

September 29, 2000

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

PROPOSAL TO AMEND THE SAN DIEGO MUNICIPAL CODE BY EMERGENCY  
ORDINANCE TO ADD DIVISION 51, TITLED "TEMPORARY STREET CLOSURES DUE  
TO SERIOUS AND CONTINUAL CRIMINAL ACTIVITY"

### **INTRODUCTION**

This Report addresses a proposal to amend the San Diego Municipal Code to provide for the temporary closure of certain streets impacted by illegal street racing. The proposal also makes a violation of the temporary street closure a misdemeanor, with violators subject to arrest and their vehicles subject to impound.

In sum, the City Council may temporarily close certain streets impacted by illegal street racing. Under the authority of California Vehicle Code section 21101.4, the City Council may enact an ordinance making it a misdemeanor to violate the temporary street closure action, thus allowing law enforcement officers to arrest violators. Vehicle Code sections 22651(n) and 22850.5 give local authorities the ability to remove and impound vehicles that are parked or left standing on a street that is temporarily closed. Thus, all vehicles that drive on or are left parked on a closed street may be towed. Signs must be posted at the entrances to the temporarily closed street giving drivers notice of the street closure. It is the City Attorney's opinion that an ordinance providing for the temporary closure of a street, the arrest of violators, and the impound of vehicles is constitutional because it promotes a compelling governmental interest and is narrowly tailored to further that interest.

### **BACKGROUND**

Illegal street racing on certain streets in the City of San Diego has grown into a serious community problem, immediately threatening public peace, property, health, and safety. In the late night and early morning hours, hundreds of illegal street racers and spectators converge on these streets, which are primarily in commercial or industrial areas. These juveniles and adults block the streets with their cars, set up improvised race tracks complete with individuals acting as race starters, and drag race until police arrive. When patrol cars descend on an illegal racing site, the racers and spectators jump back into their cars and caravan to other locations, where they race until the police catch up with them. The racers, traveling at high speeds from location to location, cause traffic congestion and a danger to other drivers. The racers are highly sophisticated, using cell phones, police scanners, and other electronic devices to communicate with each other and avoid arrest. They also communicate through the Internet, providing information and advice on how to avoid detection, staying one step ahead of law enforcement.

This illegal street racing is attracting other criminal activity -- juvenile curfew violations, gambling, fights and disturbances, littering, drinking in public, urinating in public, trespassing, and vandalism, including graffiti and destruction of property. There have been several traffic accidents associated with illegal speed contests, resulting in serious injury or death. The San Diego Police Department is presently conducting enforcement actions to curb the illegal street racing. However, police staffing is not always adequate to handle the enormous crowds that gather at the illegal racing sites. Furthermore, it takes high levels of police staffing and coordination to observe, arrest, and build strong cases against the illegal street racers for engaging in a speed contest, a violation of California Vehicle Code section 23109.

At certain illegal street racing sites, including the 9100 to 9400 block of Trade Place, property owners have taken steps to curb the illegal conduct. They have chained the entrances to private parking lots, only to have the chains cut down. They have used sprinklers to control the crowds that gather on their property and hired private security guards. However, none of these measures has successfully addressed the issues.

Other municipalities are taking emergency measures to handle the illegal street racing problem. The crackdown elsewhere is attracting street racers from other jurisdictions to the City of San Diego.

This Report sets forth the legal support for the adoption of an ordinance amending the San Diego Municipal Code to allow the City Council, by resolution, to temporarily close to vehicular and pedestrian traffic certain streets within the City of San Diego that are impacted by illegal street racing.

## **DISCUSSION**

### **I. Applicability of California Vehicle Code section 21101.4**

California Vehicle Code section 21101.4 provides that local authorities may, by ordinance or resolution, adopt rules and regulations for temporarily closing to through traffic a highway under the local authority's jurisdiction if certain conditions are met. The local authority must make four findings, after holding a public hearing. Vehicle Code section 21101.4 sets forth the necessary findings as follows:

- (1) The local authority [must] find[] and determine[] that there is serious and continual criminal activity in the portion of the highway recommended for temporary closure. This finding and determination shall be based upon the recommendation of the police department . . . .
- (2) The highway has not been designated as a through highway or arterial street.
- (3) Vehicular or pedestrian traffic on the highway contributes to the criminal activity.
- (4) The closure will not substantially adversely affect traffic flow, safety on the adjacent streets or in the surrounding neighborhoods, the operation of emergency vehicles, the performance of municipal or public utility services, or the delivery of freight by commercial vehicles in the area of the highway proposed to be temporarily closed.

Once the local authority, in this case the City Council, makes the necessary findings and enacts the temporary street closure rules and regulations by ordinance, the City Council may, by resolution, designate the streets to be closed and the hours of closure. Pursuant to Vehicle Code section 21101.4(b), a street may be temporarily closed for not more than 18 months, but this period may be extended for not more than five additional consecutive periods of not more than 18 months each, after holding a public hearing.

