



MEMORANDUM

TO: Mayor Weinberg and Members of the Los Altos City Council
FROM: Jolie Houston, City Attorney
RE: Legislative Update on AB 43 (Traffic Safety)
DATE: April 9, 2024

Assembly Bill 43 (AB 43) pertaining to traffic safety was approved by the Governor on October 8, 2021. (Attached) According to AB 43, Phase 1 became effective on January 1, 2022, and Phase 2 will become effective no later than June 30, 2024. Veh.Code §22358.7(c). AB 43 creates an exception to an Engineering and Traffic Survey (ETS) requirement for “Business Activity Districts” and provides the City of Los Altos (City) with greater flexibility in setting and reducing speed limits. An ETS is still required in most circumstances to reduce or otherwise change a local speed limit.

BACKGROUND

Under existing state law, there is a 25-mph speed limit established for business districts,¹ residence districts,² schools, and senior centers, unless a different speed is determined by a local authority (hereinafter City) or the Department of Transportation (DOT). Veh.Code §22352(b). There is also a standard 15 mph speed limit for railway crossings, alleys, and highway crossings with obstructed views without yield signs, stop signs, or traffic signals. Veh.Code §22352(a).

¹ Veh.Code §235 defines a business district as “that portion of a highway and the property contiguous thereto (a) upon one side of which highway, for a distance of 600 feet, 50 percent or more of the contiguous property fronting thereon is occupied by buildings in use for business, or (b) upon both sides of which highway, collectively, for a distance of 300 feet, 50 percent or more of the contiguous property fronting thereon is so occupied. A business district may be longer than the distances specified in this section if the above ratio of buildings in use for business to the length of the highway exists.”

² Veh.Code §515 defines a residence district as “that portion of a highway and the property contiguous thereto, other than a business district, (a) upon one side of which highway, within a distance of a quarter of a mile, the contiguous property fronting thereon is occupied by 13 or more separate dwelling houses or business structures, or (b) upon both sides of which highway, collectively, within a distance of a quarter of a mile, the contiguous property fronting thereon is occupied by 16 or more separate dwelling houses or business structures. A residence district may be longer than one-quarter of a mile if the above ratio of separate dwelling houses or business structures to the length of the highway exists.”

The City may increase or decrease these prima facie speed limits by ordinance as determined by an ETS. Veh.Code §22357(a). The City may also set speed limits for other city streets where a 65-mph limit would otherwise be applicable using an ETS. Veh.Code §22358(a).

The purpose of an ETS is to analyze prevailing speeds, collision records, pedestrian and bicycle activity, residential density, and roadside conditions. Veh.Code §627. A city may then round speed limits to the nearest five miles per hour of the 85th percentile of the free-flowing traffic. Veh. Code § 22358.6. The ETS methodology has been criticized in the past because the 85th percentile may not actually be the speed that is safe for all road users. AB 43 revised the definition of an ETS to allow for consideration for vulnerable pedestrian groups including children, seniors, persons with disabilities, users of personal assistive mobility devices, and the unhoused. Veh.Code §627.

Generally, the City is required to produce a current engineering and traffic survey when an individual is charged with violating the basic speed law with evidence obtained through radar. *People v. DiFiore* (1987) 197 Cal.App.3d Supp. 36. An ETS should be regularly conducted once every five (5) years by a city, but an ETS may be extended beyond five (5) years if a registered engineer evaluates the section of the highway and determines that no significant changes in roadway or traffic conditions have occurred. Veh.Code §40802. Should the City fail to conduct an ETS based on this timeline, an individual found to be speeding using radar could assert the defense that the area is an unlawful “speed trap.” Veh.Code §40802; *People v. Miller* (1979) 90 Cal.App.3d Supp. 35.

AB 43 ANALYSIS

"

Prior to AB 43, the City was required to use an ETS to set the speed limit at the 85th percentile rounded to the nearest 5 mph as described above. Veh.Code §22358.6. AB 43 still requires an ETS to determine the 85th percentile speed in most circumstances but introduces some flexibility regarding how an ETS can be interpreted and in what circumstance an ETS is no longer required.

PHASE 1 (Now in effect)

Round Down. After completing an ETS to identify the 85th percentile, the City may adopt an ordinance that allows it to round down whenever rounding to the nearest 5 mph is required; if for example the 85th percentile is 54 mph, the City can round down to 50 mph. Veh.Code §22358.6.

