

## Ordinance No. 34-2006

### AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADDING CHAPTER 10.70 TO THE CITY OF ELK GROVE MUNICIPAL CODE ALLOWING FOR THE IMPOUNDMENT OF VEHICLES USED IN 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 10.70 to the Elk Grove Municipal Code, allowing for the impoundment of vehicles used in 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, 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 of 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 10.70 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 10.70 is hereby added to the Elk Grove Municipal Code to read in its entirety as follows:

## CHAPTER 10.70

### Sections:

- 10.70.010 Purpose
- 10.70.020 Impoundment
- 10.70.030 Storage Hearing
- 10.70.040 Early Release of Impounded Vehicle
- 10.70.050 Release of Vehicle after Impoundment Period
- 10.70.060 Costs and Charges Related to Impoundment
- 10.70.070 Period of Storage

### **10.70.010 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](http://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.
- c. This chapter is adopted to allow for the impoundment of vehicles that are used in illegal speed contests and illegal exhibitions of speed. The chapter targets only the automobiles that are used in violation of 23109 of the California Vehicle Code and gives proper notice to citizens as to the procedural mechanisms that the City must follow. Through impounding vehicles, the act of participating in illegal street races will be discouraged.

- d. This ordinance is dedicated to the memory of Anthony Mondragon and Nick Davis. The City Council, in enacting this ordinance, recognizes and thanks the citizens of the City of Elk Grove, and particularly Constance Conley, Linda Ford, Rebecca Davis, and Patrick Hume for their participation and input into this ordinance.

**10.70.020 Impoundment**

- a. Consistent with California Vehicle Code section 23109.2, whenever a peace officer determines that a person was engaged in a motor vehicle speed contest, as described in subdivision (a) of section 23109 of the California Vehicle Code, the peace officer may immediately arrest and take into custody that person and may cause the removal and seizure of the motor vehicle used in that contest in accordance with Chapter 10 of the California Vehicle Code (commencing with section 22650).
- b. A motor vehicle so seized may be impounded for not more than 60 days.
- c. In any proceeding arising out of a violation of this ordinance, the person prosecuted shall not be eligible for participation in any Neighborhood Accountability Board program and shall not be eligible for deferred entry of judgment.

**10.70.030 Storage Hearing**

The registered and legal owner of a vehicle that is removed and seized under section 10.70.020 or their agents shall be provided the opportunity for a storage hearing to determine the validity of the storage in accordance with California Vehicle Code section 22852.

**10.70.040 Early Release of Impounded Vehicle**

Notwithstanding Chapter 10 of the California Vehicle Code (commencing with section 22650) 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 section 10.70.020 under any of the following circumstances:

- a. If the vehicle is a stolen vehicle.
- b. If the person alleged to have been engaged in the motor vehicle speed contest 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.
- c. 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 section 10.70.020, or was unaware that the driver was using the vehicle to engage in any of the activities described in section 10.70.020.

- d. If the legal owner or registered owner of the vehicle is a rental car agency.
- e. 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.

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.

If, pursuant to paragraph e above, a motor vehicle is released prior to the conclusion of the impoundment period, neither the person charged with a violation of section 23109 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.

#### **10.70.050 Release of Vehicle after Impoundment Period**

A vehicle seized and removed under section 10.70.020 shall be released to the legal owner of the vehicle, or the legal owner's agent, on or before the 60th 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 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.

#### **10.70.060 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 paragraph a. directly above, if the person convicted of engaging in a motor vehicle speed contest 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 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.

#### **10.70.070 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.

#### Section 4: Educational Video.

The City Council directs City staff to prepare an educational video highlighting the dangers of street racing. Copies of the video are to be distributed to Elk Grove schools and other organizations as determined appropriate by the City Manager.

#### Section 5: 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 6: 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.

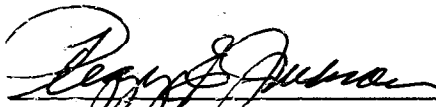
Section 7: Effective Date – Urgency Ordinance.

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. Impoundment of vehicles used in these illegal events is a means to curb participation in speed contests. 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:

  
PEGGY JACKSON  
CITY CLERK

APPROVED AS TO FORM:

  
ANTHONY B. MANZANETTI  
CITY ATTORNEY

EFFECTIVE DATE: JUNE 28, 2006

AYES: Soares, Scherman, Cooper, Briggs, Leary  
NOES: None  
ABSENT: None  
ABSTAIN: None