

ORDINANCE NUMBER O- 19116 (NEW SERIES)

ADOPTED ON OCT 21 2002

AN EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 5, ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING A NEW DIVISION 52, TITLED "SPECTATORS PROHIBITED AT ILLEGAL SPEED CONTESTS OR EXHIBITIONS OF SPEED"; AND BY ADDING NEW SECTIONS 52.5201, 52.5202, 52.5203, 52.5204 AND 52.5205.

WHEREAS, illegal street racing and exhibitions of speed on streets in the City of San Diego have become a broad community problem, immediately threatening public peace, property, health and safety; and

WHEREAS, this illegal street racing and exhibitions of speed attract hundreds of juveniles and adults to city streets on a regular basis; and

WHEREAS, this illegal street racing and exhibitions of speed attract other criminal activity, including juvenile curfew violations, littering, drinking in public, urinating in public, gambling, fights and disturbances, trespassing, graffiti, and vandalism; and

WHEREAS, illegal street racing and exhibitions of speed create a dangerous environment, with traffic congestion and risk of serious injury or death, for pedestrians and vehicular traffic on local streets; and

WHEREAS, the City Council of the City of San Diego seeks to promote the City's interest in protecting and preserving the safety of pedestrians and motorists in, about, or upon public streets and highways so as to minimize any dangerous conditions caused by illegal street

racing and exhibitions of speed, and to curb the criminal activity surrounding illegal street racing and exhibitions of speed; and

WHEREAS, on October 15, 2002, an ordinance amending the San Diego Municipal Code by adding a new Division 52 to prohibit spectators at illegal speed contests or exhibitions of speed was introduced, but will not be adopted until October 29, 2002, and not be effective until at least November 28, 2002; and

WHEREAS, there is and remains an immediate impact on the health, safety and welfare of the citizens of this City due to illegal street racing; and

WHEREAS, the adoption of this emergency ordinance is necessary and appropriate to address this immediate problem; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter 5, Article 2, of the San Diego Municipal Code is hereby amended by adding a new Division 52, and new Sections to read as follows:

Division 52

**Spectators Prohibited at Illegal Speed Contests
or Exhibitions of Speed**

§52.5201 Purpose

The Council for the City of San Diego finds and declares that pursuant to California Vehicle Code section 23109, motor vehicle speed contests and exhibitions of speed conducted on public streets and highways are illegal.

Motor vehicle speed contests and exhibitions of speed are more commonly known as street races or drag races.

Streets within the City of San Diego have been the site of continuing and escalating illegal street racing over the past several years. Such street racing threatens the health and safety of the public, interferes with pedestrian and vehicular traffic, creates a public nuisance, and interferes with the right of private business owners to enjoy the use of their property within the City of San Diego. The illegal street races occur on a regular basis on various streets within the City. Hundreds of racers and spectators gather on these streets late at night and in the early morning hours, blocking the streets and sidewalks to traffic, forming a racetrack area, placing bets, and otherwise encouraging, aiding, and abetting the racing process.

Illegal street racers accelerate to high speeds without regard to oncoming traffic, pedestrians, or vehicles parked or moving nearby. The racers drive quickly from street to street, race for several hours, and then move to other locations upon the arrival of the police. Those who participate in this illegal activity are very sophisticated, using cell phones, police scanners, and other electronic devices to communicate with each other to avoid arrest. They also use the Internet to provide information on where to race, and give advice on how to avoid detection and

prosecution. Traffic accidents, property crimes, and calls for police service have increased dramatically.

In most cases, illegal street races attract hundreds of spectators. The mere presence of spectators at these events fuels the illegal street racing and creates an environment in which these illegal activities can flourish.

This division makes evidence of specified prior acts admissible to show the propensity of the defendant to be present at or attend illegal street races, if the prior act or acts occurred within three years of the presently charged offense.

This division is adopted to prohibit spectators at illegal street races with the aim of significantly curbing this criminal activity. The division targets a very clear, limited population and gives proper notice to citizens as to what activities are lawful and what activities are unlawful. In discouraging spectators, the act of organizing and participating in illegal street races will be discouraged.

§52.5202

Definitions

Illegal motor vehicle speed contest or illegal exhibition of speed means any speed contest or exhibition of speed referred to in California Vehicle Code sections 23109(a) and 23109(c).

