

September 30, 1998

REPORT TO THE COMMITTEE ON PUBLIC
SAFETY AND NEIGHBORHOOD SERVICES

PROPOSAL TO PERMIT A PRIVATE SPONSOR TO CONDUCT CAR RACING EVENTS
ON A CITY STREET, WITH THE SUPPORT OF THE SAN DIEGO POLICE
DEPARTMENT

INTRODUCTION

The National High School Car Club Association [Car Club], with the support of the San Diego Police Department, is asking the Committee to approve its proposal to conduct competitive car racing events on the 8800 block of Kearny Villa Road on three Saturdays this fall. These test events would help the Car Club and SDPD evaluate whether providing structured, sanctioned racing events would deter teenagers and other car enthusiasts from racing illegally on city streets, and whether the Kearny Villa Road site is suitable for future, regular racing events.

The Committee has asked the City Attorney to evaluate the legal issues involved in permitting the Car Club to use a city street for racing events. The following issues are addressed in this report:

- I. What are the legal implications of permitting organized racing events on city streets, in light of state laws that make engaging in a motor vehicle speed contest and aiding and abetting a motor vehicle speed contest misdemeanor crimes?
- II. How can the City protect itself from liability for injuries sustained by event participants and spectators on city property during organized racing events?

BACKGROUND

At the Public Safety and Neighborhood Services Committee meeting of June 17, 1998, Committee Chair and Councilmember Barbara Warden recommended that the Committee support a multi-pronged approach to curbing illegal street racing. Strategies discussed included increasing traffic enforcement; installing traffic mitigation devices; developing a long-term plan to combat illicit street racing; and determining whether developing permanent, safe, and legal outlets would substantially reduce unsafe and illegal racing by teenagers and young adults.

Responding to a question from the Committee about establishing a legal racing venue in

San Diego, Officer Scott Thompson, of the SDPD's Traffic Division, and Allen W. Sill, Jr., President of the Car Club, outlined a program called "Code 4 Racing," which borrows the law enforcement term for "situation under control." Code 4 Racing is an organized, safety-oriented program designed to coax young racers from streets to tracks. Street-legal vehicles, which have passed safety inspections by Car Club volunteers, race distances of 1/8 to 1/10 miles at relatively slow speeds of 60 to 80 mph on private tracks and temporary courses on public property. The support of law enforcement and the presence of officers at races provides opportunities for positive interaction with young racers and for traffic safety education.

A blueprint for the proposed events and the site set-up is attached as Exhibit A. The proposed event is open to licensed and insured County residents with proof of registration and parental permission, if under age 18. Eligible racers pay a one-time \$15 fee to race their street-legal, safety-inspected vehicles from 9 a.m. to 5 p.m. on a straight 1/8 mile course. Races are conducted under National Hot Rod Association [NHRA] safety rules and procedures and are staffed by Car Club employees and volunteers. Race entries are limited, with the majority of slots reserved for drivers aged 16 to 25. Spectators pay a \$5 fee, with children under 12 and high school members of the Car Club admitted for free. Spectators are segregated from the race course by a concrete barrier and are allowed in the staging area.

The Car Club is an Escondido-based, nonprofit organization funded by grants from a variety of sources, including the California Office of Traffic Safety [OTS]. It seeks to reduce the high incidence of citations, car accidents, and arrests stemming from illegal street racing by teenaged drivers. The cornerstone of this effort is channeling youthful enthusiasm for street racing into controlled and safety-oriented racing events on safe tracks. The Car Club promotes responsible driving with car clubs at more than 30 high schools in San Diego County. The Car Club also has established the Street to Track Alliance of Racers for Safety [STARS] Council, a roundtable of representatives from local racing groups committed to working with law enforcement and public agencies to develop safe and legal alternatives to street racing.

The Car Club hosted its first Code 4 Racing event on May 25, 1998, in the parking lot of Qualcomm Stadium. The daylong event attracted approximately 250 racers and 1,000 spectators. In addition to racing, the event featured food booths, car and equipment displays, and traffic safety education by two uniformed SDPD officers. The event was accident-free and was considered a success, with participants telling organizers, in effect, "If you host it, we will come." A second Code 4 Racing event at the Qualcomm parking lot, called "Teens On Track '98," is scheduled for September 26, 1998. A flier describing this event is attached as Exhibit B.

The Car Club's proposal to sponsor Code 4 Racing on Kearny Villa Road has not gone through the Special Events permit process, as set out in Section 22.4001 et seq., of the San Diego Municipal Code. The Car Club obtained permits for the events at Qualcomm Stadium from Stephen M. Shushan, assistant stadium manager.

