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MEMORANDUM

Date: October 26, 2011
To: Gregory W. Rushin, Chief of Police
From: Jason Christensen, Lieutenant
Subject: Analysis of Safe Passing Ordinance

The following is a report on a proposed “Model Safe Passing Ordinance” circulated by numerous pro-bicycling organizations, including BikeTexas. BikeTexas is a non-profit organization designed to increase awareness and interest in bicycle access, safety, and education (www.biketexas.org). Cities such as Denton, El Paso, Austin, San Antonio, Edinburg, Fort Worth, New Braunfels, and Beaumont passed ordinances containing language similar to that found in the “Model Safe Passing Ordinance” presented by BikeTexas. These cities titled their ordinances under names such as “Vulnerable Road Users” and “Safe Passing of Vulnerable Road Users”. According to BikeTexas, 16 states have laws designed to protect “vulnerable road users”, including the requirement of a 3-foot passing zone of clearance around these types of users.

“Safe Passing Act” history, legislation, etc.

Bill authors: Rodney Ellis, John Carona

“The Safe Passing Act” (SB 488) was filed on January 15, 2009. It left the Senate Committee on April 1, 2009 and was voted on and passed by the Senate on April 21, 2009. The bill left the House Committee on May 5, 2009, and was voted on and passed by the House on May 19, 2009. The bill was vetoed by Governor Perry on June 19, 2009.

An analysis of the bill states there are notable differences in fatality rates among different groups of road users. According to the authors, “Vulnerable Road Users” are at greater risk than vehicle occupants, and are often overrepresented in traffic fatalities. The bill sought to provide additional protections for vulnerable road users.

SB 488 required more than three feet of passing distance (six feet for commercial vehicles) when motorists pass vulnerable road users. Additionally, it included penalties for intimidating, harassing, or threatening vulnerable road users. Violations of SB 488 constituted a fine of \$500 if the violation resulted in property damage or a Class B misdemeanor if the violation resulted in bodily injury.

Section (k) of the bill stated that it was a defense to prosecution that the vulnerable road user was a person operating a bicycle in violation of Section 551.103 (Operation on Roadway) or

551.104(b)(2) (relating to bicycle safety equipment).

According to the House Journal, SB 488 prevailed with 142 yeas and zero nays. The measure passed in the Senate as well, with 26 yeas and five nays.

Governor Perry vetoed the measure on June 19, 2009. Among his objections to the bill, Governor Perry argued that it creates a new class of roadway users, requiring specific actions by motor vehicle operators. He advised that many “Vulnerable Road Users” already have operation regulations and restrictions in statute. Additionally, Governor Perry argued the bill contradicted much of current statute, placing the liability and responsibility on the motor vehicle operator when encountering a “Vulnerable Road User”. Finally, Governor Perry noted motor vehicle operators are already subject to penalties when he or she is at fault for causing a collision or operating recklessly, regardless of whether it is against a “vulnerable road user” or not.

References:

Senate Journal from Monday, June 1, 2009 (pages 5159-5160)
<http://www.journals.senate.state.tx.us/sjrn/81r/pdf/81RSJ06-01-F.PDF#page=120>

Senate Bill No. 488 text
<http://www.legis.state.tx.us/BillLookup/Text.aspx?LegSess=81R&Bill=SB488>

Review of ordinances in other cities

Ordinances passed in New Braunfels, Beaumont, Helotes, El Paso, Austin, San Antonio, and Edinburg closely model language offered in the “Model Safe Passing Ordinance” found on the BikeTexas webpage (<http://www.biketexas.org>). The model ordinance is included as an attachment to this report.

The City of Fort Worth passed a city ordinance under Sec. 22-95 – “Safe passing of vulnerable road users”, which also uses similar language to that in the model ordinance. Fort Worth includes a section, (d) (2), which notes that an occupant of a motor vehicle may not maneuver the vehicle in a manner that is reckless and which causes a collision with any vulnerable road user on any roadway or intersection. This includes a collision caused by opening a motor vehicle’s door into the path of a vulnerable road user or the user’s animal or equipment.

The City of Denton also passed an ordinance relating to safe passage-vulnerable road users. This version includes expanded definitions of vulnerable road users (skateboarders, rollerblades, manual scooters, etc.) in various categories. Further, Denton’s ordinance provides specifications and requirements for various types of vulnerable road users (pedestrians, runners, etc. shall utilize sidewalks; persons operating on bicycles on a roadway may ride two abreast).

Denton’s ordinance includes u-turns, in reference to additional requirements in yielding right-of-way. Additionally, the ordinance makes it a violation to place a vulnerable road user at risk of unreasonable imminent bodily injury. Finally, Denton’s ordinance states “it is a defense to prosecution under this section that at the time of the offense, the vulnerable road user was acting in violation of the law”. The language in the model ordinance states “it is an affirmative defense to prosecution...”

Information from other cities

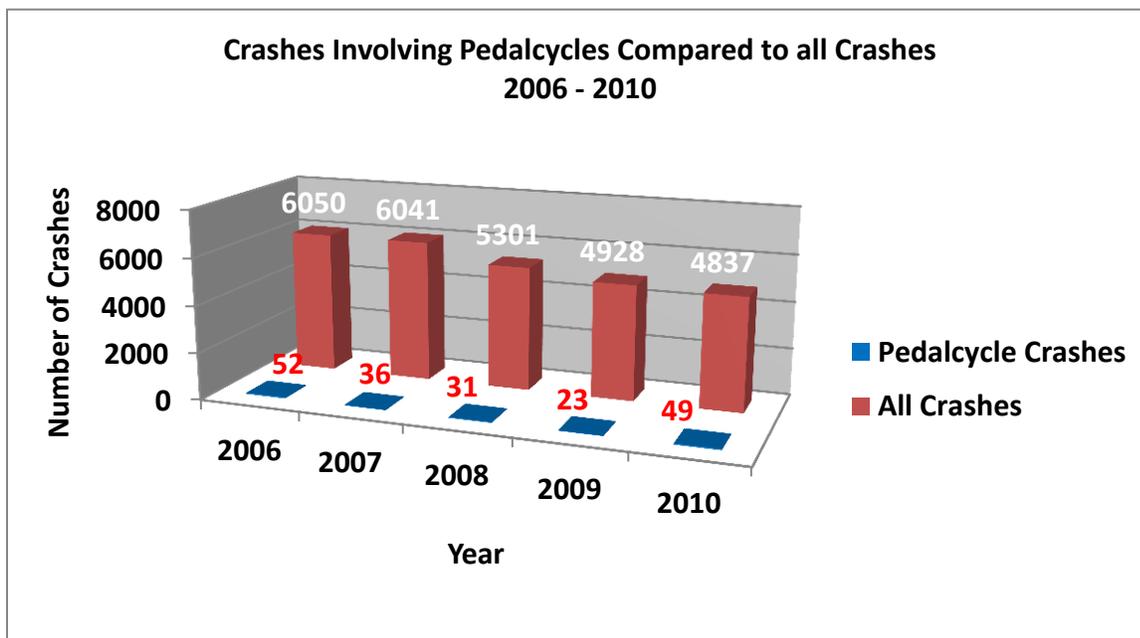
Mark Nelson, Director of Transportation Operations for the City of Denton, advised that language used in their ordinance came from that found in the “Safe Passing Act” (SB 488) proposal. Council agenda information from the City of Denton on April 5, 2011 indicates the purpose of the ordinance is to protect vulnerable road users, which are typically defined as a pedestrian, cyclist, or an individual who must occupy a portion of the roadway as part of their employment. In his agenda information sheet, Nelson noted that sixteen other states have passed vulnerable road user laws to provide additional protections, in addition to local ordinances passed in San Antonio, Austin, El Paso, New Braunfels, Edinburgh, and Helotes.

Mr. Nelson advised the impetus for the ordinance in the City of Denton began with a council member who is a bicycle enthusiast, and was aware of “Safe Passing” legislation and ordinance proposals in other cities. Mr. Nelson was unaware of any citations issued by the Denton Police Department as a result of violations involving the ordinance. He advised their emphasis involves a focus on more public education, incorporating the efforts of their Mobility Committee.

Analysis of crashes involving pedal-cyclists

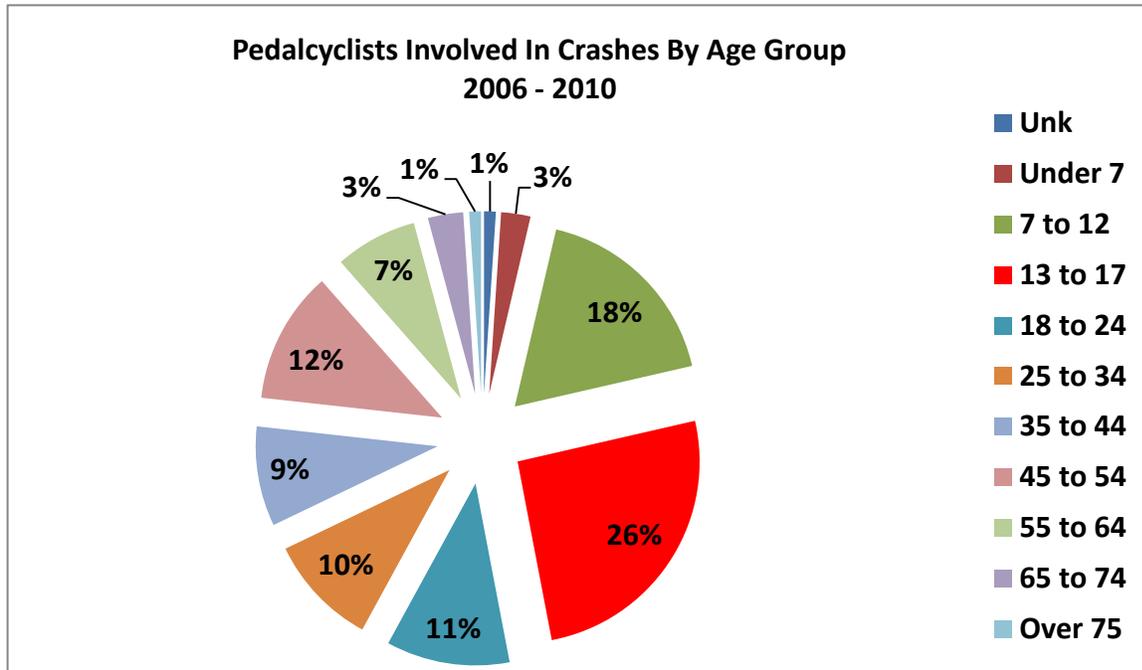
The Plano Police Department’s Crime Analysis Unit conducted a review of all crashes involving pedal-cyclists from 2006 to the present. On October 31, 2011, Planning and Research Coordinator Danny Alexander provided this report to Chief Rushin. The report analyzed a variety of issues relating to pedal-cyclist crashes.

From 2006 to 2009, the total number of crashes involving pedal cycles (142) accounted for less than one percent of all crashes in the city. In 2010, the percentage of crashes involving pedal cyclists increased (49) to 1.01 percent of all crashes. Through September 2011, there have been 34 reported crashes involving pedal cycles.



Between 2006 and 2010, most crashes involving pedal cyclists occurred in August (21), followed by July (20), with 19 crashes each occurring in April, May, and June. During the same time period, more pedal cycle crashes occurred on Mondays (40), than any other day of the week. The hours of 7:00 a.m. (29) and 8:00 a.m. (21) had the highest number of pedal cycle crashes by hour, followed by 4:00 p.m. (16) and 6:00 p.m. (16).

