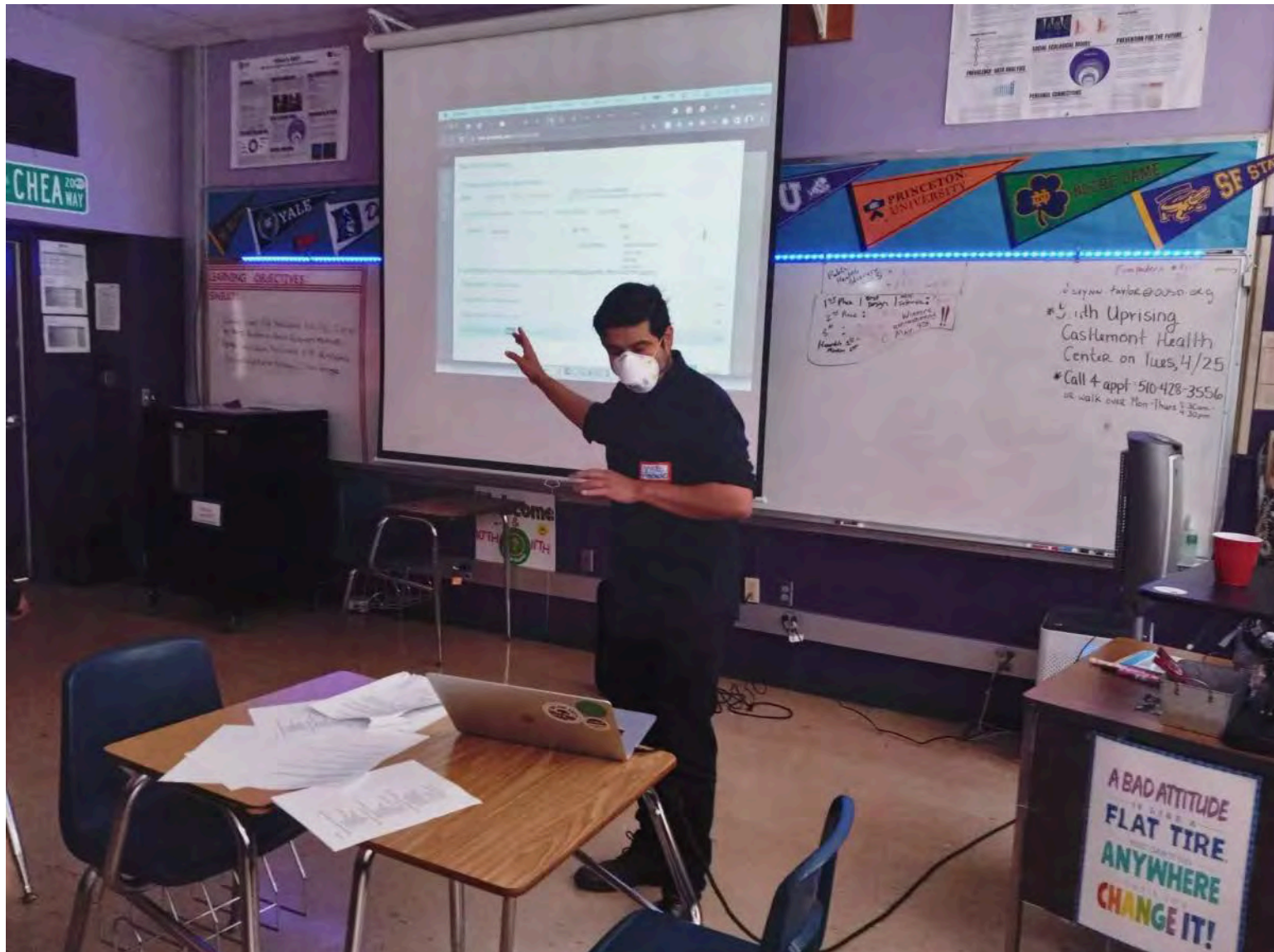
I worked with Frank and her colleague Cugno on developing a lesson plan. They recommended I ask students questions and tell them why my work matters to me personally. They also pointed out that connecting with students through their experiences navigating Oakland roads is important.

Even though I've **presented my reporting** before, preparing for this presentation was a useful exercise in reflecting on how to explain my work at The Oaklandside.

