

Your Committee, to which this proposal was referred, has amended the proposal to read as follows and recommends its adoption as amended.

CITY COUNTY COUNCIL

PROPOSAL NO. 314, 2024

CITY OF INDIANAPOLIS-MARION COUNTY, INDIANA

INTRODUCED: 9/23/2024

REFERRED TO: Public Safety and Criminal Justice Committee

SPONSOR: Osili, Robinson, Carlino, Graves, Barth, Boots, Delaney, Evans, Nielsen, Allen, Roberts and Gibson

DIGEST: amends Chapter 441, Article III, of the Revised Code of the Consolidated City of Indianapolis and Marion County to add a new Division 9 pertaining to illegal street activity

SOURCE:

Initiated by: Indianapolis Metropolitan Police Department

Drafted by: Indianapolis Metropolitan Police Department

LEGAL REQUIREMENTS FOR ADOPTION:

Subject to approval or veto by Mayor

PROPOSED EFFECTIVE DATE:

Adoption and approvals

GENERAL COUNSEL APPROVAL: _____



Date: September 19, 2024

CITY-COUNTY GENERAL ORDINANCE NO. _____, 2024

PROPOSAL FOR A GENERAL ORDINANCE to amend Chapter 441 Article III of the Revised Code of the Consolidated City of Indianapolis – Marion County to add a new Division 9 pertaining to illegal street activity.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The Revised Code of the Consolidated City and County is hereby amended by adding a new Division 9 to Chapter 441 Article III, to read as follows:

DIVISION 9. - ILLEGAL STREET ACTIVITY

Sec. 441-391. - Definitions. The following definitions apply throughout this division.

- (a) ILLEGAL STREET RACING – A motor vehicle speed contest using public highways, streets, rights-of-way, public or private driveways, airport runways, or off-street parking facility in violation of Indiana motor vehicle and traffic laws, drag racing or racing and/or laying drags. Illegal street racing may include, but is not limited to, situations in which:
1. A group of motor vehicles or individuals has gathered at a location for the purpose of participating in such an event;
 2. 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 such an event;

3. One (1) or more individuals have impeded the free public use of a public street, sidewalk, highway, public or private driveways, airport runways, or parking lots by actions, words, or physical barriers for the purpose of conducting such an event;
 4. Two (2) or more vehicles have lined up with motors running for an illegal motor vehicle speed contest or exhibition of speed;
 5. One (1) or more drivers are revving the vehicle's engine or spinning the vehicle's tires in preparation for the event; or
 6. An individual is stationed at or near one (1) or more motor vehicles serving as a race starter.
- (b) **MOTORCYCLE STUNTING** – Any use of a motorcycle for the purpose of acrobatic maneuvering to perform wheelies (the front wheel of the motorcycle comes off the ground), burnouts (keeping the motorcycle stationary and spinning its wheels which results in friction causing the tires to heat up and create smoke), or front wheelies/stoppies (the rear wheel of the motorcycle is lifted by abruptly applying the front brake).
- (c) **OFF-STREET PARKING FACILITY** – Any public or private off-street parking area open for use by the public for parking vehicles, other than a private residential property or the parking area of a garage or parking lot for which a charge is made for the storing or parking of vehicles.
- (d) **ORGANIZER** – Any individual who in any manner knowingly takes part in the planning, organization, coordination, facilitation, or sharing of the location of any illegal street racing or reckless driving exhibition or collects money in connection with an illegal street racing or reckless driving exhibition.
- (e) **PARTICIPANT** – Any individual who is knowingly present at an illegal street racing or reckless driving exhibition for the purpose of actively taking part in the event, through conduct including, but not limited to:
1. Riding in a race vehicle as a passenger;
 2. Assisting the organizers and/or drivers in carrying out the event; or
 3. Exchanging money or anything of value with any driver, car owner, organizer or other participant in connection with the event.
 4. For the purpose of this definition, a person who is a mere bystander, passerby, or observer not aware of the illegal activity shall not be deemed a participant.
- (f) **PREPARATIONS** – Any of the following acts done for the purpose of causing a street race or reckless driving exhibition:
1. Causing one or more motor vehicles and persons to gather at a predetermined location on a public street, highway, or off-street parking facility;
 2. Causing one or more persons to gather on, or adjacent to, a public street or highway;
 3. Causing one or more persons to gather in an off-street parking facility;
 4. Causing one or more persons to impede the free public use of a public street, highway or off-street parking facility by acts, words or physical barriers;
 5. Causing one or more motor vehicles to line up on a public street, highway, or off-street parking facility with motors running, impeding the free public use of a public street, highway, or off-street parking facility or being a physical barrier;
 6. Causing one or more drivers to rev a motor vehicle's engine or cause the motor vehicle's tires to spin; or

7. Standing or sitting in a location to act as a race starter.

- (g) PROMOTER – Any person who knowingly promotes an exhibition of illegal drag racing, in violation of or of laying drags. The terms promote shall include, but not be limited to, advertising, posting, or sharing the location of any illegal street racing or reckless driving exhibition or taking video or photographic images for purpose of promoting and/or profiting from the event.
- (h) RECKLESS DRIVING EXIBITION – A reckless disregard for the safety of persons or potential damage to public or private property involving a motorized vehicle.
- (i) SPECTATOR – An individual who knowingly is a bystander or observer of an illegal street racing or reckless driving exhibition.

Sec. 441-392. - Violations.

- (a) No person shall knowingly act as an organizer of an illegal street racing or reckless driving exhibition.
- (b) Except as provided elsewhere in this section, no person shall knowingly act as a participant in, or spectator of, an illegal street racing, motorcycle stunting or reckless driving exhibition, as defined herein.
- (c) Nothing in this section prohibits law enforcement officers or their agents from being participants or spectators at an illegal street racing, motorcycle stunting or reckless driving exhibition in the course of their official duties.
- (d) This section shall not apply to licensed or duly authorized racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes.
- (e) In all cases of violations of this ordinance, the person charged shall appear in court pursuant to notice from the City Prosecutor's Office as set forth in ~~(4)(b).~~ section 441-394 (b).

Sec. 441-393. - Procedure and Penalties.

- (a) Violations of this section shall be punished as follows:
 - 1. Organizers, promoters, and those driving motor vehicles shall be punished by a fine not to exceed two hundred fifty (\$250.00) dollars subject to all limitations contained in applicable state law.
 - 2. All other participants other than spectators shall be punished by a fine not to exceed two hundred fifty (\$250.00) dollars subject to all limitations contained in applicable state law.
 - 3. Spectators shall be punished by a fine not to exceed one hundred dollars (\$100.00), subject to all limitations contained in applicable state law.
 - 4. Any motor vehicle used in an illegal street racing, motorcycle stunting or reckless driving exhibition as defined in this section may be removed and impounded by police to the extent authorized by applicable state law, or pursuant to a warrant issued by a court of competent jurisdiction. An impounded vehicle may be held in impound for not less than thirty (30) days or final adjudication of the case, to the maximum extent allowed under state law. The purpose of such impoundment and holding period is because such vehicles pose a potential hazard to public safety by virtue of their use in an illegal street racing and/or reckless driving exhibition; therefore, their impoundment is necessary to abate the nuisance declared herein.
- (b) Proving a Violation. ~~Proving a Violation~~ – A violation will be based upon an evaluation of a totality of the circumstances. Notwithstanding any other provision of law, to prove a violation of this section, admissible evidence may include, but is not limited to, any of the following:

1. The time of day;
2. The nature and description of the scene;
3. The number of people at the scene;
4. The location of the individual charged in relation to any individual or group present at the scene;
5. The number and description of motor vehicles at the scene;
6. That the individual charged drove or was transported to the scene;
7. To the fullest extent permissible by law, evidence of prior act(s) may be admissible to show the plan, opportunity, intent, knowledge, **and/or** identity **and/or propensity** of the person charged to be present at a street race or a reckless driving exhibition if the prior act(s) occurred within three (3) years of the presently charged offense. The prior act(s) may also be admissible to show that, in the absence of a mistake or accident, the person charged had knowledge that a street race or reckless driving exhibition was taking place. This evidence may include, but is not limited to:
 - a. That the individual charged has previously participated in an illegal street racing or reckless driving exhibition;
 - b. That the individual charged has previously aided and abetted an illegal street racing or reckless driving exhibition;
 - c. That the individual charged has previously organized an illegal street racing or reckless driving exhibition; or
 - d. That the individual charged previously was present at a location where preparations were being made for an illegal street racing or reckless driving exhibition or where an illegal street racing or reckless driving exhibition was in progress.

Sec. 441-394. - Impound Appeals and Hearings

(a) Notice of Impoundment of Vehicle.

1. The registered owner of the impounded motor vehicle shall be established by the Indianapolis Metropolitan Police Department's vehicle registration inquiry with the Indiana Bureau of Motor Vehicles.
2. Notice of the impoundment of the vehicle shall be given in writing to the registered owner at their address on file with the Indiana Bureau of Motor Vehicles. The notice shall include the following:
 - a. Statement that the driver or operator of a motor vehicle registered to said owner:
 - i. Participated in an illegal street racing or reckless driving exposition;
 - ii. Date, approximate time, and approximate location of the event.
 - iii. Description of the motor vehicle as contained in the police officer's report.
 - iv. Notice of the opportunity to contest the imposition of the vehicle impoundment by appearing at the hearing described in **section 441-394 (b) section B**, or filing a request for a hearing with the Court listed in the Notice in **section 441-394(b) Section B**. within ten (10) days of the notice of impoundment.

(b) Notice of Hearing.

1. When the person to whom the violation has been issued has:
 - a. Appeared and denied the violation; or
 - b. Failed to appear at the court date listed on the summons; or
 - c. Failed to pay the specified civil penalty within seven (7) days of admitting the violation.

The city prosecutor may either file an enforcement action in court, or issue a notice of administrative hearing to the person upon whom the citation was served and/or to the person who is listed with the Indiana Bureau of Motor Vehicles as the registered owner of the vehicle identified on the citation.

2. Service of notice of administrative hearing shall be by United States mail to the respondent's last known address, or by personal service. Service on an artificial person or a person incompetent to receive service shall be made on a person allowed to receive service under the rules governing civil actions in the courts. The city prosecutor shall keep a record of the time, date and manner of service.
3. The city prosecutor shall cause a copy of each notice issued pursuant to this section to be delivered to the hearing officer who will preside over the hearing.
4. Each notice of administrative hearing shall include the following information:
 - a. A caption for the hearing, which shall include the name of each party expected to participate in the hearing, and an official file or other reference number;
 - b. A statement of the date, time and place of the hearing;
 - c. A statement of the nature of the hearing, including the legal authority under which the hearing is to be held, and the parties' procedural rights at the hearing;
 - d. A statement of the date, time and place of each alleged violation as stated on the parking citations, and the maximum penalty that can be imposed thereupon;
 - e. The official title and mailing address of the hearing officer and a telephone number through which information concerning the hearing may be obtained;
 - f. The official title, mailing address and telephone number of the person who has been designated to appear on behalf of the city; and
 - g. A statement that a party who fails to respond to the notice of the hearing, or to participate in the hearing, may be held in default.
5. Timing. Notice of administrative hearing shall be issued at least twenty (20) days prior to the date of the hearing.

(c) Pre Hearing Procedures

1. Prior to the hearing, the hearing officer shall give the parties an opportunity to file documents or motions regarding matters such as continuances, discovery, and any other preliminary matters. At the time of filing, a party shall serve a copy of all filed items on each other party.
2. Motions for continuance shall be filed no later than seven (7) days before the date assigned for the hearing, unless the reason therefor is shown by affidavit to have occurred within the seven-day period.
3. The hearing officer, upon request by any party or upon the hearing officer's own initiative, may issue subpoenas and discovery orders in accordance with the rules of procedure

governing subpoenas and discovery in judicial proceedings. The party seeking the subpoena or order shall cause them to be served in accordance with these rules of procedure.

(d) Hearing Procedures. The hearing shall be conducted according to the procedures set forth in section 103-76.

(e) Hearing Decision

1. Upon the conclusion of each hearing, the hearing officer shall render a decision which includes a determination whether the respondent violated the ordinance as alleged on the citation, the amount of civil penalty which must be paid for each violation with instructions on when and how payment shall be made, the length of time the vehicle will remain impounded, and a statement of the parties' right to petition for review of the decision.
2. The decision shall be based exclusively upon the evidence of record in the hearing and on matters officially noticed therein. The hearing officer's experience and specialized knowledge may be used in the evaluation of the evidence.
3. The hearing officer shall cause each decision rendered pursuant to this section to be memorialized on a minute sheet or similar written entry into the record.
4. A decision rendered pursuant to this section may be modified by the hearing officer who rendered it, upon the hearing officer's own initiative or by motion of any party. Any motion to modify a decision shall be filed within thirty (30) days after the date of the decision.

(f) Record of the Hearing: The record of each hearing shall consist of the following:

~~1. The record of each hearing shall consist of the following:~~

21. The notice of hearing and any other notices sent to respondent and/or registered owner of the vehicle;
32. The citation(s), if available;
43. The record(s) of the vehicle's impoundment;
54. Any documents, photographs, video or motions filed or entered into evidence;
65. Any written orders, subpoenas, and decision of the hearing officer; and
76. The audio recording of the hearing;

8. and

shall constitute the complete and exclusive record for review of a hearing officer's decision.

(g) Petition for Review of Decision.

1. A verified petition for review of the decision of a hearing officer, stating the alleged error and any factual or legal basis therefor, may be filed in the circuit or superior court of Marion County within thirty (30) days after the day on which the decision is rendered. A party who does not file an appeal within this time period forfeits the right to appeal.
2. Any party who files a verified petition for review shall within fifteen (15) days thereafter secure from the hearing officer a certified copy of the record of the hearing, and file the same with the clerk of the court.
3. An extension of time within which to file the record may be granted by the court upon a showing of good cause, which shall include the petitioner's inability to obtain the certified copy of the record with fifteen (15) days.

4. The failure of a party to file a certified copy of the record or to secure an extension of time therefore shall be cause for dismissal of the petition for review upon motion of any party of record.

SECTION 2. The expressed or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.

SECTION 3. Should any provision (section, paragraph, sentence, clause, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the Council in adopting this ordinance. To this end the provisions of this ordinance are severable.

SECTION 4. This ordinance shall be in effect from and after its passage by the Council and compliance with Ind. Code § 36-3-4-14.

The foregoing was passed by the City-County Council this ____ day of _____, 2024, at ____ p.m.

ATTEST:

Vop Osili
President, City-County Council

Yulonda Winfield
Clerk, City-County Council

Presented by me to the Mayor this ____ day of _____, 2024.

Yulonda Winfield
Clerk, City-County Council

Approved and signed by me this ____ day of _____, 2024.

Joseph H. Hogsett, Mayor