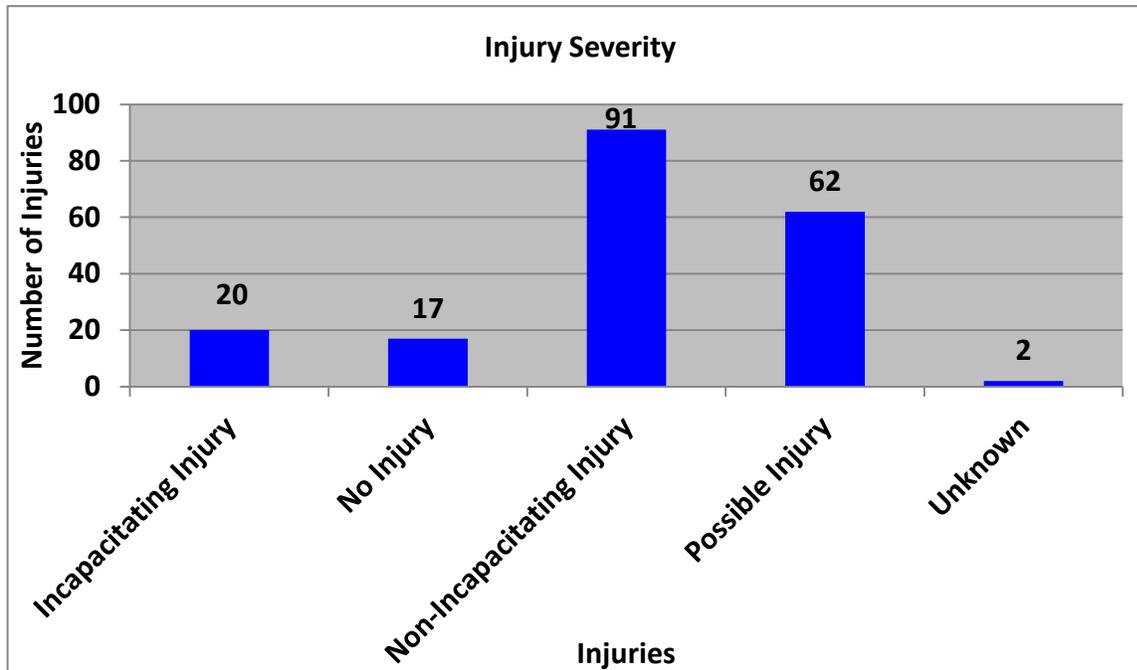
The ages of pedal cyclists involved in crashes ranged from 3 years of age to 83 years of age. The age group most often involved in crashes was 13 to 17 year olds (26%), followed by 7 to 12 year olds (18%). Fifteen year olds were most likely to be involved in a pedal cycle crash, accounting for 8.85% of all involved crashes, followed by 12 year olds (7.29%).



Pedal cyclists were not wearing a helmet in 76 percent of crashes occurring between 2006 and 2010, where helmet data was collected. Pedal cyclists in the age group of 13 to 17 years of age were least likely to be wearing a helmet in a crash. This age group accounted for nearly 24 percent of non-helmet usage in pedal cycle crashes. The age range of 45 to 54 years of age was the most compliant with helmet usage in a crash.

The injury rate for pedal cyclists involved in crashes during the period of 2006 to 2010 was 58 percent. This figure does not include those reporting possible injuries. Non-incapacitating injuries accounted for 82 percent of all injuries, with incapacitating injuries accounting for the remaining 18 percent.

During the reported period, there were no fatal crashes involving a pedal cyclist. There has only been one reported fatality-involved crash since 2002. That crash occurred in 2004 in the 6300 block of Legacy Drive. The following chart compares the injury severity of crashes occurring in 2006 through 2010.



In the following tables, causation factors in these crashes were analyzed. In 34.8 percent of crashes, pedalcyclists entered the roadway from a sidewalk just prior to the crash. In 79 percent of those crashes, the pedalcyclist entered the roadway from the sidewalk to the right of the motorist. The following table shows the contributing factors attributed to pedal cyclists in crashes:

Pedalcyclist Crash Factor	Number	Pct of Crashes
Pedalcyclist Failed to Yield Right of Way to Motor Vehicle	41	21.4%
Driver Inattention	11	5.7%
Disregard Stop and Go Signal	10	5.2%
No Opinion	10	5.2%
Failed to Yield Right of Way - Private Drive	8	4.2%
Wrong Side - Approach or Intersection	6	3.1%
Disregard Stop Sign or Light	4	2.1%
Failed to Stop at Proper Place	4	2.1%
Failed to Control Speed	3	1.6%
Wrong Side - Not Passing	3	1.6%
Changed Lanes When Unsafe	2	1.0%
Drove Without Head Lights	2	1.0%
Impaired Visibility	2	1.0%
Came off Sidewalk into the Street	1	0.5%
Defective or No Vehicle Brakes	1	0.5%

