

ORDINANCE NUMBER O-19167 (NEW SERIES)

ADOPTED ON APR 21 2003

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER V, ARTICLE 2, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING A NEW DIVISION 53, TITLED "FORFEITURE OF NUISANCE VEHICLES ENGAGED IN ILLEGAL MOTOR VEHICLE SPEED CONTESTS OR EXHIBITIONS OF SPEED"; AND BY ADDING NEW SECTIONS 52.5301, 52.5302, 52.5303, 52.5304, 52.5305, 52.5306, 52.5307, 52.5308, 52.5309, 52.5310, 52.5311, 52.5312, 52.5313, 52.5314, 52.5315, 52.5316, 52.5317, 52.5318, 52.5319, 52.5320, 52.5321, 52.5322, 52.5323, AND 52.5324.

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

WHEREAS, streets and highways within the City of San Diego have been the site of continuing and escalating illegal motor vehicle speed contests and exhibitions of speed over the past several years; and

WHEREAS, illegal motor vehicle speed contests 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, the City of San Diego has a serious and immediate problem with impromptu motor vehicle speed contests and exhibitions of speed that occur on city streets and highways, even in the absence of groups of spectators and apart from large, organized illegal motor vehicle speed contest events and exhibitions of speed; and

WHEREAS, illegal motor vehicle speed contests and exhibitions of speed create a dangerous environment, posing a high risk of serious injury or death for pedestrians and motorists; and

WHEREAS, traffic accidents, property crimes, and calls for police service have increased dramatically; and

WHEREAS, in October 2000, the City Council of the City of San Diego passed an ordinance amending the San Diego Municipal Code by adding a new Division 51 for temporary street closures due to serious and continual criminal activity to curb illegal motor vehicle speed contests on city streets; and

WHEREAS, in October 2002, the City Council of the City of San Diego passed an ordinance amending the San Diego Municipal Code by adding a new Division 52 to prohibit spectators at illegal motor speed contests and exhibitions of speed; and

WHEREAS, in 2002, thirty-one people were injured as a result of illegal motor vehicle speed contests on city and county streets and highways, with sixteen of those injuries occurring on city streets within the City of San Diego; and

WHEREAS, in 2002, the illegal motor vehicle speed contest fatality rate in San Diego was termed "epidemic," with fourteen deaths on city and county streets and highways, and eight of those deaths occurring on city streets within the City of San Diego; and

WHEREAS, in 2002, thirty-five percent of vehicle occupant fatalities on city streets in the City of San Diego were related to illegal motor vehicle speed contests; and

WHEREAS, the City Council of the City of San Diego seeks to deter dangerous, egregious driving patterns and reduce the number of deaths and injuries occurring on city streets and highways related to illegal motor vehicle speed contests and exhibitions of speed; and

WHEREAS, the City Council of the City of San Diego seeks to promote the City's interest in protecting and preserving the health and safety of pedestrians and motorists in, about, or upon public streets and highways; and

WHEREAS, the City Council of the City of San Diego declares that vehicles are instrumentalities of a crime when they are used in illegal motor vehicle speed contests and exhibitions of speed; and

WHEREAS, the City Council of the City of San Diego declares that vehicles used in illegal motor vehicle speed contests and exhibitions of speed are a public nuisance; and

WHEREAS, the City Council of the City of San Diego finds it is necessary and appropriate to take additional steps to protect public health and safety, including the civil forfeiture of nuisance vehicles used in illegal motor vehicle speed contests and exhibitions of speed; 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 53, and new Sections 52.5301, 52.5302, 52.5303, 52.5304, 52.5305, 52.5306, 52.5307, 52.5308, 52.5309, 52.5310, 52.5311, 52.5312, 52.5313, 52.5314, 52.5315, 52.5316, 52.5317, 52.5318, 52.5319, 52.5320, 52.5321, 52.5322, 52.5323, and 52.5324, to read as follows:

Division 53

**Forfeiture of Nuisance Vehicles Engaged in Illegal Motor Vehicle
Speed Contests or Exhibitions of Speed**

§52.5301 Purpose

The City Council of 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 and highways 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. Illegal street racers accelerate to high speeds without regard to oncoming traffic, pedestrians, or vehicles parked or moving nearby. Traffic accidents, property crimes, and calls for police service have increased dramatically. In 2002, the street racing fatality rate on San Diego city streets was termed "epidemic." Last year, 35 percent of vehicle occupant fatalities on city streets were related to illegal motor vehicle speed contests.

The City Council of the City of San Diego finds it is necessary and appropriate to take additional steps to protect public health and safety. This division is adopted to declare that vehicles used in violation of California Vehicle Code sections 23109(a) and (c) are a nuisance and will be forfeited to the city. The civil forfeiture of these nuisance vehicles will prevent the needless loss of life and property damage

associated with illegal motor vehicle speed contests and exhibitions of speed.

§52.5302 Definitions

Days means workdays not including weekends and holidays.

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).

Immediate family means father, mother, sister, or brother.

Legal owner means a person holding a security interest in a vehicle referred to in California Vehicle Code section 370.

Registered owner means a person registered by the Department of Motor Vehicles as the owner of a vehicle referred to in California Vehicle Code section 505.

§52.5303 Forfeiture of Nuisance Vehicles

A motor vehicle shall be declared a nuisance and forfeited subject to this division if:

- (a) It is used in violation of California Vehicle Code sections 23109(a) or (c); and
- (b) (1) It is driven by the *registered owner* of the vehicle at the time of the violation or the *registered owner* is a passenger in the vehicle at the time of the violation; or
- (2) It is driven by a member of the *registered owner's immediate family* at the time of the violation, or a

- member of the *registered owner's immediate family* is a passenger in the vehicle at the time of the violation; or
- (3) The driver or a passenger lives at the same address as the *registered owner* at the time of the violation; or
 - (4) The driver or a passenger in the vehicle at the time of the violation has a prior contact in the vehicle, as determined by law enforcement records; and

(c) The *registered owner* who is the driver or passenger at the time of the violation; or the driver or passenger who is a member of the *registered owner's immediate family* at the time of the violation; or the driver or passenger who lives at the same address as the *registered owner* at the time of the violation; or the driver or passenger at the time of the violation who has a prior contact in the vehicle has

- (1) A previous misdemeanor or felony conviction for California Vehicle Code sections 2800.2(a) or 23104(a);
or
- (2) A previous misdemeanor conviction for a violation of California Vehicle Code sections 2800.1(a) or (b), or California Vehicle Code sections 23103(a) or (b), or California Vehicle Code sections 23109(a) or (c); or
- (3) A previous conviction for a violation of California Vehicle Code section 22348(b).

§52.5304 Right to Request a Hearing

A registered or legal owner at the time of the violation may request a hearing pursuant to Section 52.5305 to determine the validity of the forfeiture action authorized by this division.

§52.5305 Post-Storage Hearing

- (a) The Chief of Police shall provide the opportunity for a post-storage hearing to determine the validity of the storage to the persons who were the *registered* and *legal owners* of the vehicle at the time of impoundment. The hearing request shall be made not later than 10 *days* after the date the vehicle was impounded. However, the hearing request shall be made within three *days* after the date the vehicle was impounded if personal service was provided to the *registered* or *legal owner* pursuant to Section 52.5307 and no mailed notice is required.
- (b) The post-storage hearing shall be conducted not later than two *days* after the date it was requested. The Chief of Police may authorize an officer or employee to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle. Failure of either a *registered* or *legal owner* to request a hearing as provided in Section 52.5305(a) or to attend a scheduled hearing shall satisfy the post-storage hearing requirement.

§52.5306 Notice of Forfeiture to Legal and Registered Owners

- (a) When a violation of California Vehicle Code section 23109(a) or (c) occurs causing a vehicle to be subject to forfeiture under this division, the Chief of Police shall ascertain from the Department of Motor Vehicles the names and addresses of all *legal and registered owners* of that vehicle.
- (b) Within two *days* of impoundment, the Chief of Police shall send a notice of forfeiture by certified mail, return receipt requested, to all *legal and registered owners* of the vehicle proposed for forfeiture. The notice shall be sent to the addresses obtained from the Department of Motor Vehicles..

§52.5307 Personal Service of Notice of Forfeiture

If a *legal or registered owner* was personally served a notice of forfeiture at the time of the violation which caused a vehicle to be subject to forfeiture under this division, and the notice contains all the information required to be provided by Sections 52.5308 and 52.5309, no further notice is required to be sent to that owner. However, a notice shall still be sent to any other current *legal or registered owners* of record of the vehicle, if any.

§52.5308 Contents of Notice of Forfeiture

The notice shall inform *legal and registered owners* of the vehicle that the vehicle will be declared a nuisance and forfeited to the City subject to Chapter 5, Article 2, Division 53 of the San Diego Municipal Code,

and will be sold or otherwise disposed of pursuant to Sections 52.5317, 52.5318, and 52.5319. The notice shall also include instructions for filing a claim with the City Attorney, and the time limits for filing a claim.

§52.5309 Additional Notice Provisions for Legal Owners

The notice of forfeiture shall also inform any *legal owner* of its right to conduct the sale pursuant to Section 52.5317. If notice was not sent to the *legal owner* within two *days*, the City shall not charge the *legal owner* for more than 15 *days'* impoundment when the *legal owner* redeems the impounded vehicle. No processing charges shall be imposed on a *legal owner* who redeems an impounded vehicle within 15 *days* of the impoundment of that vehicle.

§52.5310 Administrative Forfeiture

If no claims are filed and served within 15 *days* of the mailing of the notice pursuant to Section 52.5306 or within 5 *days* of personal service of the notice pursuant to Section 52.5307, the City Attorney shall prepare a written declaration of forfeiture of the vehicle to the City. A written declaration of forfeiture signed by the City Attorney under this Section shall be deemed to provide good and sufficient title to the forfeited vehicle. A copy of the declaration shall be provided on request to any person informed of the pending forfeiture pursuant to Sections 52.5306 and 52.5307. A claim that is filed and later withdrawn by the claimant shall be deemed to not have been filed.

§52.5311 Claim Opposing Forfeiture and Petition for Forfeiture

If a claim is timely filed and served with the City Attorney, then the City Attorney shall file a petition for forfeiture with the appropriate superior court within 10 *days* of the receipt of the claim. The City Attorney shall establish an expedited hearing date in accordance with instructions from the court. The court filing fee established by the court, not to exceed fifty dollars (\$50), shall be paid by the claimant made payable to the San Diego Superior Court, but shall be reimbursed by the City if the claimant prevails.

§52.5312 Judicial Forfeiture Proceedings

The filing of a claim within the time limit specified in Section 52.5310 is considered a jurisdictional prerequisite for initiating a forfeiture proceeding. A proceeding in the civil case is a limited civil case. The burden of proof in the civil case shall be on the City Attorney by a preponderance of the evidence. All questions that may arise shall be decided and all other proceedings shall be conducted as in an ordinary civil action. A judgment of forfeiture does not require as a condition precedent the conviction of a defendant for the current violation which gave rise to the nuisance and caused these forfeiture proceedings to be initiated.

§52.5313 Community Property Interest Release

If at the time of the violation there is a community property interest in the vehicle to be forfeited, and at the time of the violation the vehicle is

the only vehicle available to the *registered owner's* immediate family that may be operated with a class C driver's license, the vehicle shall be released to a *registered owner* or to the community property interest owner upon compliance with all of the following requirements:

- (a) The *registered owner* or the community property interest owner requests release of the vehicle and the owner of the community property interest submits proof of that interest; and
- (b) The *registered owner* or the community property interest owner submits proof that the vehicle is properly registered pursuant to the California Vehicle Code; and
- (c) All towing and storage charges and any administrative charges authorized pursuant to California Vehicle Code section 22850.5 are paid; and
- (d) The *registered owner* and the community property interest owner sign a stipulated vehicle release agreement, as described in Section 52.5314, in consideration for the nonforfeiture of the vehicle.

§52.5314 Stipulated Vehicle Release Agreement

- (a) A stipulated vehicle release agreement shall provide for the consent of the signers to the automatic future forfeiture and transfer of title to the City of any vehicle registered to that person, if the vehicle is used in violation of California Vehicle Code sections 23109(a) or (c). The agreement shall be in effect

for five years from the date of signing and shall be maintained by the Chief of Police.

- (b) No vehicle shall be released pursuant to Section 52.5313 if the Chief of Police has on file a prior stipulated vehicle release agreement signed by that person within the previous five years.

§52.5315 Vehicle Title Vesting in the City

All right, title, and interest in the vehicle shall vest in the City upon commission of the act giving rise to the nuisance under this division.

§52.5316 Sale of Forfeited Vehicle After Declaration of Forfeiture

Any vehicle forfeited pursuant to this division shall be sold once a declaration of forfeiture is issued by the City Attorney or an order of forfeiture is issued by a court, as the case may be, pursuant to Sections 52.5310 and 52.5312.

§52.5317 Sale of Forfeited Vehicle By Legal Owner

- (a) Any *legal owner* who is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or the agent of that *legal owner*, may take possession and conduct the sale of the forfeited vehicle if the *legal owner* or agent notifies the Chief of Police of its intent to conduct the sale within 15 *days* of either the mailing of the notice pursuant to Section 52.5306 or personal service of the notice pursuant to Section 52.5307. Sale of the vehicle after forfeiture pursuant to this division may be

conducted at the time, in the manner, and on the notice usually given for the sale of repossessed or surrendered vehicles. The proceeds of any sale conducted by or on behalf of the *legal owner* shall be disposed of as provided in Section 52.5320. A *legal owner's* notice to conduct the sale pursuant to Section 52.5317(a) may be presented in person, by certified mail, by facsimile transmission, or by electronic mail.

- (b) The agent of a *legal owner* acting pursuant to Section 52.5317 shall be licensed, or exempt from licensure, pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code.

§52.5318 Sale of Forfeited Vehicle

If the *legal owner* or agent of the owner does not notify the Chief of Police of its intent to conduct the sale as provided in Section 52.5317, the City shall offer the forfeited vehicle for sale at public auction within 60 *days* of receiving title to the vehicle. Low value vehicles shall be disposed of pursuant to Section 52.5319.

§52.5319 Disposition of Low-Value Vehicles

If the Chief of Police determines that the vehicle to be forfeited and sold pursuant to this division is of so little value that it cannot readily be sold to the public generally, the vehicle shall be conveyed to a licensed dismantler or donated to a charitable organization. License

plates shall be removed from any vehicle conveyed to a dismantler pursuant to this section.

§52.5320 Distribution of Sale Proceeds

The proceeds of a sale of a forfeited vehicle shall be disposed of in the following priority:

- (a) To satisfy the towing and storage costs following impoundment, the costs of providing notice pursuant to Sections 52.5306 and 52.5307, the costs of sale, and the unfunded costs of judicial proceedings, if any; then,
- (b) Upon satisfactory proof to the Chief of Police, to the *legal owner* in an amount to satisfy the indebtedness owed to the *legal owner* remaining as of the date of sale, including accrued interest or finance charges and delinquency charges, providing that the principal indebtedness was incurred prior to the date of impoundment; then,
- (c) To the holder of any subordinate lien or encumbrance on the vehicle, other than a *registered* or *legal owner*, to satisfy any indebtedness so secured if written notification of demand is received before distribution of the proceeds is completed. The holder of a subordinate lien or encumbrance, if requested, shall furnish reasonable proof of its interest and, unless it does so upon request, is not entitled to distribution pursuant to Section 52.5320(c); then,

- (d) To any other person, other than a *registered* or *legal owner*, who can reasonably establish an interest in the vehicle, including a community property interest, to the extent of his or her provable interest, if written notification is received before distribution of the proceeds is completed; then,
- (e) Of the remaining proceeds, 50 percent shall be transferred to the San Diego Police Department and 50 percent to the City Attorney via the City Treasurer.

§52.5321 Accounting of Sale Proceeds

The person conducting the sale shall disburse the proceeds of the sale as provided in Section 52.5320 and shall provide a written accounting regarding the disposition to the Chief of Police and, on request, to any person entitled to a share of the proceeds or to any person validly claiming a share of the proceeds, as determined by the Chief of Police, within 15 *days* after the sale is conducted.

§52.5322 Stolen Vehicles

No vehicle shall be sold pursuant to this division if the Chief of Police determines the vehicle to have been stolen. In this event, the vehicle may be claimed by the *registered owner* at any time after impoundment, providing the vehicle registration is current and *registered owner* has no outstanding traffic violations or parking penalties on his or her driving record or on the registration record of any vehicle registered to the person. If the identity of the *legal* and

registered owners of the vehicle cannot be reasonably ascertained, the vehicle may be sold.

§52.5323 Innocent Owner Remedy

Any owner of a vehicle who suffers any loss due to the forfeiture of any vehicle pursuant to this division may recover the amount of the loss from the person who violated California Vehicle Code section 23109(a) or (c), which gave rise to the nuisance under this division.

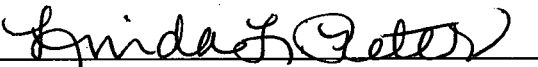
§52.5324 Towing and Storage Fees

- (a) The Chief of Police is responsible for the costs incurred for towing and storage if it is determined that the driver at the time of impoundment did not violate California Vehicle Code section 23109(a) or (c), and did not give rise to the nuisance.
- (b) Charges for towing and storage for any vehicle impounded pursuant to this division shall not exceed the normal towing and storage rates for other vehicle towing and storage conducted by the Chief of Police in the normal course of business.

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. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
Linda L. Peter
Deputy City Attorney

LLP:km:lc
01/17/03
Or.Dept:Atty.
O-2003-106
Form=codeo.frm

APPROVED
01/17/03
Linda L. Peter
Deputy City Attorney