



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL **FROM:** Nora Frimann
Jennifer A. Maguire

SUBJECT: REPEAL OF CHAPTER 11.34 OF TITLE 11 OF THE SAN JOSE MUNICIPAL CODE – REGULATION OF CRUISING **DATE:** June 17, 2022

RECOMMENDATION

Approve an ordinance repealing Chapter 11.34 of Title 11 of the San Jose Municipal Code – Regulation of Cruising.

OUTCOME

Approval of this recommendation will repeal the cruising ordinance, SJMC Chapter 11.34 – Regulation of Cruising.

BACKGROUND

On May 11, 2022, the Rules Committee unanimously approved a memorandum from Councilmember Peralez recommending the repeal of the cruising prohibition contained in San Jose Municipal Code (SJMC) Chapter 11.34. The Rules Committee directed the City Administration to submit a City Manager’s Budget Addendum (MBA) that would repeal SJMC Chapter 11.34, and fines, fees, or signage associated with the regulation of cruising. SJPD Chief Anthony Mata released MBA #29, Repeal of SJMC Chapter 11.34 – Regulation of Cruising in response to the Rules Committee direction (MBA #29 is included as an attachment to this memorandum). At the June 14, 2022 City Council meeting, as part of its action on the Mayor’s June Budget Message, the City Council approved a recommendation contained in a memorandum from Councilmembers Peralez, Carrasco, Davis, and Arenas to include MBA #29 as part of the approval of the Budget Message. This memorandum responds to the Council’s direction by proposing the repeal of SJMC Chapter 11.34.

ANALYSIS

MBA #29 provides a detailed history of the ordinance and analysis of repeal of the cruising prohibition. As noted above, MBA #29 is attached to this memorandum for reference. This memorandum brings forward for City Council consideration an ordinance repealing SJMC Chapter 11.34, in accordance with City Council direction at its June 14, 2022 meeting.

CONCLUSION

As directed by the City Council, this ordinance will repeal SJMC Chapter 11.34 – Regulation of Cruising.

EVALUATION AND FOLLOW-UP

The Department of Transportation will remove cruising prohibition signs currently posted in the public right of way. As needed, the Police Department will provide updates on any emerging issues related to repeal of the cruising prohibition through the Police Department Operations and Performance Bi-monthly Status Report to the Public Safety, Finance, and Strategic Support Committee.

CLIMATE SMART SAN JOSÉ

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

PUBLIC OUTREACH

This memorandum will be posted on the City's Council agenda website for the June 28, 2022 Council meeting.

COORDINATION

This memorandum has been coordinated with the Police Department and the Department of Transportation.

HONORABLE MAYOR AND CITY COUNCIL

June 17, 2022

Subject: Repeal of Chapter 11.34 of Title 11 of the San Jose Municipal Code – Regulation of Cruising

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CEQA

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

/s/

NORA FRIMANN
City Attorney



JENNIFER A. MAGUIRE
City Manager

For questions, please contact Peter Hamilton, Assistant to the City Manager at (408) 535-7998.

Attachment: MBA #29, Repeal of San José Municipal Code Chapter 11.34 – Regulation of Cruising



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Anthony Mata

**SUBJECT: REPEAL OF SAN JOSÉ
MUNICIPAL CODE CHAPTER
11.34 – REGULATION OF CRUISING**

DATE: May 31, 2022

Approved

Date: 6/1/2022

BACKGROUND

On May 5, 2022, Councilmember Peralez submitted a memorandum to the Rules and Open Government Committee regarding eliminating the regulation of cruising from the San José Municipal Code.¹ On May 11, 2022, the Rules and Open Government Committee directed “the City Manager to submit a Manager’s Budget Addendum that will eliminate San José Municipal Code 11.34, Regulation of Cruising, and fines, fees or signage associated with this.”²

This Manager’s Budget Addendum responds to the direction from the Rules Committee and provides additional information and alternatives for City Council consideration. Regulation of cruising is addressed in San José Municipal Code Chapter 11.34.³ A copy of this chapter is included as Attachment 1.

History

On November 18, 1986, the City of San José adopted ordinance 22385, adding Chapter 11.34 to the Municipal Code, thereby regulating cruising. The ordinance recitals referenced concern that cruising was a source of undue traffic congestion which caused air and noise pollution, that cruising prevented persons from accessing residential and business properties, and that cruising impeded the movement of emergency vehicles. The recitals also stated that cruising created an environment of fear, reprisal, and criminal activity, against both persons and property. On its first reading on October 28, 1986, the Mayor and City Council voted in favor of the ordinance unanimously on a motion by Councilmember Alvarez, seconded by Councilmember Williams. Anecdotally, this ordinance was adopted in response to the cruising occurring on Santa Clara Street, Story Road, and King Road.

¹ <https://sanjose.legistar.com/View.ashx?M=F&ID=10872120&GUID=E9DACF8A-0ED3-4873-B8F8-B4837E0237AD>

² Details from this meeting may be found here:

<https://sanjose.legistar.com/MeetingDetail.aspx?ID=965421&GUID=A379E5E8-BB7D-4760-9FC1-B673963632C6&Options=info&Search=>

³ https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT11VETR_CH11.34RECR

Cruising vs. Sideshows

As defined in the Municipal Code, cruising is the repetitive driving of any motor vehicle past a traffic-control point in congested traffic at or near the traffic-control point. A traffic-control point is a location along a public street or highway utilized by a police officer on duty in the affected area as an observation point in order to monitor traffic conditions for potential violations of the cruising ordinance. The act of repeatedly driving past a point is not prohibited by state or federal law. It is only illegal through the ordinance in the Municipal Code.

Currently, there is no legal definition of a sideshow in the Municipal Code or state law. However, the acts commonly exhibited at sideshows are listed in Municipal Code Chapter 10.50 – Spectators Prohibited at Street races and Reckless Driving Exhibitions.⁴ Those acts are prohibited by state law:

- 23103(a)⁵ – Reckless driving (e.g., “doing doughnuts”)
- 23109(a)⁶ – Speed contest (i.e., racing)
- 23109(c)⁷ – Exhibition of speed (e.g., spinning tires)

It should be noted these violations are misdemeanors, not infractions. Therefore, they may carry up to one year in jail and up to a \$1,000 fine.

The differentiation between cruising and sideshows exists in the actions defining the terms. The act that establishes cruising, driving repeatedly past a traffic control point, is not a violation of state law, although subdivision (k) of California Vehicle Code section 21100 authorizes local authorities to adopt rules and regulations by ordinance or resolution regulating cruising. The acts that define a sideshow, such as reckless driving and speed contest, were apparently considered to be sufficiently dangerous by the Legislature to warrant direct regulation as misdemeanors in the Vehicle Code while the question of whether to regulate cruising was left to the discretion of local authorities.

Fines

There are only two prohibitory sections of Municipal Code Chapter 11.34, both of which are infractions:

- 11.34.010⁸ – Cruising Prohibited – No person shall engage in the activity known as "cruising," as defined in this chapter, on the public streets or highways of the city San José.

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https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT10PUPEMOWE_CH10.50SPPRS_TRAREDREX

⁵ https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=23103.&lawCode=VEH

⁶ https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=23109.&lawCode=VEH

⁷ https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=23109.&lawCode=VEH

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https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT11VETR_CH11.34RECR_11.34.010CRPR

- 11.34.070⁹ - Violation of this Chapter – Any person who, after having received a written notice as described in Section 11.34.060, subsequently drives past the same traffic-control point within a four-hour period shall be in violation of this chapter.

Violations of the cruising ordinance are included as a list of infractions in San José Municipal Code section 1.08.020, which lists the following schedule of fines:

San José Municipal Code Section	Offense	Administrative Citation Fine
11.34.010	1 st Offense = Cruising Prohibited	\$ 100
11.34.010	2 nd Offense within 1 year = Cruising Prohibited	\$ 250
11.34.010	3 rd Offense within 1 year = Cruising Prohibited	\$ 500
11.34.010	4 th Offense within 1 year = Cruising Prohibited	Misdemeanor: fine up to \$1,000 and/or imprisonment in County Jail up to 6 months
11.34.070	Cruising within 4 hours of being cited for cruising	\$ 100

These cruising offenses are filed as infractions in the Traffic Division of the Superior Court of California in the County of Santa Clara (Superior Court) and are eligible for penalty assessments pursuant to State of California Penal Code 1464, per the Superior Court 2021 Traffic Bail Schedule.¹⁰

Frequency

On August 20, 2007, the Department implemented an electronic citation (e-cite) system. This supplemented the handwritten citation system but did not replace it. The devices were expensive and required training to use. As a result, a limited number were deployed in the field, primarily to the Traffic Enforcement Unit and select members of the Patrol Division. Over the years, e-cites have increased in use, but written citations are still the standard method of citation.

In the e-cite system, the Crime Analysis Unit is able to data-mine the types of citations written. To date, there has not been any e-cites written for Municipal Code section 11.34.010. This does not mean there have been no handwritten citations for this violation. It is not feasible to determine if there were any such citations, as a Police Data Specialist would need to read every handwritten citation.

A search of the Computer-Aided Dispatch (CAD) system found 231 events with the word “cruising” used in the event. However, in looking at these events, the word is used in numerous contexts, usually with the reporting party describing a vehicle driving through their neighborhood.

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https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT11VETR_CH11.34RECR_11.34.070VICH

¹⁰ https://www.sccourt.org/documents/traffic_bail%202021.pdf

The Finance Department is unable to establish the number of fines collected due to the fact the fines are collected by the County of Santa Clara, as outlined in the Fiscal Impact section below.

Based on the above, the Police Department is unable to establish the frequency of cruising citations.

ANALYSIS

Public Safety Concerns

Cruising can lead to quality-of-life issues and illegal activities as outlined below. The current ban provides law enforcement the opportunity to address these concerns before they develop. The following is a list of quality-of-life issues common to cruising:

- Noise from revving engines, modified exhaust systems, amplified music, and horns
- Congested pedestrian traffic
- Congested vehicle traffic
- Difficulty in the movement of emergency vehicles

The following is a list of illegal actions associated with cruising:

- 21956(a)¹¹ – Pedestrian in the roadway (e.g., when a pedestrian comes into the street to look at a vehicle or communicate with its occupants)
- 22400(a)¹² – Impeding traffic (e.g., a vehicle driving slow and disrupting the normal flow of traffic)
- 27001(b)¹³ – Unlawful use of the horn (e.g., honking to garner attention)

In addition, there are two types of driving behaviors that are particularly concerning. Often, lowrider vehicles are equipped with hydraulic or pneumatic pumps, allowing the body of the vehicle to be independently lifted and lowered at each wheel's suspension. When this raising and lowering is timed correctly, it creates a bouncing motion that may be further exacerbated by the springs at each wheel's suspension. This activity is called "hopping." When the wheels of the vehicle leave the ground, it qualifies under reckless driving, a violation of California Vehicle Code section 23103(a).

Often, during a cruise, vehicles will be stopped in congested traffic. To further draw attention, a driver will "do a burnout." This is when the driver of a vehicle locks the front wheels, revs the engine to build torque, and causes the rear wheels to lose traction. The rear wheels spin, creating a loud noise and smoke. While the rear wheels are spinning, the driver does not have control over the vehicle. This action qualifies as an exhibition of speed, a violation of California Vehicle Code section 23109(c).

¹¹ https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=21956.&lawCode=VEH

¹² https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=22400.&lawCode=VEH

¹³ https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=27001.&lawCode=VEH

In addition to the above, there are several issues typical of gathering large crowds such as fights, assaults, robberies, and vandalism.

Fiscal Impact

While the City does receive monies from the County of Santa Clara for the City's traffic infractions¹⁴, as the City does not directly collect these Administrative Citation Fines, staff does not know how much has been collected that is specifically chargeable to violations under Municipal Code chapter 11.34. However, the impact of no longer receiving revenue from infractions associated with cruising is expected to be minimal.

There are no current records enumerating the quantity of cruising signs throughout the City. The Transportation Department estimates between 20 and 30 signs exist on Santa Clara Street. A one-person crew is able to remove five signs per hour. Therefore, removing these signs would take approximately six hours for one Maintenance Worker position at approximately \$60 per hour, for a total cost of approximately \$360. Additional signs may be located along Story, King, and White Roads. Any costs would increase proportional to the additional signage. These costs can be absorbed as part of Transportation Department's routine workload and do not require any additional budget allocation.

Policy Options

Rules Committee Direction.

At the May 11, 2022 Rules Committee meeting, the Committee directed that the City Manager submit a Manager's Budget Addendum that will eliminate San José Municipal Code 11.34, Regulation of Cruising, and fines, fees or signage associated with that section. This Manager's Budget Addendum responds to this direction by providing background information and policy analysis of elimination of the prohibition on cruising. Repeal of the cruising prohibition would require staff to return to the City Council with a separate item to amend the Municipal Code. If so directed by the City Council, such as through Council action on the Mayor's June Budget Message, staff will return to the City Council with the proposed repeal of the cruising prohibition.

The Police Department has also developed a pair of policy alternatives to repeal the ordinance, which are described below.