Pedalcyclist Crash Factor	Number	Pct of Crashes
Drove Wrong Side of Road	1	0.5%
Failed to Drive in a Single Lane	1	0.5%
Failed to Heed Warning Sign	1	0.5%
Failed to Yield Right of Way - Alley	1	0.5%
Failed to Yield Right of Way - Open Intersection	1	0.5%
Failed to Yield Right of Way - Stop Sign	1	0.5%
Failed to Yield Right of Way - Turning Left	1	0.5%
Failed to Yield Right of Way Entering Roadway	1	0.5%
Failed to Yield Right of Way to Turning Traffic	1	0.5%
Faulty Evasive Action	1	0.5%
Had Been Drinking	1	0.5%
Not Equipped with Lights or Reflectors	1	0.5%
Not Equipped with Blinking Red Reflector	1	0.5%
Parked Without Lights	1	0.5%
Pedalcyclist on Sidewalk	1	0.5%
Riding in a Crosswalk	1	0.5%
Turned When Unsafe	1	0.5%
Under Influence - Alcohol	1	0.5%
Wrong Side of Side Walk	1	0.5%
Wrong Way - One-Way Road	1	0.5%

The following table shows the contributing factors attributed to motorists in these crashes, as determined by the investigating officer and reported in the State Crash Report:

Motorist Contributing Factors	Number	Pct of Crashes
Driver Inattention	26	13.5%
Failed to Yield Right of Way - To Pedestrian	15	7.8%
No Opinion	9	4.7%
Failed to Yield Right of Way - Left Turn	7	3.6%
Failed to Yield Right of Way - Stop Sign	7	3.6%
Impaired Visibility	5	2.6%
Turned When Unsafe	4	2.1%
Disregard Stop Sign or Light	3	1.6%
Fail to Control Speed	3	1.6%
Disregard Stop and Go Signal	2	1.0%
Fail to Pass Safely - Left Side	2	1.0%
Failed to Yield Right of Way - Turn on Red	2	1.0%
Failed to Yield Right of Way - Private Drive	2	1.0%
Failed to Yield Right of Way - Turn on Red	2	1.0%

Motorist Contributing Factors	Number	Pct of Crashes
Illness	2	1.0%
Turned Improperly - Wide Right	2	1.0%
Cell Phone Use	1	0.5%
Change Lane When Unsafe	1	0.5%
Defective or No Brakes	1	0.5%
Distraction in Vehicle	1	0.5%
Drove Without Headlights	1	0.5%
Failed to Drive in a Single Lane	1	0.5%
Failed to Stop at Proper Place	1	0.5%
Failed to Yield Crosswalk to Pedalcyclist	1	0.5%
Failed to Yield Right of Way - Alley	1	0.5%
Failed to Yield Right of Way - Occupied Crosswalk	1	0.5%
Failed to Yield Right of Way - Open Intersection	1	0.5%
Faulty Evasive Action	1	0.5%
Followed Too Close	1	0.5%
Overtake and Pass Insufficient Clearance	1	0.5%
Pedalcyclist Failed to Yield Right of Way to Motor Vehicle	1	0.5%
Reduced Visibility	1	0.5%
Road Rage	1	0.5%
Speeding Over Limit	1	0.5%
Sun in Eyes	1	0.5%
Wet Streets	1	0.5%

A total of 33 charges were filed in 27 pedalcycle-involved crashes between 2006 and 2010. 14 of those charges involved hazardous moving violations, with 13 of the charges filed against motorists (8 of 13 involving failure to yield right of way offenses). One hazardous moving violation (disregard red light) was filed against a pedalcyclist during the same time period.

Discussion of existing laws protecting/regulating bicycles and other conveyances

Proposed Safe Passing Ordinance	Existing law/ordinance
Definition of Vulnerable Road Users	Various definitions exist under Plano City Ordinances and Texas Transportation Code
Passing a Vulnerable Road User	Safe distance, bicyclists must ride on right curb or edge
Safe Distance	Passing to the left at safe distance, maintain clear distance between vehicles
Left Turns at Intersection	Operators shall yield right-of-way when turning left
Overtaking a Vulnerable Road User	Requires safe distance and cannot move back to right side of road unless safely clear of passed vehicle
Cause intimidation or harassment, or threaten vulnerable road user	Reckless driving includes the willful or wanton disregard for the safety of persons or property
“Affirmative Defense” – Action constitutes offense, defendant must raise issue at trial vs. “Defense to Prosecution” – Element of offense must be negated	Currently, “vehicles” fall under the same legal standard in the Transportation Code

Sample Safe Passing Ordinance: Vulnerable Road User includes (4) a person operating a motorcycle, moped, motor-driven cycle, or motor-assisted scooter.

