



DATE: December 5, 2023

TO: Mayor and City Council

FROM: Acting Chief of Police

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

RECOMMENDATION

That the City Council introduces amendments (Attachment II) to the Spectator Ordinance in Chapter 4, Article 12 of the Hayward Municipal Code (“HMC”) to include the definition of “sideshows” and ability to regulate sideshow spectators, to align with the Legislature’s 2021 adoption of the definition of “sideshow(s)” under Assembly Bill (“A.B.”) No. 3.

SUMMARY

Under current law, driving unsafely during sideshows is illegal, generally, being a spectator at a sideshow is not. Given the recent rise in the number of dangerous sideshows occurring throughout California, cities and counties have begun creating local ordinances as mechanisms to allow for the regulation of spectators at sideshows. This is because subject matter experts from cities across the country unanimously agree that if spectators can be curbed from attending these events, drivers will either stop holding these extremely dangerous shows or relocate to places they can find an audience.

The City of Hayward already has what is referred to as a “Spectator Ordinance,” (Article 12 of Chapter 4 of the HMC) that allows the City to regulate spectators. However, the current Spectator Ordinance, which was adopted in 2009, is deficient as it only covers spectators who are present at what are commonly known as drag races or speed contests. It does not currently allow for the regulation of spectators at sideshows. The proposed amendments, attached hereto, would cure this deficiency by updating the Spectator Ordinance to include the same definition of “sideshows” used by the Legislature in A.B. 3, introduced recently, in 2021 due to the increased prevalence of sideshows in California.

BACKGROUND

The proliferation and sophistication of “sideshows” have advanced dramatically in the last few years. They have gone from small gatherings in industrial areas during early morning

weekend hours, to taking over large intersections during broad daylight with hundreds of spectators livestreaming the event directly to social media. They often attract other criminal elements and the drivers' /spectator's coordination around law enforcement's response has become increasingly complex. Subject matter experts from cities across the country unanimously agree that if spectators can be curbed from attending, drivers will stop or relocate to places where they can find an audience.

In response to the recent increase of sideshows in California, in January of 2021, the California Legislature passed A.B. 3, which amended Section 23109(i)(2) of the California Vehicle Code, to include the following definition of "sideshow" (and increased penalties for drivers who participate in sideshows):

For purposes of this section, "sideshow" is defined as an event in which two or more persons block or impede traffic on a highway or in an off-street parking facility, for the purpose of performing motor vehicle stunts, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators.

Staff believes that including the Legislature's definition of "sideshow(s)" in the City's Spectator Ordinance will assist the Police Department in curbing the number of dangerous sideshows that occur in Hayward. While under state law, the City of Hayward can regulate drivers for driving recklessly while engaging in sideshows per the provisions of the Vehicle Code, the Vehicle Code does not provide any mechanism by which the City can regulate spectators at these illegal shows. As such, since the introduction of A.B. 3, numerous cities and counties have created what are known as "Spectator Ordinances," as mechanisms by which cities and counties can regulate spectators at these dangerous illegal shows.

As previously mentioned, the City of Hayward already has a Spectator Ordinance, which was adopted in 2009. However, the current ordinance relates solely to speed or drag races, and does not cover what the Legislature has now defined as "sideshows." Thus, in order to be able to fully regulate spectators at all illegal driving shows, including sideshows, the City is proposing minor amendments to the current Spectator Ordinance, to include the definition of "sideshows."

DISCUSSION

As the Spectator Ordinance currently stands, HPD can only cite/arrest spectators if the spectator is present at an event involving "illegal motor vehicle speed contests" or "illegal exhibitions of speed." Under California law, "a person engages in an exhibition of speed when he or she accelerates or drives at a rate of speed that is dangerous and unsafe in order to show off or make an impression on someone else."

Based on this definition, there would need to be some use of a dangerous or unsafe acceleration of speed during the sideshow for a spectator at the sideshow to fall within the purview of Hayward's Spectator Ordinance. For instance, without amendment, the City would not be able to regulate spectators at an event in which a car was not speeding but was driving

on the opposite side of the street or up and off of the sidewalk as a part of the show, since there is no element of unlawful speed.

The minor edits suggested by staff, which align with the Legislature’s intent to allow for further regulation of sideshows, would close this gap making it clear that the City can regulate any and all spectators at both a speed racing event, and a sideshow event, creating a safer environment for the residents of Hayward.

