

CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Manager
ATTN: Robert C. Bobb
FROM: Police Department
DATE: December 11, 2001

RE: **A RESOLUTION DIRECTING THE CITY MANAGER TO SUBMIT TO THE STATE LEGISLATURE CITY OF OAKLAND REVISIONS TO STATE LAW TO AUTHORIZE LOCAL LAW ENFORCEMENT AGENCIES TO IMPOSE 30-DAY IMPOUNDS ON VEHICLES INVOLVED IN SIDESHOW ACTIVITIES THAT IMPERIL PUBLIC SAFETY, SUCH AS "CRUISING", WANTON RECKLESS DRIVING AND ILLEGAL EXHIBITIONS OF SPEED**

SUMMARY

This report requests Council's support for a change in State legislation to address reckless driving problems associated with cruising, a.k.a "Sideshow" activities in California cities. Traffic safety problems as complex as the Sideshow require a "toolbox" of strategies in order to address contributing factors. Many of the solutions currently used by OPD and other jurisdictions remain viable, but are limited in scope and applicability. Pursuing changes to the California Vehicle Code will provide law enforcement with additional authority to impound vehicles involved in the worst types of offenses associated with the Sideshow for 30-days. The recommended changes are consistent with other Vehicle Code Sections; e.g., "30-day holds" are currently authorized for the enforcement of code sections related to unlicensed drivers, speed contests, and those involved in drag racing. Use of these holds have been determined to be effective in reducing accidents by keeping unlicensed and reckless drivers off the highway.

FISCAL IMPACT

Since 1988 law enforcement has been called upon to address the problems associated with the Sideshow. This effort has been at a substantial expense to the taxpayer. A typical summer Saturday night Sideshow operation costs the City approximately \$30,000 in police overtime. This does not include the costs associated with dispatch, the jail, and vehicle use/damage. Sideshow details are currently being deployed every Friday, Saturday, and Sunday nights during the seven months from April to October and only somewhat less so during the remainder of the year.

BACKGROUND

The City of Oakland has been working diligently to address problems associated with late-night cruising since the late-80's. These efforts have focused in three general areas:

- Community Involvement
- Local Legislation
- Law Enforcement

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The efforts of those involved in finding solutions to these problems have not been made in any one area to the exclusion of the others. Collaboration and compromise have played a part in trying to mold a comprehensive solution to the problems associated with this troublesome activity.

The “Sideshow” Problem

Since 1988, the late-night cruising has been widely referred to as the “Sideshow.” This moniker has been widely applied to the activity by participants as well as officials tasked with dealing with the problem and members of the media. Sideshow activity generally erupts on weekend nights after bars have closed, but also occurs on holiday weekends and warm summer evenings. The activity has occurred in all areas of the City, but is most prevalent in the neighborhoods of East Oakland.

The demographics of Sideshow participants are:

- Men and women
- 21 to 29 years of age
- employed
- 30% non-Oakland residents

At a minimum, problems associated with the Sideshow include noise, litter, and the defacing of city streets and off-street parking areas from unsightly black skid marks. Neighborhood residents have complained of a lack of order maintenance and quality of life problems such as vandalism and public intoxication and urination.

Substantially more serious problems are also associated with the Sideshow. On six occasions, this year Sideshow activities approached near riot conditions, requiring police to don protective helmets when unruly crowds unleashed a barrage of rocks and bottles on officers. The officers had been called to the affected parking lots and intersections to clear crowds that had gathered to watch vehicles engage in exhibitions of speed, commonly referred to as “donuts.” During one of these incidents, two police cars were vandalized and a woman was physically assaulted.

Sideshow participants will generally take over the parking lots of shopping malls, convenience stores, and gas stations. They also frequently take over major intersections. Once gathered, individuals in the group will start to spin “donuts” within a circle formed by the crowd, usually no more than a few feet from the pedestrian spectators. The traffic congestion associated with this activity prevents public transit from traveling along normal routes. On several occasions during the last three years traffic in and out of the Oakland International Airport was disrupted as Sideshow activity created gridlock on Hegenberger Road. The “event” slows and prevents

citizens from free travel and more importantly, it can also slow or prevent the delivery of emergency services.

Sideshow activity has been glamorized in a professional video available for sale on the Internet (<http://sydewayz.com>); it is the subject of a popular rap song; it's mentioned as a destination on radio stations such as KMEL (106.1 FM); and participants refer it to as an "institution" and a "tradition".

Oakland residents have complained of unknowingly driving into these gatherings and being surrounded by participants who rock their cars and intimidate them. On one occasion last year, two police officers witnessed a crowd of 30 men vandalize the car of a woman who had refused to give one of them a ride. All of the woman's windows were shattered and the hood and top of the vehicle were crushed by the mob.

Recently, there has been an increase in the number of Sideshow participants who are driving under the influence of alcohol and/or drugs. During one six week period this past summer over 55 DUI arrests were made during Saturday night operations to address the Sideshow. Stolen vehicles are routinely recovered participating in Sideshow activity.

Since 1988, there have been three traffic fatalities associated with the illegal exhibitions of speed and racing that occurs during the Sideshow. In 1994, a man was shot to death during one of the impromptu parking lot gatherings while police officers stood on the perimeter attempting to clear the crowd. During the last several summers violent and assaultive activity has become more common place as the crowds have grown in size and "mob psychology" has become more prevalent.

STATE LEGISLATIVE PROPOSAL

Staff proposes that the City spearhead changes to the California Vehicle Code that will expand the authority given to police officers to place extended (30-day) holds on vehicles involved in certain public offenses that are found to be most problematic at Sideshow events.

Existing Law:

- Provides that no person shall engage in a motor vehicle speed contest on a highway, punishable by misdemeanor penalties, suspension of driving privileges, and fines. A motor vehicle speed contest includes a motor vehicle race against another vehicle, a clock, or other timing device - an exception is provided for such events as sports car rallies where the speed limit is not exceeded.

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- Allows a peace officer who determines that a person was engaged in a vehicle motor speed contest to immediately arrest and take into custody that person and to impound the vehicle which was used for not more than 30 days at the registered owner's expense.

A prohibition is also included on any person who aids and abets a motor vehicle speed contest on a highway, with similar prohibitions in the statute for motor vehicle exhibition of speed on a highway.

- Authorizes a peace officer to immediately arrest a person who is driving a motor vehicle while his or her license is suspended or revoked or who has never obtained a license and to seize the vehicle being driven, which shall be impounded for 30 days.
- Allows peace officers and traffic control personnel to remove vehicles within local jurisdictions and to impound those vehicles for a number of specified reasons. Procedures for lawful owners to obtain those vehicles and pay impound fees and costs are established.

The proposed State legislation would add to the existing general authority to remove vehicles specific authority for law enforcement officials to seize vehicles used by a person in a motor vehicle engaging in an exhibition of speed or reckless driving when the person is arrested for that offense. This general authority would apply to both the highway and an off-street parking facility.

The proposed legislation (for full text, see Attachment A) sets forth a new section in the law pertaining to motor vehicle exhibitions of speed and reckless driving, as follows:

- Permits any lawfully seized vehicle to be impounded for up to 30 days (when a driver is cited or arrested for one of the above noted offenses).
- Provides registered and legal owners the opportunity for a storage hearing pursuant to existing Vehicle Code provisions.
- Allows an impound agency to release the motor vehicle to a legal owner or agent (who presents a valid driver's license and proof of current vehicle registration) prior to the conclusion of the impoundment period if:
 1. The vehicle was stolen.
 2. The vehicle was towed in error.

3. When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage
 - The legal or registered owner of the vehicle is a rental car agency. In such cases, the agency may require the person to whom the vehicle was rented to pay towing and impoundment charges plus any applicable administrative fees. The rental car agency would be required to agree not to rent the vehicle to the driver until the expiration of the 30-day period.
 - The vehicle shall not be sold prior to the defendant's conviction.