DISCUSSION

I. Can the City Permit Illegal Racing on City Streets? If So, How?

The activities contemplated in the Car Club's proposed event on Kearny Villa Road are prohibited on streets by state law. Section 23109(a) of the California Vehicle Code prohibits engaging in a motor vehicle speed contest – a race against another vehicle, a clock, or other timing device – on a highway or street. Subsection (b) prohibits aiding and abetting a speed contest, such as acting as a race starter. Subsection (d) prohibits obstructing or placing barricades on a street to facilitate a speed contest, such as setting up a race course.

Because these prohibitions apply only on highways or streets, the City may overcome them by temporarily closing the affected portions of Kearny Villa Road during the proposed events. Other cities that have hosted Grand Prix car racing events have avoided such prohibitions by temporarily closing city streets used in those events.

The City routinely issues permits to temporarily close city streets for activities that are otherwise prohibited. For example, pedestrians are prohibited from walking on freeways (Cal.Veh.Code 21960), crossing a roadway other than in a sidewalk (Cal.Veh. Code 21955), or walking in a bicycle lane (Cal.Veh.Code 21966); yet runners are allowed to use closed traffic lanes during races. Skateboarding is prohibited on an open roadway (San Diego Municipal Code 84.12(a)); but skateboarders rocketed down closed streets during an X-Games event. Similarly, personal water craft operators are permitted to bend boating regulations during tournaments in closed portions of Mission Bay.

The authority for temporary road closures stems from two sources. Section 21101(e) of the California Vehicle Code empowers local authorities to adopt rules and regulations for streets and highways under their jurisdiction allowing temporary road closures for:

celebrations, parades, local special events, and other purposes when, in the opinion of local authorities having jurisdiction, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing.

Also, Section 82.23 of the San Diego Municipal Code allows the City to issue a permit for a temporary closure of any city street that is to be used for a community event sponsored by a non-profit organization. This section further provides that the permit may authorize activities consistent with the event, and that "other provisions of this Code pertaining to such activities shall not apply during the time period of the event."

The City's Special Events Ordinance, San Diego Municipal Code 22.4001 et seq., sets out the procedures for permitting private-sector use of city streets, facilities, and services. This ordinance gives the City Manager authority to determine the venue for a special event and to set "reasonable boundaries" for the venue, "balancing the Special Event requirements and public health, safety, and welfare." San Diego Municipal Code 22.4004(b).

Finally, the state law prohibitions against drag racing do not apply to racing events held at the Qualcomm Stadium parking lot. The parking lot is not a "highway" or a "street," as those terms are used in the Vehicle Code.

II. How Can the City Protect Itself from Liability For Injuries Sustained By Race Participants and Spectators Who Are on City Property During the Event?

A. Participants

A well-crafted, unambiguous, and explicitly clear waiver of liability signed by racers, course officials, and volunteers should suffice to protect the City from actions arising from injuries and deaths occurring on city property during the event. Just as parental consent is necessary to allow participation of minor racers and course volunteers, parental consent is necessary for the liability waiver.

California courts routinely have upheld liability waivers signed by participants in hazardous recreational activities, such as competitive car, motorcycle, and bicycle racing, parachuting, scuba diving, and white water rafting. "To be effective, a release need not achieve perfection. . . . It suffices that a release is clear, unambiguous and explicit, and that it expresses an agreement not to hold the released party liable for negligence." *National and International Brotherhood of Street Racers, Inc. v. The Superior Court of Los Angeles County*, 215 Cal. App.3d 934, 939 (1989). In that case, the plaintiff, an experienced race car driver, sued the race organizer and the City of Los Angeles for crippling injuries he suffered when his dragster sped away from the starting line in reverse, crashing into shipping containers. The plaintiff alleged that his injuries were aggravated by the manner in which he was extricated from his wrecked car. Before competing, the plaintiff signed a printed release assuming the risks inherent in car racing and discharging the race sponsors and property owners from "any and all claims and liability

arising out of ordinary negligence of the releasees or any other participant which causes the undersigned injury, death, or property damage." 215 Cal.App.3d at 937. The court found that the release was unlimited in scope and that the plaintiff's blanket release of responsibility on the part of the race organizer and the city landowner was all-encompassing. *Id.* at 937.

The Car Club, through its insurer, requires signed liability waivers from race participants. If the City approves the Car Club's proposal, we recommend that the Car Club work with this office to rewrite the existing waiver and to ensure that *all* event participants, not just racers, sign waivers. We also recommend that the Car Club agree to indemnify the City and to pay all costs and fees associated with defending claims arising from injury, death, or property damage occurring in connection with the events.