Currently, existing City of Plano ordinances regulate the operation of motorized scooters on roadways. Plano City Ordinance (CO 14-26) defines a motorized scooter as a self-propelled device with at least two wheels in contact with the ground during operation, a braking system, a gas or electric motor forty (40) cubic centimeters or less, a deck designed to allow a person to stand or sit while operating, and the ability to be self-propelled by human power alone.

Plano City Ordinance (CO 14-27) states it is unlawful for any person to ride or operate a motorized scooter on any sidewalk within the following geographic areas:

1. The area encompassed by the following boundaries: beginning at the intersection of K Avenue and 14th Street, thence west along 14th Street to its intersection with the west side of the DART right-of-way, thence north along the west side of the DART right-of-way for a distance of one thousand two hundred (1,200) feet, thence east one hundred ninety (190) feet to the east side of the DART bus drop off lot, thence south one hundred eighty-five (185) feet to the north right-of-way of 16th Street, thence east along 16th Street to its intersection with K Avenue, thence south along K Avenue to its intersection with 14th Street.
2. Haggard Park, including the parking area,
3. The monuments, retaining walls, plazas, walkways, steps, railings, and trail that are part of the area of Memorial Park that serves as a veteran’s memorial; however, this shall not apply to the continuous recreational trail that passes under Custer Road and through the length of Memorial Park connecting it to Chisholm Trail and Jack Carter Park.

Further, Plano City Ordinance (CO 14-27) states it is unlawful for any person to ride or operate a motorized scooter on a street, road, or highway that has an improved surface that is greater than twenty-seven (27) feet in width. Plano City Ordinance (CO 14-28) outlines additional age restrictions, making it unlawful for a custodian to permit or allow a child under the age of 10 to operate or ride a motorized scooter on any alley, street, or highway within the city. Subsection (b) places similar restrictions on persons who are ten (10) years of age, but under eighteen (18) years of age, unless they have an appropriate license as specified in the ordinance.

Plano City Ordinance (CO 14-7) states no person shall use or operate a motorized device, or bicycles, roller skates, rollerblades, skateboard, or similar device on any public street, sidewalk, walkway, or other public area within the following identified places, unless specifically permitted and posted for such purposes:

1. The area encompassed by the following boundaries: beginning at the intersection of K Avenue and 14th Street, thence west along 14th Street to its intersection with the west side of the DART right-of-way, thence north along the west side of the DART right-of-way for a distance of one thousand two hundred (1,200) feet, thence east one hundred ninety (190) feet to the east side of the DART bus drop off lot, thence south one hundred eighty-five (185) feet to the north right-of-way of 16th Street, thence east along 16th Street to its intersection with K Avenue, thence south along K Avenue to its intersection with 14th Street.
2. Haggard Park, including the parking area,
3. The monuments, retaining walls, plazas, walkways, steps, railings, and trail that are part of the area of Memorial Park that serves as a veteran's memorial; however, this shall not apply to the continuous recreational trail that passes under Custer Road and through the length of Memorial Park connecting it to Chisholm Trail and Jack Carter Park.

Wheelchairs and other such devices to assist handicapped or physically impaired persons are excluded from the provisions of this section.

Sample Safe Passing Ordinance: Vulnerable Road User includes pedestrians (runners, physically disabled person, child, etc.)

Texas Transportation Code (TC 552.008) states an operator of a vehicle shall exercise due care to avoid colliding with a pedestrian on a roadway. Further, it requires a warning, by sound a horn when necessary. It also requires an operator to exercise proper precaution on observing a child or an obviously confused or incapacitated person on a roadway.

Sample Safe Passing Ordinance: An operator of a motor vehicle passing a vulnerable road user operating on a highway or street shall: (1) vacate the lane in which the vulnerable road user is located if the highway or street has two or more marked lanes running in the same direction; or (2) pass the vulnerable road user at a safe distance.