**A. Serious and Continual Criminal Activity**

Based on information provided by the San Diego Police Department, illegal street racing on certain streets in the City of San Diego is creating serious and continual criminal activity. Illegal street racing is attracting hundreds of juveniles and adults to racing sites every weekend. The drivers participating in the illegal street racing are committing a violation of California Vehicle Code section 23109(a), engaging in a speed contest. The race starters and other spectators, who are aiding and abetting the illegal speed contests, are committing a violation of California Vehicle Code section 23109(b). Vehicle Code sections 23109(a) and (b) are misdemeanors. The spectators attracted to illegal street racing sites are also engaged in criminal conduct, including juvenile curfew violations, gambling, fights and disturbances, littering, drinking in public, urinating in public, trespassing, graffiti, and vandalism. Participation in illegal street racing as a racer or as a spectator shows disregard for the law and disregard for the health and safety of others.

## **B. Trade Place as Through Highway or Arterial Street**

Trade Place, the street initially recommended for temporary closure, is a street in a commercial and industrial area of Mira Mesa. There are no residential properties in the immediate vicinity. Trade Place is 3/10th of a mile in length, with no curves. At night, Trade Place is isolated, with little or no traffic, making it an ideal location for illegal street racers to avoid detection.

San Diego Municipal Code section 82.20 and City Council Policy 200-11 give the City Manager the authority to designate and describe any street as a through street. Trade Place has not been designated as a through street. Furthermore, Trade Place is not a through highway or arterial street as set forth on the Mira Mesa Community Plan, approved by the City Council, on October 6, 1992 (see Attachment A).

## **C. Vehicular or Pedestrian Traffic Contributes to the Criminal Activity**

Every weekend night on Trade Place, hundreds of juveniles and adults converge to engage in illegal street racing and related criminal activity. Based on information from the San Diego Police Department and property owners in the area of 9100 to 9400 Trade Place, the vehicular and pedestrian traffic is contributing to the criminal activity, including illegal street racing, juvenile curfew violations, gambling, fights and disturbances, trespassing, littering, drinking in public, urinating in public, graffiti, and vandalism.

## **D. Effect of Ordinance on Traffic Flow and Safety**

In the late night and early morning hours, there is little, if any, traffic on 9100 to 9400 Trade Place. This 3/10th of a mile street is in a commercial area, where businesses are closed at night. There are no residences in the area. The area is isolated, making it an ideal location for illegal street races. Traffic flow and safety will not be substantially adversely affected by a temporary street closure.

## **E. Exceptions for Certain Uses**

The proposed ordinance will not apply to emergency or law enforcement personnel in emergency or law enforcement vehicles; City, County, or State employees in government vehicles acting within the scope of their official duties; commercial vehicles making deliveries to and from commercial properties adjacent to the designated streets; and individuals employed by businesses adjacent to the designated streets who show identification upon request by law enforcement personnel.

## **II. Authority to Remove and Impound Vehicles**

California Vehicle Code sections 22651(n) and 22850.5 give local authorities the ability to remove and impound vehicles that are parked or left standing on a street that is temporarily closed. The proposed ordinance sets forth the rules and regulations, allowing law enforcement to tow and impound vehicles in violation of the temporary street closure. Thus, all vehicles that drive on or are left parked on a closed street may be towed.

## **III. Requirement to Notice Temporary Street Closures**

California Vehicle Code section 21103 provides that signs giving notice of the temporary street closure be posted at all entrances to the street. The signs should be adequately lit and maintained. These signs should state the temporary street closure days and hours, and should state that it is a tow-away zone and violation is a misdemeanor offense.

## **IV. Penalties for Violation of the Proposed Ordinance**

As set forth in San Diego Municipal Code section 12.0201, violators of the temporary street closure will be subject to arrest for a misdemeanor offense, punishable by up to six months in the county jail and a \$1,000 fine.

## **V. Use of an Emergency Ordinance**

As an emergency measure, the City Council must approve this proposed ordinance by a two-thirds affirmative vote. As set forth in the San Diego City Charter section 17, an emergency ordinance is to provide “for the immediate preservation of the public peace, property, health, or safety.” The problem of illegal street racing in the City of San Diego is immediately threatening public health and safety, and the right of San Diego property owners to enjoy the use of their property without being victimized by criminal offenders.

## **CONCLUSION**

Illegal street racing is a serious and significant problem in the City of San Diego, threatening the public peace, property, health, and safety of citizens. The proposed ordinance and

resolution are the best way to address this problem along Trade Place. The City Attorney recommends adoption of this proposal.

Respectfully submitted,

/ S /

CASEY GWINN  
City Attorney

JFD:vj:smf:011:(043.1)  
Attachment  
RC-2000-9