

ORDINANCE No. 23-

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA AMENDING CHAPTER 4, ARTICLE 12 OF THE HAYWARD MUNICIPAL CODE REGARDING SPECTATORS AT ILLEGAL SPEED CONTESTS AND EXHIBITIONS OF SPEED

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 4, Article 12 of the Hayward Municipal Code is amended to read as follows:

ARTICLE 12 SPECTATORS PROHIBITED AT ILLEGAL SPEED CONTESTS, SIDESHOWS, AND EXHIBITIONS OF SPEED

SEC. 4-12.001 PURPOSE.

The Council for the City of Hayward finds and declares as follows:

Pursuant to California Vehicle Code Sections 23103 and 23109, motor vehicle speed contests, sideshows and exhibitions of speed conducted on public streets and highways are illegal. Motor vehicle speed contests and exhibitions of speed are more commonly known as street races or drag races. Streets within the City of Hayward have been the site of continuing and escalating illegal street racing and sideshows over the past several years. Such street racing conduct threatens the health and safety of the public, interferes with pedestrian and vehicular traffic, creates a public nuisance, and interferes with the right of private business owners to enjoy the use of their property within the City of Hayward.

The illegal street races occur on a regular basis on various streets within the City. Hundreds of racers and spectators gather on the streets late at night and in the early morning hours, blocking the streets and sidewalks to traffic, forming a racetrack area, placing bets, and otherwise encouraging, aiding and abetting the racing process.

Illegal street racers accelerate to high speeds without regard to oncoming traffic, pedestrians, or vehicles parked or moving nearby. The racers drive quickly from street to street, race for several hours, and then move to other locations upon the arrival of police. Those who participate in this illegal activity are very sophisticated, using their cell phones, police scanners, and other electronic devices to communicate with each other to avoid arrest. They also use the Internet to provide information on where to race, and give advice on how to avoid detection and prosecution. Traffic accidents, property crimes and calls for police service have increased.

In most cases, illegal street races attract hundreds of spectators. The mere presence of spectators at these events fuels the illegal street racing and creates an environment in which these illegal activities can flourish. In 2008 alone the Hayward Police Department had over eighty (80) documented calls for service for street racing incidents. Many of these incidents revealed from seventy-five (75) to over two hundred (200) vehicles involved in street racing where the informants reported nearly being hit by street racing vehicles, roads being blocked, traffic control devices being ignored and a clear danger being presented by the activities. Speeds have been estimated at 75—100 MPH by those reporting the activity.

Sideshows occur on a regular basis on various streets within the City. Hundreds of drivers and spectators gather on the streets late at night and in the early morning hours, blocking the streets, sidewalks, and off-street parking facilities to traffic. Sideshow drivers perform motor vehicle stunts, use dangerous and unsafe acceleration of speed, and other reckless driving without regard to oncoming traffic, pedestrians, or vehicles parked or moving nearby and do so to show off or make an impression on spectators.

Sideshow drivers and spectators drive quickly from street to street, perform their stunts, and then move to other locations upon the arrival of police. Those who participate in this illegal activity are very sophisticated, using their cell phones, police scanners, social media, and other electronic devices to communicate with each other to avoid arrest. They also use the Internet to provide information on where to gather and when and give advice on how to avoid detection and prosecution. Violent crimes, traffic accidents, property crimes and calls for police service have increased, and sideshows have gained popularity. In most cases, sideshows attract hundreds of spectators. The mere presence of spectators at these events fuels the illegal driving stunts and creates an environment in which these illegal activities can flourish.

This article makes evidence of specified prior acts admissible to show the propensity of the defendant to be present at or attend illegal street races and/or sideshows, if the prior act or acts occurred within three (3) years of the presently charged offense. This article is adopted to prohibit spectators at illegal street races and/or sideshows with the aim of significantly curbing this criminal activity. The article targets a very clear, limited population and gives proper notice to citizens as to what activities are lawful and what activities are unlawful. In discouraging spectators, the act of organizing, participating in or spectating at illegal street races and/or sideshows will be discouraged.

SEC. 4-12.002 DEFINITIONS.

- (a) "Illegal motor vehicle speed contests" or "illegal exhibitions of speed" means any speed contest of exhibitions of speed referred to in California Vehicle Code Sections 23109~~(a) and 23109(c)~~.
- (b) "Sideshow" means any unlawful reckless driving or exhibition of speed as defined by California Vehicle Code Sections 23103 and 23109, including but not limited to 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, including but not limited to deliberately driving in circles at high rates of speed until vehicle wheels break or lose traction with the roadway, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators. (California Vehicle Code Sections 23109(i)(2))
- (c) "Reckless driving" means any driving which comes within the confines of California Vehicle Code Section 23103, including sideshows, illegal motor vehicle speed contests, illegal exhibitions of speed and speed racing.
- (d) "Preparations" for the "illegal motor vehicle speed contest", "exhibition of speed", or "sideshow" include, but are not limited to situations in which:
 - (1) A group of motor vehicles or individuals has arrived at a location for the purpose of participating in or being "spectators" at the event;
 - (2) A group of individuals has lined one (1) or both sides of the street or highway for the purpose of participating in or being a "spectator" at the event;

- (3) A group of individuals has gathered on private property open to the general public without the consent of the owner, operator or agent thereof for the purpose of participating in or being a "spectator" at the event;
 - (4) One (1) or more individuals has impeded the free public use of a public street or highway by actions, words, or physical barriers for the purpose of conducting the event;
 - (5) Two (2) or more vehicles have lined up with motors running for an "illegal motor vehicle speed contest" or "exhibition of speed";
 - (6) One (1) or more drivers is revving his engine or spinning his tires in preparation for the event; or
 - (7) An individual is stationed at or near one (1) or more vehicles serving as a race starter.
- (e) "Spectator" means any individual who is present at an "illegal motor vehicle speed contest," ~~or~~ "exhibition of speed," "sideshow" or other "reckless driving" exhibition or at a location where "preparations" are being made for such activities, for the 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.