Preparations for the illegal motor vehicle speed contest or exhibition of speed include, but are not limited to, situations in which: (1) a group of motor vehicles or individuals has arrived at a location for the purpose of participating in or being *spectators* at the event; (2) a group of individuals has lined one or both sides of a public street or highway for the purpose of participating in or being a *spectator* at the event; (3) a group of individuals has gathered on private property open to the general public without the consent of the owner, operator, or agent thereof for the purpose of participating in or being a *spectator* at the event; (4) one or more individuals has impeded the free public use of a public street or highway by actions, words, or physical barriers for the purpose of conducting the event; (5) two or more vehicles have lined up with motors running for an *illegal motor vehicle speed contest or exhibition of speed*; (6) one or more drivers is revving his engine or spinning his tires in preparation for the event; or (7) an individual is stationed at or near one or more motor vehicles serving as a race starter. *Spectator* means any individual who is present at an *illegal motor vehicle speed contest or exhibition of speed*, or at a location where *preparations* are being made for such activities, for the purpose of viewing, observing, watching,

or witnessing the event as it progresses. *Spectator* includes any individual at the location of the event without regard to whether the individual arrived at the event by driving a vehicle, riding as a passenger in a vehicle, walking, or arriving by some other means.

§52.5203 Spectator at Illegal Speed Contest or Exhibitions of Speed – Violation

- (a) Any individual who is knowingly present as a *spectator*, either on a public street or highway, or on private property open to the general public without the consent of the owner, operator, or agent thereof, at an *illegal motor vehicle speed contest* or *exhibition of speed* is guilty of a misdemeanor subject to a maximum of six months in jail and a fine of \$1,000.

- (b) Any individual who is knowingly present as a *spectator*, either on a public street or highway, or on private property open to the general public without the consent of the owner, operator, or agent thereof, where *preparations* are being made for an *illegal motor vehicle speed contest* or *exhibition of speed* is guilty of a misdemeanor subject to a maximum of six months in jail and a fine of \$1,000.

- (c) An individual is present at the *illegal motor vehicle speed contest* or *exhibition of speed* if that individual is within 200 feet of the location of the event, or within 200 feet of the location where *preparations* are being made for the event.
- (d) Exemption: Nothing in this section prohibits law enforcement officers or their agents from being *spectators* at *illegal motor vehicle speed contests* or *exhibitions of speed* in the course of their official duties.

§52.5204 Relevant Circumstances to Prove a Violation

Notwithstanding any other provision of law, to prove a violation of Section 52.5203, admissible evidence may include, but is not limited to, any of the following:

- (a) the time of day;
- (b) the nature and description of the scene;
- (c) the number of people at the scene;
- (d) the location of the individual charged in relation to any individual or group present at the scene;
- (e) the number and description of motor vehicles at the scene;
- (f) that the individual charged drove or was transported to the scene;
- (g) that the individual charged has previously participated in an *illegal motor vehicle speed contest* or *exhibition of speed*;

- (h) that the individual charged has previously aided and abetted an *illegal motor vehicle speed contest* or *exhibition of speed*;
- (i) that the individual charged has previously attended an *illegal motor vehicle speed contest* or *exhibition of speed*;
- (j) that the individual charged previously was present at a location where *preparations* were being made for an *illegal speed contest* or *exhibition of speed* or where an *exhibition of speed* or *illegal motor vehicle speed contest* was in progress.

§52.5205 Admissibility of Prior Acts

The list of circumstances set forth in Section 52.5204 is not exclusive. Evidence of prior acts may be admissible to show the propensity of the defendant to be present at or attend an *illegal motor vehicle speed contest* or *exhibition of speed*, if the prior act or acts occurred within three years of the presently charged offense. These prior acts may always be admissible to show knowledge on the part of the defendant that a *speed contest* or *exhibition of speed* was taking place at the time of the presently charged offense. Prior acts are not limited to those that occurred within the City of San Diego.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. That this emergency ordinance requires six votes for passage and shall take effect and be in force on the day of its adoption by the Council of the city of San Diego in accordance with Charter sections 16 and 17.

Section 4. This ordinance expires on NOV 27 2002, the effective date of ordinance number O- 19118. The City Clerk is instructed to insert the ordinance number and effective date, once known.

APPROVED: CASEY GWINN, City Attorney

By Linda L. Peter
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LLP:jp
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Or.Dept:Atty
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