Choice of ETS. After completing an ETS to identify the 85th percentile, the City may also elect not to follow the new ETS. Veh.Code §22358.8. By ordinance, the City may instead retain the current speed limit or restore the immediately prior speed limit established by an older ETS if a registered engineer evaluates the highway and determines that no additional general-purpose lanes have been added since the prior ETS. Veh.Code §22358.8(a). The speed limit may be reduced by no more than 5-mph from the current or prior speed limit. Veh.Code §22358(b). Only warning citations may be issued for violations exceeding the speed limit by 10-mph or less for the first 30 days that the lower speed limit is in effect. Veh.Code §22358.8(c). This speed limit will not constitute a “speed trap.” Veh.Code §40802(c)(2)(B).

Business Activity Districts. Without an ETS to identify the 85th percentile and without the risk of creating a “speed trap,” the City may by ordinance declare a 20 or 25 mph speed limit for a streets contiguous to a “Business Activity District.” Veh.Code §22358.9; Veh.Code §40802(c)(2)(B)(ii). A Business Activity District is a new land use category for central or neighborhood downtowns, urban villages, and zoning designations that prioritize commercial land uses at the downtown or neighborhood scale and meet certain conditions. Id. This new land use category is not the same as but may overlap with a business district as previously discussed, which usually has a 25-mph speed limit pursuant to Vehicle Code section 22352(b). A Business Activity District must have four or fewer traffic lanes and meet three of the following four conditions:

- a. Commercial/Retail: At least 50% of the property adjoining the highway consists of retail or commercial dining that opens directly onto sidewalks adjacent to the highway.
- b. Parking: There are parking spaces located along the highway.
- c. Signage: Traffic signals or stop signs are located at least every 600 feet.
- d. Crosswalks: Crosswalks are marked and controlled by traffic control devices.

By ordinance, the City may declare a 20 or 25-mph speed limit for a Business Activity District. Signs must be posted and there must be a 5-mph buffer immediately prior to and after the Business Activity District. For example, if the Business Activity District has a speed limit of 20 mph, then the speed limit immediately prior and after the Business Activity District must be 25-mph. Veh.Code §22358.9(a)(2)(B). Only warning citations may be issued for violations exceeding the speed limit by 10-mph or less for the first 30 days that the lower speed limit is in effect.

PHASE 2 (Available June 30, 2024 or when state officials create an online portal to adjudicate an infraction, whichever is sooner)

Safety Corridors. After completing an ETS to identify the 85th percentile, the City may designate up to one-fifth of their streets as “safety corridors” based on the number of serious injuries and fatalities related to vehicles, pedestrians, bicycles, school proximity and vulnerable populations. Veh.Code §22358.7. The City may adopt an ordinance and issue findings to reduce the speed limit in a Safety Corridor by an additional 5 mph from the 85th percentile.

The Department of Transportation (DOT) defines a safety corridor as a roadway segment where the highest number of serious injuries and fatality crashes occur. California Manual on Uniform Traffic Control Devices p.136, Table 2B-105(CA) Safety Corridor Definition Requirement (Attached). The geographic extent of the safety corridor may be determined by non-engineering staff and proactive measures may be used as indicators, but a licensed professional engineer must sign off on the safety corridor using an ETS. The DOT recommends using three to five years of the most recent crash data to determine a safety corridor based on fatal and serious injury data to identify where a minimum of 25% of the fatal and serious injury crashes occur. Data may come from an ETS and the California Highway Patrol’s Statewide Integrated Traffic Records System. Safety corridors will not constitute a “speed trap.” Veh.Code §40802(c)(2)(B)(ii).

Vulnerable Groups. After completing an ETS to identify the 85th percentile, the City will also be able to reduce the speed limit on portions of highway adjacent to lands or facilities that generate high concentrations of bicyclists or pedestrians, as well as vulnerable groups such

as children, seniors, persons with disabilities, and the unhoused. Veh.Code §22358.7(a)(2). The City may reduce the speed limit an additional 5-mph from the 85th percentile speed if the portion of the highway is within a distance of 1320 feet of specified land uses, transit factors, pedestrian and bicycle infrastructure, demographic factors, and local data as specified in the California Manual on Uniform Traffic Control Devices p.136, Table 2B-106(CA) p.262. This designation will also not constitute a “speed trap.” Veh.Code §40802(c)(2)(B)(ii).

CONCLUSION

AB 43 modifies how an ETS can be interpreted when the City sets speed limits and introduces another alternative methodology to set speed limits for Business Activity Districts, Safety Corridors, and Vulnerable Groups, if these areas meet the specified criteria. If the City Council wishes to take further action, the City Council may agendaize this for a public discussion and/or direct this matter to the Complete Streets Commission for review.