

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE ADDING A
NEW CHAPTER 10.50 TO TITLE 10 OF THE SAN JOSE
MUNICIPAL CODE TO PROHIBIT SPECTATORS AT
STREET RACES AND RECKLESS DRIVING EXHIBITIONS**

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and confirms the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

A new Chapter 10.50 is added to Title 10 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

**Chapter 10.50
SPECTATORS PROHIBITED AT STREET RACES AND
RECKLESS DRIVING EXHIBITIONS**

10.50.010 Definitions

The definitions in this Section apply to the following terms as used in this Chapter:

- A. “Street Race” means any motor vehicle speed contest or motor vehicle exhibition of speed referred to in subdivisions (a) and (c) of California Vehicle Code Section 23109, as may be amended.
- B. “Reckless Driving Exhibition” shall mean any exhibition of reckless driving referred to in California Vehicle Code Section 23103, as may be amended.
- C. “Offstreet Parking Facility” is defined in subdivision (c) of California Vehicle Code Section 12500, as may be amended.
- D. “Spectator” shall mean any person who is present at a Street Race or Reckless Driving Exhibition, or the site of the Preparations for either of these activities, for the purpose of viewing, observing, watching, or witnessing the event as it progresses. A “Spectator” includes any person at the location of the event without regard to the means by which the person arrived.
- E. A person is “present” at the Street Race or Reckless Driving Exhibition if that person is within two hundred (200) feet of the location of the Street Race or Reckless Driving Exhibition, or within two hundred (200) feet of the site of the Preparations for either of these activities.
- F. “Preparations” for any Street Race or Reckless Driving Exhibition include, but are not limited to, any of the following acts done for the purpose of a Street Race or Reckless Driving Exhibition:

1. One (1) or more motor vehicles and persons have arrived at a predetermined location on a public street or highway or in an Offstreet Parking Facility;
2. One (1) or more persons have gathered on, or adjacent to, a public street or highway;
3. One (1) or more persons have gathered in an Offstreet Parking Facility;
4. One (1) or more persons have impeded the free public use of a public street, highway, or Offstreet Parking Facility by acts, words or physical barriers;
5. One (1) or more motor vehicles have lined up on a public street, highway, or Offstreet Parking Facility with motors running;
6. One (1) or more drivers is revving a motor vehicle's engine or causing the motor vehicle's tires to spin; or
7. A person is standing or sitting in a location to act as a race starter.

10.50.020 Spectators Prohibited at Street Races and Reckless Driving Exhibitions

- A. It shall be unlawful for any person to:
1. Be knowingly present as a Spectator at a Street Race conducted on a public street or highway; or

2. Be knowingly present as a Spectator at a Reckless Driving Exhibition conducted on a public street or highway or in an Offstreet Parking Facility.
- B. It shall be unlawful for any person to:
1. Be knowingly present as a Spectator where Preparations are being made for a Street Race conducted on a public street or highway; or
 2. Be knowingly present as a Spectator where Preparations are being made for a Reckless Driving Exhibition conducted on a public street or highway or in an Offstreet Parking Facility.
- C. Nothing in this Section prohibits peace officers or their agents who are acting in the course of their official duties from being Spectators at a Street Race or Reckless Driving Exhibition or Spectators at the location of Preparations for either of these activities.

10.50.030 Relevant Circumstances to Prove a Violation

- A. Notwithstanding any other provision of law, to prove a violation of this Chapter, admissible evidence may include, but is not limited to, any of the following:
1. That the person charged has previously participated in or been a Spectator at a Street Race or Reckless Driving Exhibition;
 2. That the person charged has previously aided and abetted Street Racing;
 3. That the person charged has previously attended a Street Race or Reckless Driving Exhibition; or

4. That the person charged was previously present at a location where Preparations were being made for a Street Race or Reckless Driving Exhibition, or where a Street Race or Reckless Driving Exhibition was in progress.
 5. Evidence of these prior acts may be admissible, to the fullest extent permissible by law, to show the opportunity, intent, plan, knowledge, identity, or the absence of a mistake or accident, or propensity of the defendant to be present at or attend a Street Race or a 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 a Street Race or a Reckless Driving Exhibition was taking place.
- B. In addition to the circumstances set out in subsection A. above, and notwithstanding any other provision of law, to prove a violation of this Chapter, admissible evidence may also include, but is not limited to, any of the following:
1. The time of day;
 2. The nature and description of the Scene, including the number and configuration of traffic lanes;
 3. The number of people at the Scene;
 4. The location of the person charged in relation to any person or group of persons present at the Scene;

5. The number and descriptions of motor vehicles at the Scene;
 6. That the motor vehicles at the Scene have been modified or altered to increase power, handling, or visual appeal;
 7. That the person charged drove or was transported to the Scene.
- C. For purposes subsection B., above, "Scene" refers to the location of the Street Race or Reckless Driving Exhibition or the location of the Preparations for the Street Race or Reckless Driving Exhibition.

PASSED FOR PUBLICATION of title this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk