



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Anthony Mata

SUBJECT: SEE BELOW

DATE: June 21, 2021

Approved

Date

6/23/2021

SUBJECT: ORDINANCE PROHIBITING ENCOURAGING SPECTATORS TO GATHER AT STREET RACES AND RECKLESS DRIVING EXHIBITIONS

RECOMMENDATION

Approve an ordinance adding Section 10.50.025 to Chapter 10.50 of Title 10 of the San José Municipal Code that would prohibit encouraging spectators to gather at street races and reckless driving exhibitions.

OUTCOME

Approving this ordinance would make it unlawful to encourage others to attend an illegal street race and reckless driving exhibition as a spectator, providing the Police Department with an additional tool to enforce against those who knowingly encourage, promote, instigate, assist, facilitate, aid, or abet spectators at street racing and reckless driving exhibitions in San José.

BACKGROUND

At the Rules and Open Government Committee meeting on March 3, 2021, the Police Department presented a plan to Committee members to address illegal street racing and sideshows. As part of this presentation, the Police Department proposed an ordinance that would make it unlawful to encourage others to attend an illegal street race and reckless driving exhibition as a spectator. At the Committee's request, this was further presented to City Council on March 30, 2021. The City Council directed staff to develop the ordinance and bring it before Council for approval.

San José continues to adapt to the dangerous and tragic ramifications of illegal street racing and sideshows incidents that have become commonplace throughout the Bay Area.

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The San José Police Department is required to draw tremendous amounts of resources for these illegal events. These events put the community at risk and have shown an increased level of violence not only in San José, but neighboring jurisdictions. These reckless driving exhibitions continue to impact the safety and quality of life for all community members in San José.

In the late night and early morning hours, hundreds of illegal street racers and spectators continue to converge on various public streets and off-street parking facilities in both commercial and residential neighborhoods. When patrol cars descend on an illegal sideshow site, the racers and spectators attempt to flee the area at high speeds and then meet up at other locations to start their illegal activities again. These events are encouraged usually from one or a just a few people who, through social media, text, and phone calls spread the word to others to participate.

Impacting Emergency Response

To deal with these large-scale illegal events, the San José Police Department has continued to take resources out of the patrol beat structure. These officers normally would be dealing with 911 calls. Not only do these events remove patrol officers from being available for community needs, those officers who continue to respond to those calls often become entangled in large traffic blockages caused by the unpredictable street racing and sideshow events. These traffic blockages cause all emergency response entities (police, fire, ambulance) to have a delayed response to critical situations.

The San José Police Department has been bolstering our Racing Enforcement Detail (R.E.D.). The R.E.D. team is active in suppressing racing/sideshow activity and pursuing suspects under current laws. California Vehicle Code Section 23109(a) prohibits motor vehicle speed contests on public highways, where speed contests are defined as one vehicle racing against another vehicle or against a clock. Section (b) prohibits aiding or abetting such activity, while section (c) prohibits motor vehicle speed exhibitions. California Vehicle Code Section 23103 (a) prohibits a person to drive upon a highway with wanton disregard for the safety of persons or property. Section (b) prohibits a person to drive upon an off-street parking facility with wanton disregard for the safety of persons or property. The R.E.D. team continues to relentlessly follow up on enforcement by towing vehicles involved in illegal-racer events. The San José Police Department continues to coordinate with adjoining agencies and other Bay Area agencies to share intelligence and create a Task-Force approach to these illegal exhibitions.

Street racing and sideshows attract spectators as well as participants. Those spectators organically connect through social media outlets to attend the illegal street racing and sideshow events. Spectators initially may arrive to watch the “show,” but they often become direct facilitators of the illegal events. Through word of mouth, social media posts, and/or other technological means, facilitators guide other participants and spectators to venues to conduct illegal racing/sideshows. By directing other spectators to those other venues for illegal racing/sideshows, they aid in encouragement of gathering additional spectators.

ANALYSIS

The ordinance proposed under this item will provide the Department with an additional tool to discourage those encouraging street racing and sideshow events in San José. State law provides ample basis to enforce against participants in street racing, but the Department currently struggles to enforce against those who encourage spectators to gather for the events. Given the important role facilitators play in encouraging and popularizing these events, discouraging their participation is an important step in combating the problem. Staff's proposed ordinance would make it illegal to knowingly encourage, promote, instigate, assist, facilitate, aid, or abet the gathering of spectators for a street race or sideshow in San José. The proposed ordinance has been drafted to narrowly target only those individuals who knowingly engage in this encouragement. Encouraging others to become spectators often leads to their participation in the event. This ordinance will hold accountable those who elect to facilitate the gathering of spectators at street racing and sideshow events in San José. Staff is not proposing adopting an ordinance that would prohibit the encouragement or promotion of the street races themselves because the California Vehicle Code already prohibits aiding and abetting a speed contest, therefore the City would be preempted from adopting its own ordinance on that topic.