Summary of Minor Updates to Ordinance

To make up for this enforcement gap, staff have added the following types of minor updates to the current Spectator Ordinance:

1. The Ordinance currently only references California Vehicle Code § 23109, which makes the exhibition of speed unlawful and includes the new definition of “sideshow.” Staff have amended the Ordinance to also include reference to California Vehicle Code § 23103, which penalizes “reckless driving,” in order to better capture all types of unsafe driving used during sideshows;
2. Language was inserted into Sec. 4-12.001 “Purpose” to provide information on the importance of regulating sideshows and those who attend them as spectators, including information about the prevalence, popularity, and dangerous nature of sideshows;
3. The Definitions of “sideshow(s)” and “reckless driving” were added to Sec. 4-12.002. The purpose of adding these definitions is to both broaden the City’s ability to regulate all dangerous driving behavior being performed for the purpose of spectating, and to provide potential spectators notice of what the unlawful behavior entails;
4. The definition of the term “present” was inserted into Sec. 4-12.002, to provide notice to both City staff and potential violators when their “presence” at a sideshow is unlawful. Specifically defining these terms is what ensures that the standards are not unconstitutionally vague;
5. The terms “sideshow,” and “reckless driving” were added to Sec. 4-12.003, which summarizes the potential criminal/administrative penalties for violating the Ordinance;
6. The terms “sideshow and “reckless driving” were added to Sec. 4-12.004, which provides for “relevant circumstances to prove [a] violation”; and
7. The terms “sideshow” and “reckless driving” were added to Sec. 4-12.005, which discusses the admissibility of prior acts to prove a violation.

Council / Community Input from Work Session – September 26, 2023

On September 26, 2023, a Council Work Session was held during which several questions were posed and several points of feedback were provided. In addition to a request to streamline the proposed ordinance and remove redundant language, the following specific questions were asked. Staff responses are as follows:

1. *Can the term “donuts” be added to the Ordinance?*
 - a. Staff prefers to keep the language in the Ordinance consistent with the California Vehicle Code’s definition of a sideshow, which is the following: “sideshow” is defined as an event in which two or more persons block or

impede traffic on a highway or in an off-street parking facility, for the purpose of performing motor vehicle stunts, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators. See CVC section 23109. This definition includes doing “donuts.”

2. *What areas are generally impacted?*
 - a. Industrial areas, large commercial parking lots, large intersections, and roadways in some residential neighborhoods.
3. *How do we know who is a spectator?*
 - a. Section 4-12.004 of the Ordinance entitled “Relevant Circumstances to Prove the Violation” provides factors for staff to use when determining whether someone is an unlawful spectator. In addition, staff will use their training and experience to identify those unlawfully spectating versus those just passing by. Other factors to be considered by staff include but are not limited to the following:
 - i. The amount of time someone is standing near a sideshow;
 - ii. Whether they are facing the sideshow;
 - iii. If they are filming the sideshow;
 - iv. If they are interacting with people performing during a sideshow, etc.
 - b. Ultimately, staff must prove the violation, which includes a specific intent to spectate, so staff would not cite or arrest someone if there was no supporting evidence indicating a person was present for the purpose of unlawful spectating.
4. *Can we include a public service alternative?*
 - a. The City of Hayward does not currently have a public/community service program so one would need to be created before adding such an alternative. Once developed, community service options could be utilized as alternatives to criminal or administrative fines during administrative hearing processes for this ordinance or others.
5. *Can we progressively enforce this ordinance?*
 - a. As the Ordinance is currently written, it allows for progressive enforcement at the discretion of staff, which is consistent with other municipalities and State programs. Under other programs, and based on discretion, staff may choose to issue a citation to a person in lieu of making a physical arrest. Such a decision is made based on the totality of the circumstances and specific facts known at the time, including prior incidents where a person engaged in the same or similar conduct.
 - b. The Ordinance allows for both criminal and administrative enforcement at the discretion of staff based on the circumstances and facts present. Additionally, staff can elect to issue a written warning based on HPD’s current warning citation program. HPD’s records system will allow staff to query the history of a person, which will provide information regarding previous conduct, citations, or arrests. Staff can use this information to progressively enforce this Ordinance when warranted. For example, staff can issue a warning citation for a first-time offense, which can be stored in HPD’s records system. If that same person continues to engage in the same conduct in violation of the Ordinance,

he or she can be issued administrative or criminal citations for subsequent offenses.