We created a four-part lesson that included an introduction to myself, my work, and systemic reporting, a summary of my articles and how I pursued stories, and a live case-study of student experiences using publicly available tools. If any teachers find this useful, please feel free to adapt the material for you own lesson plans, or let me know if you want me to present to your class.



# Explaining why it's important to take a systems approach to problems like roadway safety



Students were very interested in the Transportation Injury Mapping System, a tool Jose Feroso regularly uses to drill down into specific road safety issues. Credit: Courtesy of OUSD/Castlemont High School

I connected with students by telling them about my roots in Oakland. I'm a native Oaklander whose family owned the [El Progreso](#) bakery on International Boulevard for 30 years and I care about what happens on the streets of our city because my family members have had to navigate underfunded areas where Black and brown people live. My family's old shop, which is now a paint store, fronts a dangerous intersection, just six blocks away from where [one of the worst collisions](#) in recent history happened. This is just one example of how dangerous Oakland's roads are. More than 30 [people died in traffic collisions in the city last year](#), and hundreds more suffered serious injuries.

After defining the problem, I asked students two simple questions, in Spanish and English: Why are so many people hit and injured on our streets? And who is responsible?



Several answered that people are speeding and driving recklessly. Although true, I pushed them consider the systemic nature of the problem.

A single collision might have been caused by a person's decision to speed or drive recklessly. But if thousands of people have been hit and killed in Oakland over time, and if Oakland residents get hurt a lot more than residents of other places, there are systemic forces at work. Poorly designed systems encourage people to make bad decisions by making it easier to do the *wrong* thing than the *right* thing. Over the last two years, after talking with city planners, road engineers, and collision victims, it's clear systems have a lot to do with traffic violence.

In the early 1900s, when Oakland's population was expanding, streets were designed to be wide enough to accommodate trains. Then, in the 1950s, trains mostly disappeared and cars became the dominant form of transportation, but Oakland leaders kept streets the same width, allowing for multiple car lanes. These wider, multi-laned streets encouraged people to speed, researchers have found.

“Can you think of any other flaws in the system of streets that you experience every day,” I asked the students.

Several said, some in Spanish, that traffic lights often don't work. I told them about one of my reports where I found that yellow lights are often timed to flash for too short a period which encourages people to race through red lights, causing crashes. Also, if stop lights aren't positioned directly above the street, in the middle of a crosswalk, it's too easy to miss them.

Potholes, too few speed bumps, and unpainted crosswalks also came up in our conversation.

Then I told them about one example in the last year where a poorly designed street contributed to a tragedy, one that probably could have been avoided.

In June 2022, Dmitry Putilov, a deaf man, was killed in front of his two children while they were on a bike ride. According to witnesses and a video, Putilov was crossing 14th Street in downtown Oakland. His children were behind him when a black Infinity sped up through the intersection and hit him.

Protesters, including the Rapid Response Traffic Violence team, said later that if the city had been quicker to narrow of the street and add protected bike lanes, including curb bulb outs that would have made that crossing shorter, Putilov might be alive today. In 2017, the city received \$10 million from the state to make that change but it still has not happened.

If part of better public health is saving people's lives, and if, statistically-speaking, better infrastructure leads to saving lives, then reporting on the systems of traffic violence also improves public health.

## An exercise to have the students speak from their own experiences

To give students some hands on experience researching the problem of road safety, we did an exercise about the potential hazards they would face walking, biking, taking the bus, or driving through part of Oakland. They could use Google Maps on their phones or computers to trace their steps. In a larger classroom, teachers could probably make kids break into groups for this exercise.

“Let’s start by creating a list of problems you see in parts of Oakland on your journey,” I told them.

The students spoke up about the traffic problems they would encounter along specific routes. Then, I pulled up UC Berkeley’s [Transportation Injury Mapping System](#) to show them exactly how many collisions occurred on a few of those routes over the last five years. Even though they said they experienced speeding and a general sense of danger on the roads, they were surprised at the thousands of serious injuries and deaths that appeared on the map.

“That many, really?” one said in Spanish.

We also discussed how traffic advocates and engineers are using a new kind of language to name traffic violence problems and change the way we collectively think about the issue.

