

**SPECIAL JOINT MEETING OF
THE CITY COUNCIL AND
HAYWARD REDEVELOPMENT
SUCCESSOR AGENCY BOARD**

SEPTEMBER 26, 2023

**DOCUMENTS RECEIVED AFTER
PUBLISHED AGENDA**

Agenda Questions and Answers

AGENDA QUESTIONS & ANSWERS
MEETING DATE: September 26, 2023

Work Session Item [WS 23-034](#)

Spectator Ordinance Modifications: Consider Ordinance Changes Amending Chapter 4, Article 12 of the Hayward Municipal Code Relating to Spectators at Illegal Speed Contests and Exhibitions of Speed to Include Sideshows

My questions for sideshows:

1. What experts are we referencing for the basis of the updates to the ordinance?

2. What is the definition of spectator in this sense that would be fined?

3. What was the response regarding First Amendment in regards to public space?

1. In researching this topic, we relied on the legal expertise of our CAO and expertise provided by other law enforcement agencies who have like ordinances and have experienced success in deterring sideshow activity through their use (San Jose PD and others).

2. "Spectator" is defined as any individual who is present at an "illegal motor vehicle speed contest", "exhibition of speed", "sideshow" or other "reckless driving" exhibition or at a location where "preparations" are being made for such activities, for the purpose of viewing, observing, watching, or witnessing the event as it progresses. "Spectator" includes any individual at the location of the event without regard to whether the individual arrived at the event by driving a vehicle, riding as a passenger in a vehicle, walking, or arriving by some other means.

3. The First Amendment allows people to peacefully assemble in a public place and the HPD supports those who choose to exercise their right to do so. "Sideshows" and the other events outlined in the Ordinance, by their nature and legal definition, are illegal events, thus they would constitute an unlawful assembly under sections 407 and 408 of the Penal Code. Penal Code section 407 provides the following legal definition of an unlawful assembly: "Whenever two or more persons assemble together to do an unlawful act, or do a lawful act in a violent, boisterous, or

tumultuous manner, such assembly is an unlawful assembly. Penal Code section 408 makes participating in an unlawful assembly a misdemeanor offense. Moreover, the City has the ability to regulate potentially lawful speech/assembly, so long as the regulation at issue is “narrowly tailored” to serve a “compelling government interest.” Here, since the Ordinance only applies to those present for the specific purpose of viewing the illegal vehicle demonstration, it would not apply to those merely present, meaning the Ordinance is narrowly tailored. Moreover, the compelling interest served by the regulation is curbing the prevalence of illegal sideshows which threaten the health and safety of the public.

4. Can we confirm number of feet and how is it measured?

4. The distance included in the Ordinance is within 200 feet and a visual estimation is all that is required for this. In a majority of cases, “spectators” are well within 200 feet of “sideshows”.

5. I see the ordinance wording is the same. Shouldn't we add in all “public streets” in Sect. 4-12.002 DEFINITIONS “... on a highway or in an off-street parking facility...”?

5. The terms “highway” and “off-street parking facility” were taken directly from the Vehicle Code section 23103 (Reckless Driving). For the purpose of the Ordinance, we can certainly expand it and/or include clarifying language to make sure all public roadways and private property are covered in the final draft. Please feel free to provide that feedback tonight.

6. SEC. 4-12.002 DEFINITIONS, (d)(5) I think the word “sideshow” is missing. All the other sections here simply refer to the “event” (5) specifically calls out the type of events but doesn't mention sideshows.

6. SEC. 4-12.002 DEFINITIONS, subsection (d)(5) is specific to drag racing, which is why “sideshow” isn't referenced there.

7. Also, in the title to this section, I think the word “sideshow” is missing: SEC. 4-12.003 SPECTATOR AT ILLEGAL SPEED CONTEST OR EXHIBITION OF SPEED — CRIMINAL VIOLATIONS; ADMINISTRATIVE CITATIONS.

7. We can certainly add “SIDESHOW” to the title in the final draft. Thanks for catching that.