Texas Transportation Code (TC 551.101) states a person operating a bicycle has the rights and duties applicable to a driver operating a vehicle. Texas Transportation Code (TC 551.103) notes that one shall ride as near as practicable to the right curb or edge of the roadway; however, there

are several situations that permit the bicyclist to ride away from the right curb. These include when passing another vehicle moving the same direction, preparing to make a left turn, and road conditions that prevent the ability to ride along the right curb or edge. Further, bicyclists operating in an outside lane that is less than 14 feet wide and does not have an adjacent bicycle lane, or is too narrow for a bicycle and a motor vehicle to travel safely side by side, are not required to ride along the right curb of the roadway.

Additionally, persons riding two abreast on a laned roadway shall ride in a single lane, and may not impede the normal and reasonable flow of traffic. They may not ride more than two abreast unless the roadway is set aside exclusively for bicycle operation.

Texas Transportation Code (TC 552.006) states pedestrians may not walk along and on a roadway if an adjacent sidewalk is provided and is accessible. Further, if a sidewalk is not provided, a pedestrian shall walk on the left side of the roadway, or on the shoulder of the highway facing oncoming traffic. Vehicle operators emerging from or entering an alley, building, private road, or driveway shall yield to a pedestrian.

Sample Safe Passing Ordinance: Defines safe distance as at least: three feet if the operator's vehicle is a passenger car or light truck, or six feet if the operator's vehicle is a truck other than a light truck, or a commercial motor vehicle as defined by Texas Transportation Code (TC 522.003).

Texas Transportation Code (TC 545.053) states an operator passing another vehicle must pass to the left of the other vehicle at a safe distance. The operator may not move back to the right side of the roadway until safely clear of the passed vehicle. Texas Transportation Code (TC 545.062) requires an operator, if following another vehicle, to maintain an assured clear distance between the two vehicles. It also requires the operator to consider the speed of the vehicles, traffic, and the conditions of the highway.

Sample Safe Passing Ordinance: An operator of a motor vehicle that is making a left turn at an intersection, including an intersection with an alley or private road or driveway, shall yield the right-of-way to a vulnerable road user who is approaching from the opposite direction and is in the intersection, or is in such proximity to the intersection as to be an immediate hazard.

Texas Transportation Code (TC 545.152) states that to turn left at an intersection or into an alley or private road or driveway, an operator shall yield to a vehicle that is approaching from the opposite direction and that is in the intersection or in such proximity to the intersection as to be an immediate hazard.

Sample Safe Passing Ordinance: An operator of a motor vehicle may not overtake a vulnerable road user traveling in the same direction and subsequently make a right-hand turn in front of the vulnerable road user unless the operator is safely clear of the vulnerable road user, taking into account the speed at which the vulnerable road user is traveling and the braking requirements of the motor vehicle making the right-hand turn.

Texas Transportation Code (TC 545.051) states an operator shall drive on the right half of the

roadway unless the operator is passing another vehicle, an obstruction necessitates moving the vehicle left of center and the operator yields the right of way to a vehicle that is moving in the proper direction, or is an immediate hazard. Additionally, it states an operator of a vehicle on a roadway moving more slowly than the normal speed of other vehicles at the time and place under the existing conditions shall drive in the right-hand lane available for vehicles, or as close as practicable to the right-hand curb or edge of the roadway, unless the operator is:

- Passing another vehicle, or
- Preparing for a left turn at an intersection or into a private road or driveway

In regards to passing, Texas Transportation Code (TC 545.053) requires an operator passing another vehicle to pass to the left of the other vehicle at a safe distance. Additionally, the operator may not move back to the right side of the roadway until safely clear of the passed vehicle. An operator being passed by another vehicle shall, on audible signal, move or remain to the right in favor of the passing vehicle, and may not accelerate until completely passed by the passing vehicle.

Texas Transportation Code (TC 545.103) addresses the issue by noting that an operator may not turn the vehicle to enter a private road or driveway, or otherwise turn the vehicle from a direct course, or move right or left on a roadway unless the movement can be made safely. Further, Texas Transportation Code (TC 545.062) regulates a safe distance between vehicles, requiring an operator to be able to safely stop without colliding with the preceding vehicle or veering into another vehicle, object, or person on or near the highway.

Texas Transportation Code (TC 552.008) – Operator of a vehicle shall exercise due care to avoid colliding with a pedestrian on a roadway; give warning by sounding horn when necessary; exercise proper precaution on observing a child or an obviously confused or incapacitated person on a roadway.