For example, I explained, many people have used the word “accident” for decades to refer to a car crash that hurts or kills someone. But this word assumes that a crash was an unfortunate mistake made by the people driving, or by a pedestrian or bicyclists. Many public health practitioners don’t use the word accident because it absolves the driver, the road design, and government leaders who could change a road’s design from any responsibility. They now prefer instead to use the more neutral term collision or crash. Using this language allows for a detailed investigation to define what actually happened without inaccurate assumptions. It also forces people to think about the “bigger picture” of their systems of roads.

Looking at the systemic reason why collisions happen is a public health approach to traffic violence. When epidemiologists try to find the reason why epidemics happen, they look at demographic data, risk factors, and other trends. Similarly, when I look at the whole picture of a collision, I try to find as much data and information to determine whether it’s part of a pattern.

Through analysis of the TIMS map during my time with them, the students learned that Black and brown communities are more impacted than white communities by traffic collisions, there are more speeding collisions than traffic light collisions, and the faster people drive, the more likely it is that someone who is hit by their car will die.

# Showing Oakland students they can realize career paths in public health



The Oaklandside’s traffic violence reporter Jose Feroso speaking to students about how traffic safety is a public health issue. Credit: Courtesy of OUSD/Castlemont High School

After the class, some of the students told they appreciated the presentation and I even got some happy fist bumps. In a survey, the teens said that they were more interested in careers in public health after the summit.

Frank said she’s not surprised that the students engaged excitedly with my presentation about traffic safety. “Young people love interfacing with professionals who tackle issues that affect Oakland, and they enjoy the experience of understanding the different opportunities out there,” she said.

Talking to people they might not otherwise have been exposed to—researchers, doctors, engineers, and journalists—is also important because it helps them develop a network of mentors and imagine that they too could become a public health leader. At the end of the workshops, several of us talked with kids in small groups for a networking lunch about our work.

“How many opportunities have these kids had to talk to a reporter like you?” Frank asked after. The truth is, not many. But for the OUSD students attending the summit it was a good opportunity.

“The day came with many challenges, but this was nevertheless an incredible experience for our students, and I am so grateful to each of you,” Cugno told us in an email this week.

As a person whose family lived and worked in East Oakland, and who throughout the years benefitted from the education provided by extremely dedicated teachers, including in low-income schools, I told Frank that I was grateful for the opportunity and would welcome the opportunity to do it again.



The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

JOSE ANTONIO GARCIA  
(b) County of Residence of First Listed Plaintiff Alameda  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
David Loy (SBN 229235); Ann Cappetta (SBN 354079)  
FIRST AMENDMENT COALITION 415.460.5060  
534 4th Street, Suite B, San Rafael, CA 94901-3334

**DEFENDANTS**

COUNTY OF ALAMEDA and YESENIA SANCHEZ  
County of Residence of First Listed Defendant Alameda  
(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.  
Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

**III CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment Of Veteran's Benefits <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury -Medical Malpractice <b>CIVIL RIGHTS</b> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>PRISONER PETITIONS</b> <b>HABEAS CORPUS</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>OTHER</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee-Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC § 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC § 158 <input type="checkbox"/> 423 Withdrawal 28 USC § 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent-Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC § 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC § 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding  2 Removed from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from Another District (specify)  6 Multidistrict Litigation-Transfer  7 Multidistrict Litigation-Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. § 1983  
Brief description of cause:  
Violation of the First Amendment; Cal. Const. Art. I § 2(a)

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. **DEMAND \$** **CHECK YES only if demanded in complaint: JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S), IF ANY** (See instructions):

JUDGE DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**

(Place an "X" in One Box Only)  SAN FRANCISCO/OAKLAND  SAN JOSE  EUREKA-MCKINLEYVILLE

DATE July 2, 2024

SIGNATURE OF ATTORNEY OF RECORD /s/ David Loy

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44**

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”

**Date and Attorney Signature.** Date and sign the civil cover sheet.





UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
Form 6. Representation Statement

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>

**Appellant(s)** (List *each* party filing the appeal, do not use “et al.” or other abbreviations.)

Name(s) of party/parties:

JOSE ANTONIO GARCIA

Name(s) of counsel (if any):

DAVID LOY, Cal. Bar No. 229235  
FIRST AMENDMENT COALITION

Address: 534 4th Street, Suite B, San Rafael, CA 94901-3334

Telephone number(s): 415.460.5060

Email(s): dloy@firstamendmentcoalition.org

Is counsel registered for Electronic Filing in the 9th Circuit?  Yes  No

**Appellee(s)** (List *only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.*)

Name(s) of party/parties:

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

Name(s) of counsel (if any):

MATTHEW D. ZINN, Cal. Bar No. 214587  
SHUTE, MIHALY & WEINBERGER LLP

Address: 396 Hayes Street, San Francisco, California 94102

Telephone number(s): 415.552.7272

Email(s): Zinn@smwlaw.com

To list additional parties and/or counsel, use next page.

Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)

Continued list of parties and counsel: *(attach additional pages as necessary)*

**Appellants**

Name(s) of party/parties:

JOSE ANTONIO GARCIA

Name(s) of counsel (if any):

ANN CAPPETTA, Cal. Bar No. 354079  
FIRST AMENDMENT COALITION

Address: 534 4th Street, Suite B, San Rafael, CA 94901-3334

Telephone number(s): 415.460.5060

Email(s): acappetta@firstamendmentcoalition.org

Is counsel registered for Electronic Filing in the 9th Circuit?  Yes  No

**Appellees**

Name(s) of party/parties:

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

Name(s) of counsel (if any):

AARON M. STANTON, Cal. Bar No. 312530  
SHUTE, MIHALY & WEINBERGER LLP

Address: 396 Hayes Street, San Francisco, California 94102

Telephone number(s): 415.552.7272

Email(s): Stanton@smwlaw.com

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

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ADRMOP,APPEAL

**U.S. District Court  
California Northern District (San Francisco)  
CIVIL DOCKET FOR CASE #: 3:24-cv-03997-RS**

Garcia v. County of Alameda et al  
Assigned to: Judge Richard Seeborg  
Case in other court: USCA, **24-06814**  
Cause: 42:1983 Civil Rights Act

Date Filed: 07/02/2024  
Jury Demand: None  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

**Plaintiff**

**Jose Antonio Garcia**

represented by **Ann Cappetta**  
First Amendment Coalition  
534 4th St.  
Ste #B  
San Rafael, CA 94901  
630-853-0705  
Email:  
acappetta@firstamendmentcoalition.org  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**John David Loy**  
First Amendment Coalition  
534 Fourth Street  
Suite B  
San Rafael, CA 94901  
619-701-3993  
Email: dloy@firstamendmentcoalition.org  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**County of Alameda**

represented by **Matthew Dwight Zinn**  
Shute, Mihaly & Weinberger  
396 Hayes Street  
San Francisco, CA 94102  
415-552-7272  
Fax: 415-552-5816  
Email: zinn@smwlaw.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Aaron Michael Stanton**  
Shute Mihaly and Weinberger  
396 Hayes St  
San Francisco, CA 94102

415-552-7272

Email: stanton@smwlaw.com

ATTORNEY TO BE NOTICED

**Defendant****Yesenia Sanchez**represented by **Matthew Dwight Zinn**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

**Aaron Michael Stanton**

(See above for address)