Alternative Option 1:

Car cruises, meetups, and car shows may be found throughout California. Websites such as CaliforniaCarShows.com¹⁵ and SoCalCarCulture.com¹⁶ list both regularly scheduled events and those that are unique or occur only once per year.

¹⁴ The City collected \$856,309 in FY2021 for vehicle code fines.

¹⁵ <https://californiacarshows.org/carcruise.html>

¹⁶ <http://www.socalcarculture.com/events.html>

Rather than repeal chapter 11.34, the Police Department recommends an addendum to the chapter indicating cruising is authorized during permitted or sanctioned events. Permits would be managed through the Police Department's Permits Unit. Prior to authorization, the Police Department would require a safety plan from organizers including community outreach, limited roadway closures, access for emergency vehicles, and predetermined start and stop times. During these events, the Police Department would suspend enforcement of vehicle code violation citations for cruising and predetermined mechanical, equipment, or moving violations.

Alternative Option 2:

Rather than repeal the ordinance, the Police Department could temporarily suspend enforcement for a set period, such as six months. The Department could return to City Council at the end of the period with a report on the outcome of the suspension. In doing so, the City and affected stakeholders will have time to evaluate the potential impact of repeal before making a final decision to amend the Municipal Code.

Public Outreach

The Media Relations Unit at the Police Department will draft and disseminate a press release for public notification. In addition, information will be distributed through the Department's social media platforms. Simultaneously, the City Manager's Office of Communications will mirror the public outreach through their social media platforms.

COORDINATION

This Manager's Budget Addendum was coordinated with the City Manager's Office, the City Attorney's Office, the Finance Department, and the Transportation Department.

/s/
ANTHONY MATA
Chief of Police

For questions, please contact Lieutenant Steve Donohue, San José Police Department, Research & Development Unit, at (408) 277-5200.

Attachment 1: San José Municipal Code chapter 11.34

Attachment 1: San José Municipal Code chapter 11.34

5/16/22, 2:02 PM

San Jose, CA Code of Ordinances

Chapter 11.34 - REGULATION OF CRUISING

11.34.010 - Cruising prohibited.

No person shall engage in the activity known as "cruising," as defined in this chapter, on the public streets or highways of the city San José.

(Ord. 22385.)

11.34.020 - "Cruising" defined.

For purposes of this chapter, "cruising" shall be defined as the repetitive driving of any motor vehicle past a traffic-control point in congested traffic at or near the traffic-control point.

(Ord. 22385.)

11.34.030 - "Congested traffic" defined.

For the purposes of this chapter, "congested traffic" means traffic on any public street or highway which is delayed to the point that:

- A. Motor vehicles cannot move through a one-hundred-yard approach corridor to an intersection controlled by a traffic light within two complete green light cycles where the delay in forward movement is due to the position of other motor vehicles; or
- B. Motor vehicles cannot move through a one-hundred-yard approach corridor to an intersection controlled by a traffic light within a five-minute period of time where the delay in forward movement is due to the position of other motor vehicles; or
- C. Motor vehicles cannot readily move forward on portions of public streets or highways between intersections because traffic speed has slowed to less than five miles per hour, and the delay in movement is due to the position of other motor vehicles.

The determination that a street or highway is congested shall be made by the ranking police officer on duty in the affected area.

(Ord. 22385.)

11.34.040 - "Green light cycle" defined.

For purposes of this chapter, a "green light cycle" shall mean the period commencing upon the switching of a red light to a green light through to the return of a red light.

(Ord. 22385.)

11.34.050 - "Traffic-control point" defined.

For purposes of this chapter, "traffic-control point" shall mean a location along a public street or highway utilized by a police officer on duty in the affected area as an observation point in order to monitor traffic conditions for potential violations of this chapter.

(Ord. 22385.)

11.34.060 - Warning against cruising.

A police officer may issue a written notice [to] any person operating or occupying any motor vehicle passing a traffic-control point that any subsequent passage past that traffic-control point will be a violation of this chapter.

(Ord. 22385.)

11.34.070 - Violation of this chapter.

Any person who, after having received a written notice as described in Section 11.34.060, subsequently drives past the same traffic-control point within a four-hour period shall be in violation of this chapter.

(Ord. 22385.)

11.34.080 - Posting of no-cruising zones.

- A. This chapter will be enforced in any area which has been posted as a no-cruising zone.
- B. No-cruising signs shall be posted at the beginning and end of any public street or highway which is a no-cruising zone. The signs shall reference California Vehicle Code Section 21100(k) and this chapter.

(Ord. 22385.)