

ORDINANCE NO. 768

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE AMENDING CHAPTERS 9.80 AND 9.81 OF TITLE 9 OF THE CITY OF COMMERCE MUNICIPAL CODE, REGARDING THE IMPOUNDMENT OF VEHICLES USED TO PARTICIPATE IN, AND PROHIBITING SPECTATORS AT, ILLEGAL MOTOR VEHICLE SPEED CONTESTS, EXHIBITIONS OF SPEED, AND RECKLESS DRIVING EXHIBITIONS

WHEREAS, pursuant to the City's police power, as granted broadly under Article XI, Section 7 of the California Constitution, the City Council has the authority to enact and enforce ordinances and regulations for the public peace, morals, and welfare of the City and its residents; and

WHEREAS, pursuant to California Vehicle Code Section 23109 motor vehicle speed contests and exhibitions of speed conducted on public streets and roadways are illegal; and

WHEREAS, pursuant to California Vehicle Code Section 23103 reckless driving, meaning driving a vehicle upon a highway or in an off-street parking facility in willful or wanton disregard for the safety of persons or property, including performing vehicle stunts, is illegal; and

WHEREAS, streets within the City of Commerce have been the site of continuing and escalating illegal street racing and reckless driving exhibitions; and

WHEREAS, street racing and reckless driving exhibitions threaten 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 and for patrons to enjoy the use of the private businesses; and

WHEREAS, Vehicle Code Section 21 precludes local regulation of matters covered by the Vehicle Code "absent express legislative authorization"; and

WHEREAS, the Vehicle Code Section 26109.2 authorizes municipalities to impound vehicles used in illegal motor vehicle speed contests, exhibitions of speed, and reckless driving exhibitions for up to 30 days; and

WHEREAS, racers and spectators gather on the streets late at night and early in the morning hours, blocking the streets and the sidewalks to oncoming traffic, placing bets, forming a racetrack area, and otherwise encouraging, aiding, and abetting the street racing and reckless driving exhibition process; and

WHEREAS, thousands of people are killed each year due to illegal street racing and reckless driving exhibitions, including spectators who can be injured or killed when the driver of a vehicle engaged in such activities loses control of the vehicle and enters the crowd of spectators; and

WHEREAS, the City of Commerce Municipal Code currently prohibits illegal motor vehicle speed contests and exhibitions of speed, but such activities continue to exist and pose a threat to the public's health and safety; and

WHEREAS, to ensure Chapters 9.80 and 9.81 of the City of Commerce Municipal Code are up to date and consistent with state law, industry standards, and the City's practices, amendments have been made to these chapters herein and are being proposed for the City Council's consideration. Additionally, it was necessary to amend Chapters 9.80 and 9.81 to promote internal consistencies within, and with the City's Code; and

WHEREAS, the City Council finds it necessary and appropriate to take additional steps to protect the public's health and safety, beyond the current

penalties imposed upon spectators at illegal motor vehicle speed contests and exhibitions of speed.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The City Council hereby finds and determines that the recitals above are true and correct and are hereby incorporated into this Ordinance as though fully set forth herein.

SECTION 2: Chapter 9.80, "SEIZURE AND FORFEITURE OF VEHICLES USED TO PARTICIPATE IN MOTOR VEHICLE SPEED CONTESTS AND EXHIBITIONS OF SPEED," of the City of Commerce Municipal Code is hereby repealed in its entirety and replaced to read as follows:

CHAPTER 9.80 – IMPOUNDMENT OF VEHICLES USED TO PARTICIPATE IN MOTOR VEHICLE SPEED CONTESTS, EXHIBITIONS OF SPEED, AND RECKLESS DRIVING EXHIBITIONS

9.80.010 – Definitions.

As used in this chapter, the following terms are defined as:

- (a) "Driver" means any person who drives a motor vehicle.
- (b) "Exhibition of speed" means a willful act of showing off or displaying a dangerous or imprudent speed in a vehicle on a highway where the presence of another person is known to the driver or may reasonably be anticipated by him or her.
- (c) "Highway" means a way or place of whatever nature, which is used by the public for vehicular travel. It does not include a facility which is specifically designed and legally maintained for the purposes of speed contests or exhibitions of speed.
- (d) "Reckless driving exhibition" shall mean any exhibition of reckless driving described in California Vehicle Code Section 23103, as may be subsequently amended, including, but not limited to, a person who drives a vehicle upon a highway or an off-street parking facility in willful or wanton disregard for the safety of persons or property.
- (e) "Speed contest" means a contest where a vehicle is raced on a highway against another vehicle, a clock, or other timing device. In order to constitute a speed contest under this section, at least two vehicles must be assembled, or spectators must be present at the event. An event where the vehicles traveling over a prescribed route do not exceed the speed limit, is not a speed contest.
- (f) "Vehicle" means any transportation device that requires the driver to have in his or her immediate possession a valid driver's license for the appropriate class of vehicle being driven and which transportation device is equipped with a motor.

9.80.020 – Impoundment.

- (a) Consistent with Section 23109.2 of the California Vehicle Code, whenever a peace officer determines that a person was engaged in a speed contest, exhibition of speed, or reckless driving exhibition, the peace officer may immediately arrest and take into custody that person and may cause the removal and seizure of the vehicle used in that activity in accordance with Chapter 10 (commencing with Section 22650) of the California Vehicle Code.

(b) A vehicle so seized may be impounded for not more than thirty (30) days.

9.80.030 – Storage Hearing.

The registered and legal owner of a vehicle that is removed and seized under CMC Section 9.80.020 or their agents shall be provided the opportunity for a storage hearing to determine the validity of the storage in accordance with Section 22852 of the California Vehicle Code.

9.80.040 – Early Release of Impounded Vehicle.

(a) Notwithstanding Chapter 10 (commencing with Section 22650) of the California Vehicle Code or any other provision of law, an impounding agency shall release a motor vehicle to the registered owner or his or her agent prior to the conclusion of the impoundment period described in CMC Section 9.80.020 under any of the following circumstances:

(1) If the vehicle is a stolen vehicle.

(2) If the person alleged to have been engaged in the speed contest, exhibition of speed, or reckless driving exhibition was not authorized by the registered owner of the motor vehicle to operate the motor vehicle at the time of the commission of the offense.

(3) If the registered owner of the vehicle was neither the driver nor a passenger of the vehicle at the time of the alleged violation pursuant to CMC Section 9.80.020, or was unaware that the driver was using the vehicle to engage in any of the activities described in CMC Section 9.80.020.

(4) If the legal owner or registered owner of the vehicle is a rental car agency.

(5) If, prior to the conclusion of the impoundment period, a citation or notice is dismissed under Section 40500 of the California Vehicle Code, criminal charges are not filed by the district attorney because of a lack of evidence, or the charges are otherwise dismissed by the court.

(b) A vehicle shall be released pursuant to this section only if the registered owner or his or her agent presents a currently valid driver's license to operate the vehicle and proof of current vehicle registration, or if ordered by a court.

(c) If, pursuant to subsection (a)(5) of this section, a motor vehicle is released prior to the conclusion of the impoundment period, neither the person charged with a violation of Section 23109 or 23103 of the California Vehicle Code nor the registered owner of the motor vehicle is responsible for towing and storage charges nor shall the motor vehicle be sold to satisfy those charges.

9.80.050 - Release of Vehicle After Impoundment Period.

A vehicle seized and removed under CMC Section 9.80.020 shall be released to the legal owner of the vehicle, or the legal owner's agent, on or before the thirtieth (30th) day of impoundment if all of the following conditions are met:

(a) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this State, or is another person, not the registered owner, holding a security interest in the vehicle.

(b) The legal owner or the legal owner's agent pays all towing and storage

fees related to the impoundment of the vehicle. No lien sale processing fees shall be charged to a legal owner who redeems the vehicle on or before the fifteenth (15th) day of impoundment.

(c) The legal owner or the legal owner's agent presents foreclosure documents or an affidavit of repossession for the vehicle.

9.80.060 - Costs and Charges Related to Impoundment.

(a) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5 of the California Vehicle Code.

(b) Notwithstanding subsection (a) of this section, if the person convicted of engaging in a speed contest, exhibition of speed, or reckless driving exhibition was not authorized by the registered owner of the motor vehicle to operate the motor vehicle at the time of the commission of the offense, the court shall order the convicted person to reimburse the registered owner for any towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5 of the California Vehicle Code incurred by the registered owner to obtain possession of the vehicle, unless the court finds that the person convicted does not have the ability to pay all or part of those charges.

(c) If the vehicle is a rental vehicle, the rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 of the California Vehicle Code that were incurred by the rental car agency in connection with obtaining possession of the vehicle.

(d) The registered owner shall not be liable for any towing and storage charges related to the impoundment if acquittal or dismissal occurs.

(e) The vehicle shall not be sold prior to the defendant's conviction.

(f) The impounding agency is responsible for the actual costs incurred by the towing agency as a result of the impoundment should the registered owner be absolved of liability for those charges pursuant to Paragraph (3) of Subdivision (c) of Section 23109.2 of the California Vehicle Code. Notwithstanding this provision, nothing shall prohibit impounding agencies from making prior payment arrangements to satisfy this requirement.

9.80.070 - Period of Storage.

Any period in which a vehicle is subjected to storage under this chapter shall be included as part of the period of impoundment ordered by the court under Subdivision (h) of Section 23109 of the California Vehicle Code.

9.80.080 - Policies, Rules and Regulations Promulgated by City Manager, or Law Enforcement.

The City Manager, or his or her designee, as well as the City's law enforcement, shall be authorized to promulgate additional or supplemental policies, rules and regulations for the effective enforcement of this Chapter, if the public's safety, welfare or health warrants same.

9.80.090 – Fees and Charges.

All related fees and charges associated with, or as referenced or determined by, this Chapter shall be established by resolution of the City Council, which may be amended from time to time. City Council is further authorized to periodically review City

contracts with towing companies to propose adjusting and amending towing fee amounts.

SECTION 3: Chapter 9.81, "SPECTATORS AT ILLEGAL MOTOR VEHICLE SPEED CONTESTS AND EXHIBITIONS OF SPEED," of the Commerce Municipal Code is hereby repealed in its entirety and replaced to read as follows:

CHAPTER 9.81 – SPECTATORS AT ILLEGAL MOTOR VEHICLE SPEED CONTESTS, AND EXHIBITIONS OF SPEED OR RECKLESS DRIVING EXHIBITIONS

9.81.010 – Definitions.

As used in this chapter, the following terms are defined as:

(a) "Illegal motor vehicle speed contest or exhibition of speed" shall mean any speed contest or exhibition of speed referred to in California Vehicle Code Sections 23109(a) and 23109(c).

(b) "Reckless driving exhibition" shall mean any exhibition of reckless driving referred to in California Vehicle Code Section 23103, as the same may be amended from time-to-time, including, but not limited to, a person who drives a vehicle upon a highway or an offstreet parking facility in willful or wanton disregard for the safety of persons or property.

(c) "Offstreet parking facility" shall mean the same as is defined in subdivision (c) of California Vehicle Code Section 12500, as may be amended.

(d) A person is "present" at the illegal motor vehicle speed contest, exhibition of speed, or reckless driving exhibition if that person is within two hundred (200) feet of the location of the illegal motor vehicle speed contest, exhibition of speed, or reckless driving exhibition, or within two hundred (200) feet of the site of the preparations for either of these activities.

(e) "Preparations" for the illegal motor vehicle speed contest, exhibition of speed, or reckless driving exhibition include, but are not limited to, any of the following acts done for the purpose of an illegal motor vehicle speed contest, exhibition of speed, or reckless driving exhibition:

- (1) One (1) or more motor vehicles or 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 on private property or offstreet parking facility 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 (1) or more persons have impeded the free public use of a public street or highway by actions, words, or physical barriers;
- (5) One (1) or more vehicles have lined up on a public street, highway, or offstreet parking facility with motors running;
- (6) One (1) or more drivers is revving their engine or causing the motor vehicle's tires to spin;
- (7) An individual is standing or sitting in a location to act as a race

starter.

(f) "Spectator" shall mean any individual who is present at an illegal motor vehicle speed contest, exhibition of speed, or reckless driving exhibition, 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.

9.81.020 – Spectators Prohibited at Illegal Motor Vehicle Speed Contests, Exhibitions of Speed, and Reckless Driving Exhibitions.

(a) It shall be unlawful for any person to:

(1) Be knowingly present as a spectator at an illegal motor vehicle speed contest or exhibition of speed 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 an illegal motor vehicle speed contest or exhibition of speed 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 an illegal motor vehicle speed contest, exhibition of speed, or reckless driving exhibition or spectators at the location of preparations for either of these activities.

(d) Any violation of this Section shall be punishable by a fine consistent with the City's Administrative Citation Schedule of Fines as a Schedule C Violation, and CMC Section 9.81.030.

9.81.025 – 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 an illegal motor vehicle speed contest, exhibition of speed, or reckless driving exhibition;

(2) That the person charged has previously aided and abetted an illegal motor vehicle speed contest, exhibition of speed, or reckless driving exhibition;

(3) That the person charged has previously attended an illegal motor vehicle speed contest, exhibition of speed, or reckless driving exhibition;

(4) That the person charged was previously present at a location where preparations were being made for an illegal motor vehicle speed contest, exhibition of speed, 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 an illegal motor vehicle speed contest, exhibition of speed, or 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 an illegal motor vehicle speed contest, exhibition of speed, or reckless driving exhibition was taking place.

(b) In addition to the circumstances set out in subsection (a) of this section, 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 the purposes of subsection (b) of this section, "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.

9.81.030 – Penalty.

Violation of this chapter shall constitute a misdemeanor, and may be prosecuted criminally or administratively pursuant to the provisions of the Commerce Municipal Code. If the violation is prosecuted criminally, the maximum penalty shall be a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six (6) months, or both. If the violation is prosecuted administratively, the penalties for a violation of this article shall be as follows:

- (a) The first violation of this chapter shall be subject to a fine of \$1,000.
- (b) The second violation of this chapter within a twelve-month period shall be subject to a fine of \$2,000.
- (c) The third and subsequent violations of this chapter within a twelve-month period shall be subject to a fine of \$5,000.

Each person shall be guilty of a separate offense for each and every day, or part thereof, during which a violation of this Chapter, or of any law or regulation referenced herein, is allowed, committed, continued, maintained or permitted by such person, and shall be punishable accordingly.

Whenever in this Chapter any act or omission is made unlawful, it shall include causing, permitting, aiding, abetting, suffering, or concealing the fact of such act or omission.

The penalties set forth herein are cumulative and in addition to all other remedies, violations, and penalties set forth in this Chapter, the City's Code, or in any other ordinance, laws, rules or regulations of the City, County, or the State of California.

9.81.040 – Policies, Rules and Regulations Promulgated by City Manager, or Law Enforcement.

The City Manager, or his or her designee, as well as the City's law enforcement, shall be authorized to promulgate additional or supplemental policies, rules and regulations for the effective enforcement of this Chapter, including, but not limited to, the use of automated license plate readers ("ALPR") as regulated by state law, if the public's safety, welfare or health warrants same.

SECTION 4: In the event of any conflict between the provisions of this Ordinance and the Commerce Municipal Code, or any appendix or ordinance adopted therein by incorporation, the provisions of this Ordinance shall apply and supersede.

SECTION 5: CEQA. This ordinance is exempt from the California Environmental Quality Act ("CEQA") based on the following:

- A. Under CEQA Guidelines Section 15061(b)(3), CEQA review is not required because there is no possibility that this ordinance may have a significant effect on the environment.
- B. Under CEQA Guidelines Section 15378, the proposed amendment is not a project under CEQA because it will not cause a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, because it is limiting in nature and does not authorize any specific development activity or promote new construction.
- C. Any potential indirect physical change in the environment is speculative and not reasonably foreseeable.

SECTION 6: Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held out to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, subdivision, sentence, clause, phrase, or portion thereof, be declared invalid or unconstitutional.

SECTION 7: The City Clerk shall attest to the adoption of this Ordinance and shall cause the same to be posted as required by law. This Ordinance shall take effect thirty (30) days after its adoption.

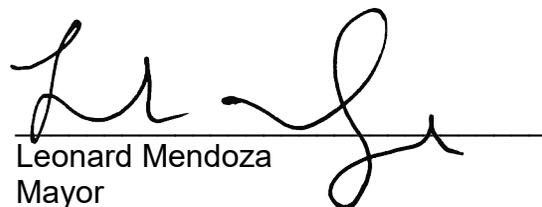
THE FOREGOING ORDINANCE was adopted at a regular meeting of the City Council of the City of Commerce held on the 18th day of May, 2021, by the following vote:

AYES: Altamirano, Argumedo, Mendoza, Rebollo, Soria

NOES:

ABSENT:

ABSTAIN:


Leonard Mendoza
Mayor

ATTEST:


Lena Shumway
City Clerk