ATTORNEY TO BE NOTICED

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
07/02/2024	<a href="#">1</a>	COMPLAINT against All Defendants ( Filing fee \$ 405, receipt number ACANDC-19580287.). Filed by Jose Antonio Garcia. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4, # <a href="#">5</a> Civil Cover Sheet)(Loy, John) (Filed on 7/2/2024) (Entered: 07/02/2024)
07/02/2024	2	Case assigned to Magistrate Judge Alex G. Tse.  Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at <a href="http://cand.uscourts.gov/ecf/caseopening">http://cand.uscourts.gov/ecf/caseopening</a> .  Standing orders can be downloaded from the court's web page at <a href="http://www.cand.uscourts.gov/judges">www.cand.uscourts.gov/judges</a> . Upon receipt, the summons will be issued and returned electronically. A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 7/16/2024. (ark, COURT STAFF) (Filed on 7/2/2024) (Entered: 07/02/2024)
07/02/2024	<a href="#">3</a>	Proposed Summons. (Loy, John) (Filed on 7/2/2024) (Entered: 07/02/2024)
07/02/2024	<a href="#">4</a>	Proposed Summons. (Loy, John) (Filed on 7/2/2024) (Entered: 07/02/2024)
07/02/2024	<a href="#">5</a>	Certificate of Interested Entities by Jose Antonio Garcia (Loy, John) (Filed on 7/2/2024) (Entered: 07/02/2024)
07/09/2024	<a href="#">6</a>	<b>Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 9/27/2024. Initial Case Management Conference set for 10/4/2024 02:00 PM in San Francisco, - Videoconference Only. (kmg, COURT STAFF) (Filed on 7/9/2024) (Entered: 07/09/2024)</b>
07/09/2024		<a href="#">Electronic filing error</a> . Please put all Defendant's names and addresses on one Summons. The Summons Signature block should not be adjusted or moved. This filing will not be processed by the clerks office.Please re-file in its entirety. Re: <a href="#">4</a> Proposed Summons filed by Jose Antonio Garcia, <a href="#">3</a> Proposed Summons filed by Jose Antonio Garcia (kmg, COURT STAFF) (Filed on 7/9/2024) (Entered: 07/09/2024)
07/09/2024	<a href="#">7</a>	Proposed Summons. (Loy, John) (Filed on 7/9/2024) (Entered: 07/09/2024)
07/10/2024	<a href="#">8</a>	Summons Issued as to County of Alameda, Yesenia Sanchez. (ark, COURT STAFF) (Filed on 7/10/2024) (Entered: 07/10/2024)



07/11/2024	<a href="#">9</a>	CERTIFICATE OF SERVICE by Jose Antonio Garcia re <a href="#">5</a> Certificate of Interested Entities, 2 Case Assigned by Intake,, <a href="#">8</a> Summons Issued, <a href="#">1</a> Complaint, <a href="#">6</a> Initial Case Management Scheduling Order with ADR Deadlines, <i>as to County of Alameda</i> (Loy, John) (Filed on 7/11/2024) (Entered: 07/11/2024)
07/11/2024	<a href="#">10</a>	CERTIFICATE OF SERVICE by Jose Antonio Garcia re <a href="#">5</a> Certificate of Interested Entities, 2 Case Assigned by Intake,, <a href="#">8</a> Summons Issued, <a href="#">1</a> Complaint, <a href="#">6</a> Initial Case Management Scheduling Order with ADR Deadlines, <i>as to Yesenia Sanchez, Sheriff of Alameda County, in her official capacity</i> (Loy, John) (Filed on 7/11/2024) (Entered: 07/11/2024)
07/16/2024	<a href="#">11</a>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Jose Antonio Garcia.. (Loy, John) (Filed on 7/16/2024) (Entered: 07/16/2024)
07/16/2024	12	CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now reassign this case to a District Judge because a party has not consented to the jurisdiction of a Magistrate Judge. You will be informed by separate notice of the district judge to whom this case is reassigned.  ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED.  <i>This is a text only docket entry; there is no document associated with this notice.</i> (shy, COURT STAFF) (Filed on 7/16/2024) (Entered: 07/16/2024)
07/17/2024	<a href="#">13</a>	<b>ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge Richard Seeborg for all further proceedings. Magistrate Judge Alex G. Tse no longer assigned to case, Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and <a href="http://cand.uscourts.gov/cameras..">http://cand.uscourts.gov/cameras..</a> Signed by Clerk on 7/17/2024. (Attachments: # <a href="#">1</a> Notice of Eligibility for Video Recording)(ark, COURT STAFF) (Filed on 7/17/2024) (Entered: 07/17/2024)</b>
07/17/2024	14	CLERK'S NOTICE RE REASSIGNED CASE:  You are notified that the Court has scheduled an Initial Case Management Conference set for 10/10/2024 at 10:00 AM before Judge Richard Seeborg upon reassignment. Case Management Statement due by 10/3/2024.  All parties shall appear by videoconference using log-in instructions the Court will provide in advance.  For a copy of Judge Seeborg's Standing Order and other information, please refer to the Court's website at <a href="http://www.cand.uscourts.gov">www.cand.uscourts.gov</a>  <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cl, COURT STAFF) (Filed on 7/17/2024) (Entered: 07/17/2024)
07/23/2024	<a href="#">15</a>	MOTION for Preliminary Injunction filed by Jose Antonio Garcia. Motion Hearing set for 9/5/2024 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. Responses due by 8/6/2024. Replies due by 8/13/2024. (Attachments: # <a href="#">1</a> Declaration of Jose Antonio Garcia, # <a href="#">2</a> Exhibit 1, # <a href="#">3</a> Errata 2, # <a href="#">4</a> Declaration of Ann Cappetta, # <a href="#">5</a> Exhibit 3, # <a href="#">6</a> Proposed Order, # <a href="#">7</a> Certificate/Proof of Service)(Loy, John) (Filed on 7/23/2024) (Entered: 07/23/2024)