(f) A person is "present" at the "illegal motor vehicle contest," "exhibition of speed," "sideshow," or other "reckless driving" exhibition, if that person is within two hundred (200) feet of the location of the race or exhibition, or within two hundred (200) feet of the site of the Preparations for those activities.

**SEC. 4-12.003 SPECTATOR AT ILLEGAL SPEED CONTEST OR EXHIBITION OF SPEED—
CRIMINAL VIOLATIONS; ADMINISTRATIVE CITATIONS.**

- (a) Any individual who is knowingly present as a "spectator," either on a public street or highway, or on private property open to the general public without the consent of the owner, operator, or agent thereof, at an "illegal motor vehicle speed contest," "exhibition of speed," "sideshow," or other "reckless driving" exhibition, is guilty of a misdemeanor subject to a maximum of six (6) months in jail and a fine of one thousand dollars (\$1,000.00).
- (b) Any individual who is knowingly present as a "spectator," either on a public street or highway, or on private property open to the general public without the consent of the owner, operator, or agent thereof, where "preparations" are being made for an "illegal motor vehicle speed contest," "exhibition of speed," "sideshow," or other "reckless driving" exhibition is guilty of a misdemeanor subject to a maximum of six (6) months in jail and a fine of one thousand dollars (\$1,000.00).
- ~~(c) An individual is present at the "illegal motor vehicle speed contest," "exhibition of speed," or "sideshow" if that individual is within two hundred (200) feet of the location of the event, or within 200 feet of the location where "preparations" are being made for the event.~~
- (c) As an alternative to criminal enforcement of the provisions of this Article, the Chief of Police (or his or her designee), at his or her discretion, may issue an administrative citation for a violation of this Article. A first violation of this Article shall result in an administrative citation with a five hundred dollar (\$500.00) fine. A second violation shall result in an administrative citation with a seven hundred fifty dollar (\$750.00) fine. A third or

subsequent violation shall result in an administrative citation with a one thousand dollar (\$1,000.00) fine.

The Chief of Police (or his or her designee) shall give notice of a violation of this Article by issuing the administrative citation to any and all responsible persons identified by the Chief of Police within thirty (30) days of the violation. The issuance and enforcement of an administrative citation shall be subject to the processes and procedures set forth in Article 7 of Chapter 1 of this Code.

Exemption: Nothing in this section prohibits law enforcement officers or their agents from being "spectators" at an "illegal motor vehicle speed contest," "exhibition of speed," "sideshow," or other "reckless driving" exhibition in the course of their official duties."

SEC. 4-12.004 RELEVANT CIRCUMSTANCES TO PROVE VIOLATION.

- (a) The time of day;
- (b) The nature and description of the scene;
- (c) The number of people at the scene;
- (d) The location of the individual charged in relation to any individual or group present at the scene;
- (e) The number and description of motor vehicles at the scene;
- (f) That the individual charged drove or was transported to the scene;
- (g) That the individual charged has previously participated in an "illegal motor vehicle speed contest," "exhibition of speed," "sideshow," or other "reckless driving" exhibition;
- (h) That the individual charged has previously aided and abetted an "illegal motor vehicle speed contest," "exhibition of speed," "sideshow," or other "reckless driving" exhibition;
- (i) That the individual charged has previously attended an "illegal motor vehicle speed contest," "exhibition of speed," "sideshow," or other "reckless driving" exhibition;
- (j) That the individual charged previously was present at a location where "Preparations" were being made for an "illegal motor vehicle speed contest," "exhibition of speed," "sideshow," or other "reckless driving" exhibition or where an "illegal motor vehicle speed contest," "exhibition of speed," "sideshow," or other "reckless driving" exhibition was in progress.

SEC. 4-12.005 ADMISSIBILITY OF PRIOR ACTS.

The list of circumstances set forth in Sec. 4-12.004 is not exclusive. Evidence of prior acts may be admissible to show the propensity of the defendant to be present at or attend an "illegal motor vehicle speed contest," "exhibition of speed," "sideshow," or other "reckless driving" exhibition if the prior act or acts occurred within three (3) years of the presently charged offense. These prior acts may always be admissible to show knowledge on the part of the defendant that an "illegal motor vehicle speed contest," "exhibition of speed," "sideshow," or other "reckless driving" exhibition was taking place at the time of the presently charged offense. Prior acts are not limited to those that occurred within the City of Hayward.

Section 2. California Environmental Quality Act (CEQA). The City Council independently finds and determines that this action is exempt from CEQA pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code; and, under Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

Section 3. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 4. This Ordinance shall become effective thirty (30) days after adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ___ day of __, 2023, by Council Member _____,

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ___ day of _____, 2023, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS: