

ORDINANCE NO. 33-2006

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADDING CHAPTER 10.68 TO THE CITY OF ELK GROVE MUNICIPAL CODE PROHIBITING SPECTATORS AT ILLEGAL SPEED CONTESTS AND ILLEGAL EXHIBITIONS OF SPEED

The City Council of the City of Elk Grove does ordain as follows:

Section 1: Purpose and Authority.

The purpose of this ordinance is to add Chapter 10.68 to the Elk Grove Municipal Code, prohibiting spectators at illegal speed contests and illegal exhibitions of speed in the City of Elk Grove (hereinafter "City"). The City Council enacts this ordinance pursuant to the authority granted cities by Article XI, Section 7 of the California Constitution.

Section 2: Findings.

- a. Based upon the following, together with the above findings, and, in order to protect the public's health, welfare, and safety, the City Council finds there is an urgent need that this ordinance be effective immediately upon its enactment:
 - (1) With the growth of the City, the number of illegal speed contests and illegal exhibitions of speed is increasing. Since July 2001, there have been 148 citations issued to individuals engaged in illegal speed contests. Illegal speed contests and illegal exhibitions of speed are now being reported to the Sheriff's Dispatch on a daily basis.
 - (2) Some individuals have been maimed and killed due to activities that appear to be illegal speed contests or illegal exhibitions of speed.
 - (3) An increase in property crimes is connected to these illegal events.
- b. The addition of Chapter 10.68 to the Elk Grove Municipal Code is necessary on an urgency basis in order to curb illegal speed contests and illegal exhibitions of speed.

Section 3: Addition.

Chapter 10.68 is hereby added to the Elk Grove Municipal Code to read in its entirety as follows:

CHAPTER 10.68

Sections:

- 10.68.010 Purpose
- 10.68.020 Definitions
- 10.68.030 Spectator at Illegal Speed Contest or Illegal Exhibitions of Speed – Violation
- 10.68.040 Relevant Circumstances to Prove a Violation
- 10.68.050 Admissibility of Prior Acts

10.68.010 Purpose

- a. The Council for the City of Elk Grove 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. Illegal motor vehicle speed contests and illegal exhibitions of speed are more commonly known as street races or drag races. Streets within the City of Elk Grove have been the site of continuing and escalating illegal street racing. 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. 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 race track area, and otherwise encouraging, aiding and abetting the racing process.
- b. 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 their cell phones, police scanners, and other electronic devices to communicate with each other to avoid arrest. They also use the internet, including the website myspace.com, 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. In some cases, illegal street races attract up to fifty (50) 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 chapter 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.

- c. This chapter is adopted to prohibit spectators at illegal street races with the aim of significantly curbing this activity. The chapter 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.

10.68.020 Definitions

- a. "Illegal motor vehicle speed contest" or "illegal exhibition of speed" means any illegal speed contest or illegal exhibition of speed referred to in California Vehicle Code sections 23109(a) and 23109(c).
- b. Preparations for the "illegal motor vehicle speed contest" or "illegal 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 "illegal 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.
- c. "Spectator" means any individual who is present at an "illegal motor vehicle speed contest" or "illegal 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.

10.68.030 Spectator at Illegal Speed Contest or Illegal 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 illegal 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 illegal 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 illegal 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 illegal exhibitions of speed in the course of their official duties.

10.68.040 Relevant Circumstances to Prove a Violation

Notwithstanding any other provision of law, to prove a violation of Section 10.68.030, 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 individuals 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 illegal exhibition of speed;
- h. that the individual charged has previously aided and abetted an illegal motor vehicle speed contest or illegal exhibition of speed;
- i. that the individual charged has previously attended an illegal motor vehicle speed contest or illegal exhibition of speed;

- j. that the individual charged was previously present at a location where preparations were being made for an illegal speed contest or illegal exhibition of speed or where an illegal exhibition of speed or illegal motor vehicle speed contest was in progress.

10.68.050 Admissibility of Prior Acts

The list of circumstances set forth in Section 10.68.040 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 illegal 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 an illegal speed contest or illegal 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 Elk Grove.

Section 4: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

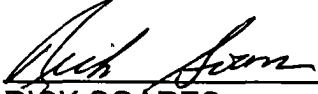
Section 5: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 6: Effective Date – Urgency Ordinance.

This ordinance shall take effect immediately as an urgency ordinance. The frequency of illegal speed contests and illegal exhibitions of speed in the City is increasing. Participants and innocent bystanders are placed at great risk by these illegal events. Some individuals have, in all likelihood, even been maimed or killed by accidents that have resulted from individuals participating in these illegal events. Illegal speed contests and illegal exhibitions of speed are encouraged by the spectators that attend these dangerous events. For these reasons and the findings found in Section 2 above, the City Council finds that the immediate passage of this ordinance is necessary for the immediate preservation of the public health and safety of the City.


PASSED AND ADOPTED by the City Council of the City of Elk Grove this 28th day of June 2006.



RICK SOARES
MAYOR OF THE CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:



PEGGY JACKSON
CITY CLERK



ANTHONY B. MANZANETTI
CITY ATTORNEY

EFFECTIVE DATE: JUNE 28, 2006

Ayes:	Soares, Scherman, Briggs, Cooper, Leary
Noes:	None
Abstain:	None
Absent:	None