07/31/2024	<a href="#">16</a>	STIPULATION <i>EXTENDING TIME FOR DEFENDANTS TO RESPOND TO COMPLAINT</i> filed by County of Alameda, Yesenia Sanchez. (Zinn, Matthew) (Filed on 7/31/2024) (Entered: 07/31/2024)
07/31/2024	<a href="#">17</a>	NOTICE of Appearance by Aaron Michael Stanton (Stanton, Aaron) (Filed on 7/31/2024) (Entered: 07/31/2024)
08/01/2024	<a href="#">18</a>	STIPULATION WITH PROPOSED ORDER re <a href="#">15</a> MOTION for Preliminary Injunction , <a href="#">16</a> Stipulation filed by County of Alameda, Yesenia Sanchez. (Zinn, Matthew) (Filed on 8/1/2024) (Entered: 08/01/2024)
08/01/2024	<a href="#">19</a>	<b>ORDER by Judge Richard Seeborg Granting <a href="#">18</a> Scheduling Stipulation. (cl, COURT STAFF) (Filed on 8/1/2024) (Entered: 08/01/2024)</b>
08/08/2024	<a href="#">20</a>	STIPULATION WITH PROPOSED ORDER <i>CONTINUING CASE MANAGEMENT CONFERENCE AND ASSOCIATED DEADLINES</i> filed by Jose Antonio Garcia. (Attachments: # <a href="#">1</a> Declaration of Ann Cappetta) (Cappetta, Ann) (Filed on 8/8/2024) Modified on 8/9/2024 (kmg, COURT STAFF). (Entered: 08/08/2024)
08/08/2024	<a href="#">21</a>	<b>ORDER by Judge Richard Seeborg GRANTING <a href="#">20</a> STIPULATION CONTINUING CASE MANAGEMENT CONFERENCE AND ASSOCIATED DEADLINES. Initial Case Management Conference previously set for 10/10/2024 is continued to 12/12/2024 at 10:00 AM in San Francisco, - Videoconference Only. Case Management Statement due by 12/5/2024.(cl, COURT STAFF) (Filed on 8/8/2024) (Entered: 08/08/2024)</b>
08/29/2024	<a href="#">22</a>	OPPOSITION/RESPONSE (re <a href="#">15</a> MOTION for Preliminary Injunction ) filed byCounty of Alameda, Yesenia Sanchez. (Attachments: # <a href="#">1</a> Declaration of Fenton Culley, # <a href="#">2</a> Declaration of Aaron Stanton)(Stanton, Aaron) (Filed on 8/29/2024) (Entered: 08/29/2024)
09/19/2024	<a href="#">23</a>	REPLY (re <a href="#">15</a> MOTION for Preliminary Injunction ) filed byJose Antonio Garcia. (Loy, John) (Filed on 9/19/2024) (Entered: 09/19/2024)
09/27/2024	24	CLERK'S NOTICE CONTINUING INITIAL CASE MANAGEMENT CONFERENCE. Initial Case Management Conference previously set for 12/12/2024 is continued to 1/9/2025 at 10:00 AM in San Francisco, - Videoconference Only. Case Management Statement due by 1/2/2025. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cl, COURT STAFF) (Filed on 9/27/2024) (Entered: 09/27/2024)
10/03/2024	25	<b>Minute Entry for proceedings held before Judge Richard Seeborg: Motion Hearing held on 10/3/2024 re <a href="#">15</a> MOTION for Preliminary Injunction. Motion taken under submission. Court to issue an order.</b>  <b>Total Time in Court: 1 hour 10 minutes.</b> <b>Court Reporter: Beth Krupa.</b>  <b>Plaintiff Attorney: Ann Cappetta, David Loy.</b> <b>Defendant Attorney: Aaron Stanton, Matthew Zinn.</b>  <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cl, COURT STAFF) (Date Filed: 10/3/2024) (Entered: 10/03/2024)
10/11/2024	<a href="#">26</a>	<b>ORDER denying <a href="#">15</a> Plaintiff's Motion for Preliminary Injunction. Signed by Chief Judge Richard Seeborg on October 11, 2024. (rslc3, COURT STAFF) (Filed on 10/11/2024) (Entered: 10/11/2024)</b>

