

Revised July 8, 2024

MEMORANDUM

To: Public Safety Committee
From: Tamaso Johnson, Analyst
Subject: Council Bill 120806 – Emergency Illegal Racing Ordinance

On July 9, 2024, the Public Safety Committee will discuss and possibly vote on Council Bill (CB) 120806 addressing illegal racing. This emergency legislation would in primary part: 1) create a new municipal traffic infraction of \$500 assessed to the registered owner of a vehicle involved in unlawful racing; and, 2) adopt into Seattle Municipal Code recent changes to the Revised Code of Washington enacted by the state legislature which provide an expanded definition of the crime of unlawful racing and classify it as a reckless driving gross misdemeanor.

CB 120806 would effectuate policies that are substantively identical to those contained in CB 120799, discussed for the first time in the Public Safety Committee on June 25, 2024, where the City Attorney's Office and the Seattle Police Department presented on the mechanics of the legislation and the issues it is intended to address.

This memo provides some background on existing law relating to illegal racing and related conduct, summarizes proposed changes under this bill, and discusses next steps for this legislation.

Illegal racing prohibitions

Current City law addressing illegal racing

Though illegal racing may include or co-occur with other prohibited conduct (e.g. speeding) the Seattle Municipal Code (SMC) specifically addresses unsanctioned races on public roadways in the city primarily through a criminal prohibition on reckless driving. SMC 11.56.120 prohibits any person from racing a motor vehicle on public roadways and states that, "[a]ny person or persons who willfully compare or contest relative speeds by operation of one or more motor vehicles is guilty of reckless driving[...]." As used in the reckless driving prohibition, "race" is not explicitly defined beyond the accompanying subsection language addressing comparisons or contests of relative speed. Reckless driving under current City law is a gross misdemeanor, punishable by up to 364 days in jail and/or a fine up to \$5,000.

Washington state law addressing illegal racing

During the 2023 legislative session, the Washington State Legislature passed Senate Bill 5606 *Deterring illegal racing*.¹ This legislation, which became law on January 1, 2024, expands the scope of conduct prohibited as illegal racing under the Revised Code of Washington (RCW), further defines illegal racing behavior beyond speed contests, and creates new impound and forfeiture authority for vehicles used in illegal racing.

New prohibited conduct

Prior to this change, state law prohibitions on racing largely mirrored the current SMC by defining “racing” as a form of reckless driving involving contests of speed by one or more vehicles.² The expanded state law describing illegal “racing” retains the prohibition on contests of speed in addition to expressly prohibiting exhibitions of “maneuverability, or the power of one or more vehicles, including “drifting”.”³ The scope of racing prohibitions were also expanded with this state legislation beyond public roadways to explicitly include “off-street facilities” which are most commonly parking lots.⁴

Penalties

Illegal racing is also a gross misdemeanor under state law, punishable by up to 364 days in jail and a fine of up to \$5,000.⁵ Any person who “knowingly aids and abets” racing may also be prosecuted under the same statute.⁶ In addition to criminal sanctions on persons involved in illegal racing, the RCW allows for vehicles used in illegal racing to be impounded and potentially forfeited under certain conditions.⁷ Vehicle impounds related to illegal racing are subject to the same general statutory process concerning impounds generally, which allow for impoundment when a driver is arrested, except vehicles used in illegal racing cannot be redeemed within 72 hours when the driver arrested for racing is also the registered owner.⁸

A vehicle used in illegal racing may be subject to forfeiture if: 1) a person is convicted of illegal racing and a finding is made that a specific vehicle was used; 2) the person has previously had

¹ <https://app.leg.wa.gov/billsummary?BillNumber=5606&Chamber=Senate&Year=2023>.

² See former RCW 46.61.530 (effective until January 1, 2024)

³ See RCW 46.61.530. “Drifting” is defined in RCW 46.04.1641 as “a driver intentionally oversteers a vehicle, causing loss of traction, while maneuvering a vehicle in a turning direction.