The proposed ordinance will clearly notice those facilitating these illegal events of our intention to enforce against those who elect to encourage these illegal activities in San José. To the best of our knowledge, we are the first city to propose enactment of this additional legislation and other agencies are looking for our leadership to both enforce the spectator law as well as enact this law sanctioning the facilitation of spectators.

The current spectator ordinance, in Chapter 10.50 of the San José Municipal Code, defines a "spectator" as "any person who is present at an illegal motor vehicle speed contest or exhibition of speed for the purpose of viewing, observing, watching, or witnessing the event as it progresses." A spectator is present at a street racing event if they are within 200 feet of the location where the event is being held or where preparations are being made for it to begin. The existing spectator ordinance has been a highly advantageous tool to impact a sideshow in progress. Spectators who receive citations recognize that the San José Police Department is conducting enforcement to curb this behavior.

Enforcement

The San José Police Department currently conducts enforcement through both a group of volunteer on-duty officers taken from the active patrol structure every time a street racing or sideshow incident occurs. This impacts public safety's ability to respond to emergency 911 calls by lowering the number of available officers on the street. Recently, the City of San José approved additional monies to pay for officer overtime to decrease the impacts of taking officers from the normal patrol beat structure during these illegal events. This, combined with a dedicated R.E.D. team, will provide a strong response to these illegal events, and enable relentless follow up on those who encourage and enable spectators toward the City of San Jose.

Under this ordinance, officers would be empowered to sanction those who encourage these illegal events in our City. Whether through social media or other means, officers would determine who is enabling the spectators to meet up in San José and enforce this new ordinance or those who encourage the promotion of an event that comes to fruition in San Jose. Officers would also consider other relevant evidence that could include that the person has previously participated in or been a spectator at a street race or reckless driving exhibition, or that the person has previously aided and abetted street racing. Currently, there are no legal sanctions taken against those who successfully encourage hundreds of spectators to come and watch these illegal street shows.

The individuals who are currently orchestrating these large crowds are known to San José Police Department. Often, they have been stopped, cited, and observed participating in the illegal street events they have encouraged the spectators to attend. More times than not, the spectators are cited for their involvement, but those who encouraged the event are not cited. Either officers did not observe them as spectators or they did not qualify for other violations, even though the officers have known they were the initial catalyst for the event. Individuals who violate this ordinance will be guilty of a misdemeanor and can be punished by a fine up to one thousand dollars or by imprisonment in the county jail for a period not exceeding six months, or by both a fine and imprisonment.

Initial Actions

The San José Police Department is prepared to immediately engage in enforcement against illegal sideshow and street racing activities. Through California Vehicle Code Violations, the current San Jose Municipal Code Spectator Ordinance, and prohibiting the encouragement of spectators through this new ordinance, officers will be empowered to cover the majority of issues they face during these incidents and through investigative follow up.

Encouraging the spectators to watch or participate in a sideshow/street race is no small feat for the individuals currently enabling the events. Many are responsible for dozens of large-scale events in San Jose that have led to major injuries, death, and violence. There will be no grace period for these individuals once this ordinance is enacted. The effort to properly document, obtain court orders, and enforce this ordinance is significant. Holding the individuals accountable for their actions will be a significant step toward changing behavior and setting a standard that the City of San José will not tolerate any participation, spectating, or encouraging of these illegal events. This, combined with rigorous enforcement should an illegal event start in San José, will discourage our city from being a destination for these events.

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Outreach

San José's Vision Zero Action Plan notes that "one traffic death is one too many." In laying out San José's strategy to eliminate traffic fatalities and significantly reduce serious injury crashes, it identifies an important role for traffic enforcement, noting that "illegal behavior and poor judgment by roadway users contribute to many of the fatal crashes in San José." Enforcement is an important strategy to encourage individuals to make better choices. The San José Police Department is committed to ensuring that the public is safe on our streets. While the proposed ordinance will not end street racing on its own, in concert with the Department's other enforcement strategies it will be a powerful tool to suppress this dangerous practice.

This ordinance will be messaged through as many forms of media as practical to notice those participating or considering participating in illegal street racing and sideshow events in San José. The message is clear that San José is continuing to provide officers with innovative tools to keep illegal events like these out of our city.

CONCLUSION

The proposed ordinance will provide the San José Police Department with an additional tool to discourage those encouraging street racing and sideshow events in San José.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

EVALUATION AND FOLLOW-UP

The San José Police Department will follow-up with an implementation informational memorandum in 6 months or as directed by Council.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the June 29, 2021 Council Meeting.

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COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

There is no City commission recommendation for this proposed ordinance.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

/s/
ANTHONY MATA
Chief of Police

For questions, please contact Captain Todd Trayer, San José Police Department, at (408) 277-4631.

AM:SD:TT