The proposed legislation provides that when a person convicted of engaging in a motor vehicle exhibition of speed or reckless driving was not authorized by the registered owner of the motor vehicle to operate the motor vehicle at the time of the commission of the offense, the court shall order the convicted person to reimburse the registered owner for any towing and storage charges related to the impoundment, and any authorized administrative charges incurred by the registered owner to obtain possession of the vehicle, unless the court finds that the person convicted does not have the ability to pay all or part of those charges.

Prior legislation of this type has been supported by the following:

- Ontario Police Department
- Chino Police Association
- San Bernardino County Police Chiefs and Sheriff Association
- Sheriff, San Bernardino County
- Chiefs of Police, City of Rancho Cucamonga and City of Chino Hills
- California Peace Officers' Association
- California Police Chiefs Association

Law enforcement authorities find that reckless driving and exhibitions of speed both on the highway and in off-street parking facilities have become major problems on many of California's city streets. These acts are extremely dangerous, as those involved operate their vehicles at unsafe speeds, risking injury not only to themselves, but also to innocent citizens. Furthermore, these illegal activities are often accompanied by street violence.

When confronting these criminals, law enforcement's hands are tied by laws that prevent an officer from impounding a vehicle used in an offense until the perpetrator has been convicted. The result is that these criminals shift their operations to other jurisdictions when confronted by police.

The proposed legislation allows for the arrest of any driver engaged in a exhibition of speed or reckless driving on city streets or in an off-street parking facility and will impose a mandatory 30-day impoundment of the vehicle, thus preventing the continued commission of these crimes.

KEY ISSUES AND IMPACTS

Local Efforts

Traffic Engineering

Traffic mitigation efforts have been attempted. These efforts have had minimal or no impact. One attempted mitigation effort was the placement of “Bot’s dots” at several problem intersections. The dots were supposed to act as a deterrent to the spinning of donuts. It was eventually discovered that the addition of the dots proved to be an added attraction to those who performed these speed exhibitions.

Community Involvement

The Oakland communities impacted by Sideshow have been involved in efforts to rid their streets of this problem. They continue to express their dissatisfaction with this behavior at the neighborhood level through their Neighborhood Crime Prevention Councils (NCPC). Local residents have also attended at least three town hall meetings to discuss the problem with City officials.

This past year, community members banded together to create a multi-discipline Sideshow committee. Representatives from the Police Department, the Life Enrichment Agency, the Office of the City Attorney, and the Department of Parks and Recreation are also involved in this Sideshow committee.

Community members have demonstrated their displeasure with the Sideshow by organizing affected residents and staging public gatherings during Sideshows and distributing leaflets enumerating their concerns to Sideshow participants. Community members have videotaped the activity and provided the tapes to City officials, and they continue to schedule meetings with City officials to express their displeasure and demand permanent solutions. Members of the committee have appeared on KMEL radio station in an effort to discuss the problems associated with Sideshow and to urge an end to this practice.

Members of the Sideshow committee have attempted to solicit solutions from Sideshow participants. The overwhelming response from the participants were:

- There is nothing else for them to do (at 3:00 o’clock in the morning).

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- They pay taxes.
- They don't appreciate police "harassment".
- They simply want to be left alone.
- They will continue with the Sideshow because it is an "Oakland tradition" and there is nothing that can be done to stop it!

Committee members and Police also explored providing alternative venues for Sideshow activities. It was thought that by directing Sideshow participants into industrial areas that the activity could take place with minimal community impact. This resulted in severe vehicular traffic problems in the areas surrounding Oakland International Airport. It also led to complaints from business owners in the area who found their lots and property vandalized and covered with litter. One business in an industrial area near Hegenberger Road, as well as a convenience store in Hayward, were looted by Sideshow participants after they were directed out of the residential neighborhoods of East Oakland.

The problems associated with directing this activity onto Hegenberger Road are further complicated by the fact that it is contrary to the City's effort to improve and redevelop the area. Much of the vacant property (such as the Coliseum Drive-in) which would have been suitable for such alternative venues is now being redeveloped for other, more profitable uses.

An "alternative venue" idea proposed by the Police Department was to allow Sideshow participants to use the large parking lot at the Oakland-Alameda County Coliseum. This plan was to be modeled after a program in San Diego that allows High School students to use Qualcomm Stadium for racing events. Members of the Sideshow committee traveled to San Diego to see the program and discuss its operation with coordinators. It was determined that such a program would not be a viable alternative for Oakland's Sideshow because:

- The San Diego program, "Race Legal," is part of a school curriculum.
- The age of participants is much younger than that of Sideshow participants.
- "Race Legal" participants are strictly scrutinized for drug and alcohol use.
- The event ends at a time when Sideshow would just be commencing.
- This concept was discussed with Coliseum management who decided they do not want such activity occurring on the property.

Sideshow participants have expressed their reluctance to be controlled or monitored. The structured environment of legal racing is not conducive to the exhibitions of speed performed at Sideshow. Alcohol use by Sideshow participants has been found to be a problem. Those persons who attend the Sideshow generally want to participate in the activity during the late evening / early morning hours.

Law Enforcement

In the past, the Police Department attempted to use the City's anti-cruising ordinances (Ord. Nos. 11504 and 11790 C.M.S.) to combat the Sideshow problem. Originally created to abate cruising around Lake Merritt, these laws allow for the citing of drivers and passengers who pass a checkpoint twice within a four-hour period. Aside from being labor intensive, the area affected by East Oakland Sideshow activities is so large, and the participants so mobile, that use of the ordinance has been only minimally effective.

Check Points and Traffic Constriction

The Police Department has also tried using driver's license and drunk driver checkpoints. While these operations were effective at identifying and arresting drivers operating under the influence, they also proved to be labor intensive and only effective in the immediate area of operation. In addition, these operations had to close early to allow officers to respond to Sideshow generated problems at locations away from the checkpoints. The Department still uses this tactic from time to time, when staffing is available.

The Department has made every effort to ensure that strict traffic control measures are employed during Sideshow events. This method directs large numbers of cars out of residential areas and into the industrial areas around Hegenberger Road. When crowds and traffic problems in these industrial areas got out of hand, Sideshow participants were directed onto the nearby I880 freeway.

Unfortunately, it was found that Sideshow participants simply got off the freeway at the next exit and returned to the neighborhoods. To prevent this, officers were then stationed at freeway off-ramps in order to prevent exiting. This led to two additional problems - - (1) It prevented drivers who had no affiliation with Sideshow from traveling to their destinations and (2) It resulted in the displacement of the problem and the occurrence of the Sideshow to neighboring East Bay communities. Employment of this technique also created a conflict with the California Highway Patrol, who stated that the practice caused collisions. However, this practice has been found to be effective and its been determined to be legal; therefore it is still used when other enforcement strategies fail.

"Saturation" Policing

This response entails placing large numbers of officers into the area effected by Sideshow activity and ordering officers to take a minimal-tolerance approach to "order maintenance, quality of life, and traffic violations." While expensive, this strategy has also proved effective. However, some citizens have complained of being caught up in the enforcement effort despite not being involved in the Sideshow, as well as the overall appearance of a "police state" type

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operation. Saturation policing results in the relocation of police services from other areas of the City at the expense of the safety and security of those neighborhoods.

As noted above, efforts to “run” the problem out of Oakland caused other nearby communities (and the freeway system) to be overwhelmed by the Sideshow. In an effort to minimize this particular consequence, this past summer OPD organized a “multi-agency” task force to address Sideshow, a new twist on the concept of saturation policing. Officers from seven additional law enforcement agencies (San Leandro, Alameda, Union City, Hayward, Fremont, Alameda County Sheriff’s, and the CHP) participated in the effort. Over a seven week period, 205 people were arrested, 354 vehicles were towed, and 1334 citations were issued. This program was extremely effective; however, the long-term impact is still unknown and the cost to the other agencies was significant.