B. Spectators

The case law is not as conclusive regarding a property owner's liability to spectators who are injured or killed while watching hazardous activities. But the City may enhance its ability to successfully defend claims for property damage, injury, or death to spectators by:

(1) working with the Car Club to rewrite existing releases to include spectators; (2) requiring signed releases from each spectator, including parental signatures for minor spectators; (3) posting written warnings at the entry about the hazards of watching a competitive car race; (4) erecting physical barriers between the raceway and spectator areas and posting volunteers to keep spectators out of the raceway and staging areas.

Although requiring each spectator to sign a clear and well-crafted liability waiver might be expensive and cumbersome for the Car Club, signed liability waivers, along with the safety measures mentioned in the preceding paragraph, appear to be the City's strongest protection against claims from injured spectators.

In *Celli v. Sports Car Club of America*, 29 Cal.App.3d 511, 521 (1972), the court held that a release printed on a "pit pass" signed by spectators did not absolve the race sponsor and track owner from liability because the release did not specifically address their negligent acts and omissions, which contributed to the spectator plaintiffs' injuries. A driver was killed and plaintiffs were injured when a race car spun out of control during a practice run and crashed into a spectator area segregated from the raceway by only a row of parked cars. Posting signs, clearly marking and enforcing spectator areas, segregating spectators from the raceway, and crafting a clear and comprehensive release form should correct the problems the *Celli* court identified.

The City could raise as a defense the fact that the spectator assumed the risks inherent in watching a hazardous activity. However, case law addressing this defense has focused on the sophistication of the spectator, and as such it does not provide reliable protection against claims in all instances. In *Goade v. Benevolent & Protective Order of Elks, Lodge No. 189*, 213 Cal. App.2d 189 (1963), a woman who had never before watched a sports car race was injured while standing in a spectator area, after a race car missed a turn and plowed through a short fence into a group of spectators. The court found that the question of whether the woman, a novice to sports car racing, had assumed the risk of watching a hazardous activity was a factual question for the jury. *Id.* at 192.

In *Morton v. California Sports Car Club*, 163 Cal.App. 2d 685 (1958), the plaintiff, a veteran racing spectator, was injured when a race car went into a spin and lost a wheel. The wheel jumped a short fence encircling the race course and injured the plaintiff, who had eschewed grandstand spectator seating for a vantage point nearer the race course. The court found that the plaintiff must have known of the hazard he was subjecting himself to and "ignored the hazard in his desire to observe the races from the best (rather than the safest) location." 163 Cal. App. at 689. Furthermore, it was immaterial to the court that the defendant car club might have been negligent in failing to provide sufficient protection around the course for all spectators, because "one may assume a risk even though the dangerous condition is caused by the negligence of others." *Id.* at 689. Although the court directed a defense verdict, it declined to hold that, as applied to car races in general, assumption of the risk is a matter of law. 163 Cal. App. 2d at 970. Thus, if the City were sued for injuries to a car racing spectator and raised the defense of assumption of the risk, the City would likely face the expense and uncertainty of litigating the sophistication of the plaintiff before a jury, with no guarantee of a favorable verdict.

C. SDPD Involvement

SDPD has expressed its support of Code 4 Racing, and its desire to form a "partnership" with the Car Club to conduct sanctioned racing events. Uniformed officers attended the Code 4 Racing event on May 25, 1998, to observe and provide traffic safety education. Officers may satisfy educational requirements by working at Code 4 Racing events on their own time. Off-duty officers may race at the events in their own cars or cars provided by private law enforcement associations.

In the interest of reducing the City's exposure to liability claims, the City's role should be limited to that of a site provider, not a co-sponsor of racing events or "partner" to the Car Club. This clarification of the City's role should not hamper SDPD's ability to work with the Car Club on drag racing issues or to work at racing events to promote traffic safety and education.

CONCLUSION

If the City approves the Car Club's proposal to conduct competitive car racing on Kearny Villa Road, the City may overcome the prohibition against speed contests on highways by temporarily closing the affected portions of the street for the event. The City may also protect itself from liability to race participants by requiring all race participants to sign a clear and comprehensive liability release, which explicitly absolves the City from passive and active negligence. The City may also enhance its ability to defend claims by spectators who are injured at the events by requiring spectators, including the parents of minors, to sign similar releases; requiring adequate barriers between spectators and race cars; posting signs warning of hazards; and keeping spectators in designated areas away from race cars or the raceway. The City should also limit its role to that of a site provider, not a co-sponsor or "partner" to the Car Club, though this distinction should not hinder SDPD from continuing to work with the Car Club to address racing problems or provide safety education at racing events.

Respectfully submitted,

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City Attorney

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Attachment
RC-98-19