⁴ See RCW 46.04.367.

⁵ See RCW 46.61.530; RCW 46.61.500.

⁶ See RCW 46.61.530(2); RCW 46.64.048.

⁷ See RCW 46.61.748; RCW 46.55.

⁸ See RCW 46.55.360(2)(c) and (d); limited exceptions for situations where there are multiple registered or legal owners of an impounded vehicle.

any vehicle impounded for illegal racing; and, 3) the person was previously charged with reckless driving, racing, or a similar crime under local ordinance.⁹

Changes proposed by CB 120806

This ordinance proposes to amend City code on illegal racing by creating a new traffic infraction penalizing the registered owner of a vehicle involved in racing, and by adopting into SMC the state law changes made by Senate Bill 5606 (2023) described previously in this memo.

Adoption of RCW racing crime

CB 120806 adopts into the SMC the provisions of state law described previously in this memo. Generally speaking, though Seattle Police Department (SPD) has existing authority to investigate and enforce state criminal law, adoption of RCW sections into the SMC gives the Seattle City Attorney's office the statutory authority to prosecute misdemeanor and gross misdemeanor crimes once codified in the SMC.

New registered owner fine

This legislation also creates a new non-criminal traffic infraction for "vehicle participation in unlawful racing" assessable in the amount of \$500 to the registered owner of a vehicle used in "unlawful racing," regardless of whether the owner was the person driving the vehicle during the racing conduct.¹⁰ "Unlawful race event" is a new term defined by this legislation, which is largely similar to the current 'racing' elements of the SMC definition of "reckless driving," with two important additions: 1) in addition to speed contests, "unlawful race events" also include demonstrations of power or maneuverability, "in a straight or curved direction, in a circular motion, around corners, or in circles in an activity commonly known as "drifting," or by breaking traction."; and, 2) "unlawful race events" may take place at an "off-street facility," such as a parking lot, in addition to the public roadway language in existing SMC. This infraction is intended to be enforced primarily through the use of SPD video evidence identifying a specific vehicle and license plate, as captured largely via bodycams or police vehicle dashcams, and this is expressly authorized in this legislation. During the June 25, 2024 Public Safety Committee hearing on CB 120799, SPD stated that video captured by non-SPD devices, such as personal cell phones, might also be able to be used as evidence of an infraction, provided that the video was able to be verified and vetted as authentic by SPD.

⁹ See RCW 46.61.748(2).

¹⁰ The \$500 statutory fine amount in this legislation constitutes a base fine amount, to which various mandatory fees are added to determine the final amount charged to a violator. According to estimates from the Seattle Municipal Court, a base traffic infraction amount of \$500 would result in an actual fine amount of \$1,071 to be assessed to the violator.

Amendments or Policy Considerations:

There are currently two amendments filed to CB 120806, described in brief below:

Amendment 1: Increasing fines for vehicle participation in unlawful racing (Saka)

This amendment changes the infraction fine amounts for vehicle participation in unlawful racing by increasing penalties for repeat violators. CB 120806 includes a \$500 base infraction charged to the registered owner of a vehicle involved in unlawful racing. This amendment would retain that \$500 base fine for a first infraction, increase the fine to \$800 for a second infraction, and \$1,500 for third and subsequent infractions.

Amendment 2: Penalizing attendees at unlawful race events (Saka)

This amendment adds unlawful race attendance as a prohibited activity punishable by civil infraction. Any person knowingly attending an unlawful race event with the intent to observe, support, or encourage the event may face a civil infraction base fine of \$100 if they fail to leave the event if instructed to do so by a peace officer.

Next steps

Following a discussion and possible vote on CB 120806 at the July 9, 2024 meeting of the Public Safety Committee, this legislation may be scheduled for hearing at Full Council later this month. The previous iteration of this legislation (CB 120799) will not move forward.

cc: Ben Noble, Director