6. *Does this apply to public and private roads?*
 - a. No. The Ordinance, which mirrors the California Vehicle Code, only applies to public roads and off-street parking lots.
7. *Does the Ordinance apply to community members who are at a sideshow for the purpose of reporting it?*
 - a. No. If a person was temporarily present at a sideshow event for the purpose of gathering information and providing it to HPD, he or she would not be subject to enforcement under the Ordinance. Having said that, a person does not have to physically be present at a sideshow event to report it. Staff recommends community members stay clear of sideshow events and report them from a distance, to avoid confusion and for their individual safety. If a person chooses to temporarily attend for the purpose of reporting and that person is issued a citation, he or she can appeal the citation and bring supporting evidence showing he or she was not present for the purpose of unlawfully spectating.
8. *Data: Staff were asked to provide data related to this project.*
 - a. Since 2017, there have been 36 calls for service (CFS) related specifically to “sideshow” activity. However, HPD consistently receives community feedback indicating sideshow events happen regularly in certain areas, which is supported by physical evidence (e.g., circular tire marks covering an intersection, etc.).
 - b. Since 2012, there have been 366 citations issued to spectators related to the current Street Racer Spectator ordinance.
 - c. HPD has been actively participating as part of the RESET (Regional Sideshow Enforcement Team), which is a collaborative effort spearheaded by the Alameda County Sheriff’s Office (ACSO). The joint team conducts enforcement operations focused solely on sideshow activity and provides intelligence for sideshow activity within Alameda County. Currently, operations are conducted every other week with the Alameda County Sheriff’s Office (ACSO), California Highway Patrol (CHP), Hayward Police Department (HPD), and San Leandro Police Department (SLPD). Operations rotate between jurisdictions; however RESET maintains the flexibility to move enforcement efforts to a different participating member’s jurisdiction based on intelligence of planned sideshow activity and/or in-progress sideshow activity. These efforts have yielded much success in deterring and responding to sideshow activity throughout the jurisdictions of participating RESET agencies. The following is data related to operations conducted by RESET, which has been collected based on operations in all participating jurisdictions:

ALL DATA AS OF 10/21/2023	
Misdemeanor Arrests	119
Felony Arrests	53
TOTAL ARRESTS	172
MALE	154
FEMALE	18
OFFICER ACTIVITY	
Traffic/Enforcement Stops	1,253
Probation Searches	108
Firearms Seized	23
Pursuits	7
Vehicles Towed	198
Use of Force Incidents	13
Citations Issued	614
Stolen Vehicles Recovered	20
Officer Injuries	0
Patrol Vehicle Collisions	1
ARREST TYPES	
Warrant	26
Firearms	23
Narcotics	15
Stolen Vehicle	12
Stolen Property	2
Sideshow/Reckless Driving	22
Driving Under the Influence (DUI)	42
Other	19
Known Sideshows Prevented	4

Enforcement/Penalties

The Hayward Police Department (HPD) would be responsible for enforcement of this Ordinance. Under the Ordinance, HPD has the option of providing a written warning (warning citation) or enforcing the Ordinance criminally or administratively. If HPD decides to enforce the Ordinance criminally, a spectator unlawfully attending an illegal vehicle show may be charged with a misdemeanor, subject to a maximum of six (6) months in jail and a fine of one thousand dollars (\$1,000).

If HPD chooses to enforce the Ordinance administratively, a first violation of the Ordinance would result in an administrative citation with a five hundred (\$500) fine. A second violation would result in an administrative citation and a seven hundred fifty dollar (\$750) fine. A third/any subsequent violation(s) would result in an administrative citation with a one thousand dollar (\$1,000) fine. The City would need to issue a notice of violation within thirty (30) days of the violation, which the violating person can then challenge via the administrative hearing process set forth in Article 7 of Chapter 1 of the Hayward Municipal Code.

This Ordinance has been in place since 2009 and has been used primarily to educate and deter potential violators. The goal in updating this Ordinance is to provide the City with a variety of options to address the safety concerns associated with sideshows and to serve as a deterrent for would-be participants and spectators. These options include the issuance of warning citations, administrative citations, and/or criminal citations by the HPD. The City recognizes the concerns associated with an Ordinance designed to include the potential enforcement of spectators; however, the need to allow for these options in the interest of community safety outweighs the concerns presently. These options are not designed for use on individuals or groups protected by State and Federal law, nor would they be used to disproportionately impact such individuals or groups. The Ordinance includes very specific language, identifies very specific conduct, and identifies very specific processes for appealing a violation, which can ensure the Constitutionality of the Ordinance as well as the equal enforcement of it.

FISCAL IMPACT

There is no fiscal impact associated with this item.

STRATEGIC PRIORITIES

This agenda item relates directly to the Council's Strategic Initiative to Enhance Community Safety & Quality of Life as it relates to the cleanliness and blight reduction goals. It would also have secondary benefits to the initiatives focusing on Investing in Infrastructure by protecting City-Owned facilities & Property.

NEXT STEPS

Following this public hearing, staff will make any appropriate changes to the ordinance language and will return to Council for adoption of the updated Ordinance during a future Council meeting.

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Approved by:



Kelly McAdoo, City Manager