Towing and Evidentiary Tows

One of the most effective tools used by law enforcement to address the problems created by the Sideshow has been the towing of cars used by participants. Increased towing, in accordance with applicable provisions of the California Vehicle Code, has resulted in decreased Sideshow activity. In July of this year, Oakland officers expanded the towing of vehicles of people who engage in illegal activity during the Sideshow under California Vehicle Code (CVC) Section 22655.5(a), which allows a police officer to tow any vehicle “involved in a public offense,” be it an infraction, a misdemeanor, or a felony. The most problematic and inherently dangerous violations associated with Sideshow were identified, and authority was given to officers to tow vehicles engaging in these violations. The listed violations are:

1. Driver Permitting Passenger to Ride Outside of Vehicle, CVC §21712(a)
2. Unlawful Riding on Portion of Vehicle not Intended for a Passenger, CVC §21712(b)
3. Reckless Driving, CVC §23103(a)
4. Reckless Driving in an Off-street Parking Lot, CVC §23103(b)
5. Exhibitionist Speed/Blocking a Roadway for a Speed Contest, CVC §23109(c)
6. Passenger in a Truck Bed (driver responsibility), CVC §23116(a)
7. Passenger in a Truck Bed (passenger responsibility), CVC §23116(b)
8. Driving over a Flare or Cone Pattern, CVC §28118
9. Driving Left of the Double Solid Line, CVC §21460(a)
10. Driving on the Sidewalk, CVC §21663
11. Provisional License, CVC §12814.6(a), plus: Driving between the hours of 12:00 a.m. and 5:00 a.m., part(5)(b)(1)(A) **and/or** Transport of passengers who are under 20 years of age, part (5)(b)(1)(B)
12. Unlawful Operation After Notice, CVC §24004
13. Music Audible 50 feet from a Vehicle, CVC §27007

After consultation with the City Attorney's Office, the Alameda County Office of the District Attorney, and the courts, it was decided that in the case of egregious violations the towed vehicle could have evidentiary value. Officers have been given authority to tow vehicles with possible evidentiary value and to place indefinite holds on vehicles (at the owners expense) until the vehicle's value as evidence can be reviewed by the court (or stipulated to by the defendant).

All of the aforementioned towing practices have been codified in a formal Oakland Police Department policy, applicable citywide at any time. Additionally, due process procedures have been developed and included in the policy in order to protect some vehicle owners who use their vehicle for a business or had their vehicles towed in error.

Local Legislation

A proposed ordinance to amend the Oakland Municipal Code is pending before the Oakland City Council. The amendment will add section 8.04.001 – "Enclosure of Off Street Parking Areas and Facilities During Hours when Businesses are Closed," requiring businesses with more than 10 off-street parking spaces to secure their lots within an hour of closing. This legislation was drafted in response to the use of those parking lots by Sideshow participants and law enforcement's very limited authority to enforce the Vehicle Code in those locations, i.e., private property. For example, there is no violation for participating (observing, encouraging, facilitating, etc.) in a speed exhibition in an off-street parking lot. Additionally, the Police Department has had to post officers at several "problem" parking lots to prevent them from being overrun by Sideshow participants. These "fixed post" assignments cost at least \$120 per hour per lot (an average of least ten posts are assigned for each Sideshow event). Enactment of this legislation will enable officers to be re-deployed those resources to other assignments.

The idea of passing a local 30-day vehicle impound ordinance to address the Sideshow was considered. It was proposed that OPD could deem the vehicle a "nuisance" and therefore subject it to "abatement." However, the City Attorney believes that this type of local legislation raised a "preemption" conflict with the California Vehicle Code. Therefore, the statewide solution is being proposed.

ENVIRONMENTAL OPPORTUNITIES

A reduction in cruising and Sideshow activities would reduce the number of cars on City streets, thereby reducing exhaust emissions and the consumption of gasoline. A reduction in these events would also reduce the amount of litter that accumulates on Oakland streets, sidewalks, and parking lots as a direct result of cruising activities.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no ADA or senior citizen access issues contained in this report.

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RECOMMENDATION

Accept this report and support the proposed amendments to the California Vehicle Code as part of the City's State Legislative Agenda.

Respectfully submitted,

Richard L. Word
Chief of Police

Prepared by: Lt. D. Kozicki, Traffic Section,
Bureau of Field Operations & W. R. Uber, Admin &
Tech Division, Bureau of Services

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:

Office of the City Manager

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