10/31/2024	<a href="#">27</a>	STIPULATION WITH PROPOSED ORDER <i>Continuing Deadline for Defendants' Responsive Pleading and Case Management Conference</i> filed by County of Alameda, Yesenia Sanchez. (Zinn, Matthew) (Filed on 10/31/2024) (Entered: 10/31/2024)
10/31/2024	<a href="#">28</a>	<b>STIPULATION AND ORDER RE <a href="#">27</a> CONTINUING DEADLINE FOR DEFENDANTS RESPONSIVE PLEADING AND CASE MANAGEMENT CONFERENCE. Case Management Statement due by 3/6/2025. Initial Case Management Conference previously set for 1/9/2025 is continued to 3/13/2025 a 10:00 AM in San Francisco, - Videoconference Only.</b>  <b>Signed by Chief Judge Richard Seeborg on 10/31/2024. (cl, COURT STAFF) (Filed on 10/31/2024) (Entered: 10/31/2024)</b>
11/07/2024	<a href="#">29</a>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Jose Antonio Garcia. Appeal of Order on Motion for Preliminary Injunction <a href="#">26</a> (Appeal fee of \$605 receipt number ACANDC-20027954 paid.) (Loy, John) (Filed on 11/7/2024) (Entered: 11/07/2024)
11/08/2024	<a href="#">30</a>	STIPULATION WITH PROPOSED ORDER <i>FOR STAY PENDING APPEAL</i> filed by Jose Antonio Garcia. (Cappetta, Ann) (Filed on 11/8/2024) (Entered: 11/08/2024)
11/08/2024	<a href="#">34</a>	USCA Case Number <b>24-6814</b> for <a href="#">29</a> Notice of Appeal to the Ninth Circuit filed by Jose Antonio Garcia. (gba, COURT STAFF) (Filed on 11/8/2024) (Entered: 11/13/2024)
11/12/2024	<a href="#">31</a>	<b>ORDER by Judge Richard Seeborg Granting <a href="#">30</a> Stipulation for Stay Pending Appeal. (cl, COURT STAFF) (Filed on 11/12/2024) (Entered: 11/12/2024)</b>
11/12/2024	<a href="#">32</a>	CLERK'S NOTICE CONTINUING INITIAL CASE MANAGEMENT CONFERENCE. Initial Case Management Conference previously set for 3/13/2025 is continued to 9/18/2025 at 10:00 AM in San Francisco, - Videoconference Only. Case Management Statement due by 9/11/2025. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cl, COURT STAFF) (Filed on 11/12/2024) (Entered: 11/12/2024)
11/12/2024	<a href="#">33</a>	TRANSCRIPT ORDER for proceedings held on 10/3/2024 before Judge Richard Seeborg by Jose Antonio Garcia, for Court Reporter Beth Krupa. (Loy, John) (Filed on 11/12/2024) (Entered: 11/12/2024)
11/18/2024	<a href="#">35</a>	Transcript of Proceedings held on 10/3/2024, before Judge Richard Seeborg. Court Reporter/Transcriber Beth A. Krupa, RMR, CRR, EMAIL <a href="mailto:beth_krupa@scd.uscourts.gov">beth_krupa@scd.uscourts.gov</a> . Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re <a href="#">33</a> Transcript Order ) Redaction Request due 12/9/2024. Redacted Transcript Deadline set for 12/19/2024. Release of Transcript Restriction set for 2/18/2025. (Related documents(s) <a href="#">33</a> ) (Krupa, Beth) (Filed on 11/18/2024) (Entered: 11/18/2024)
11/20/2024	<a href="#">36</a>	TRANSCRIPT ORDER for proceedings held on 10/03/2024 before Judge Richard Seeborg by County of Alameda, Yesenia Sanchez, for Court Reporter Beth Krupa. (Zinn, Matthew) (Filed on 11/20/2024) (Entered: 11/20/2024)

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