Sample Safe Passing Ordinance: An operator of a motor vehicle may not maneuver the vehicle in a manner that is intended to cause intimidation or harassment, or threatens a vulnerable road user.

Texas Transportation Code (TC 545.401) addresses reckless driving as an offense. It states that a person commits an offense if they drive a vehicle in willful or wanton disregard for the safety of persons or property. Additionally, this section applies to a private access way or parking area for businesses, and a highway or other public place. It also applies to a person, a team, or motor vehicles and other equipment engaged in work on a highway surface.

Legal Issues

Rodney D. Patten, Assistant City Attorney III for the City of Plano, reviewed related documents and provided a legal analysis on the subject of a “Safe Passing Ordinance”. Mr. Patten advised that the proposed model ordinance presents several concerns in the areas of enforceability and preemption, which could make it difficult to prosecute violations in court. Mr. Patten addressed both topics in a memo on October 14, 2011.

In regards to enforceability, Mr. Patten notes enforcement could be difficult as a result of vague and unclear language, as well as the fact that it places an undue burden on officers to obtain exact measurement of distance, speed, and breaking ratios between motorists and vulnerable road users. He notes that, if for any reason an officer fails to address or is incapable of obtaining these calculations or measurements, enforcement and subsequent prosecutions may fail. Additionally, he states that subsection (f) of the model ordinance provides no guidance to explain the specific actions or movement required to constitute a violation.

In addressing preemption issues, Mr. Patten states that the model ordinance addresses areas of transportation safety which are currently governed by state law. Mr. Patten notes that the Texas Transportation Code already controls the following areas, which are addressed within the model ordinance:

1. Operation, rights and duties of bicycles and pedestrians on the roadway
2. Pedestrian right-of-way
3. Driver's obligations to exercise due care
4. Operation and movement of vehicles when turning or entering at an intersection
5. Rights and duties of pedestrians crossing at a point other than a crosswalk
6. The operation of bicycles, mopeds, and play vehicles operated on a roadway

Mr. Patten states that any attempt to further regulate these areas by local ordinance may place the proposed ordinance at risk of being preempted by state law. Further, he notes that if the City of Plano fails to provide a different punishment or define the violations differently from state law, the proposed ordinance may be considered in conflict with state law, causing the entire ordinance to be declared invalid and unenforceable.

Based on the legal review, Mr. Patten advises that the proposed ordinance should not be adopted as written based on the concerns relating to enforcement and preemption. Further, he cites specified distances, measurements, and unclear terminology as additional challenges for law enforcement to act on violations of the proposed ordinance. Mr. Patten recommends any vague and ambiguous language be removed, and exact measurements or calculations be eliminated. Finally, he states that in order to address preemptions issues, the local ordinance should be drafted to address issues not already covered by state law.

References:

Memorandum from Rodney D. Patten, Assistant City Attorney III to Chief Greg Rushin, dated October 14, 2011.

Email attachment from Chief Greg Rushin to Captain Gay Schaffer and Lieutenant Jason Christensen, sent September 30, 2011.

Analysis of Safe Passing/Vulnerable Road Users Ordinances

Gregory W. Rushin, Chief
Plano Police Department



Legislative History

- “The Safe Passing Act” (SB 488) filed on January 15, 2009
 - Authors: Rodney Ellis, John Carona
- Voted and passed by the Senate on 5/21/2009 (26 yea – 5 nay votes)
- Voted and passed by the House on 5/19/2009 (142 yea – 0 nay votes)



SB 488 History

- Vetoed by Gov. Perry on 6/19/2009
 - Reasons cited:
 - Creates new class of roadway users
 - Requires specific actions by motorists
 - Regulations and restrictions in statute already exist
 - Contradicts current statute and places liability and responsibility on motorists
 - Motorists already subject to penalties when at fault for causing a collision/operating recklessly



Ordinances in other cities

- Passed in New Braunfels, Beaumont, Helotes, El Paso, Austin, San Antonio, Edinburg, Denton
 - Closely model language in “Model Safe Passing Ordinance”
 - Denton expands definitions of vulnerable road users, provides additional specifications, and changes language to “a defense to prosecution”



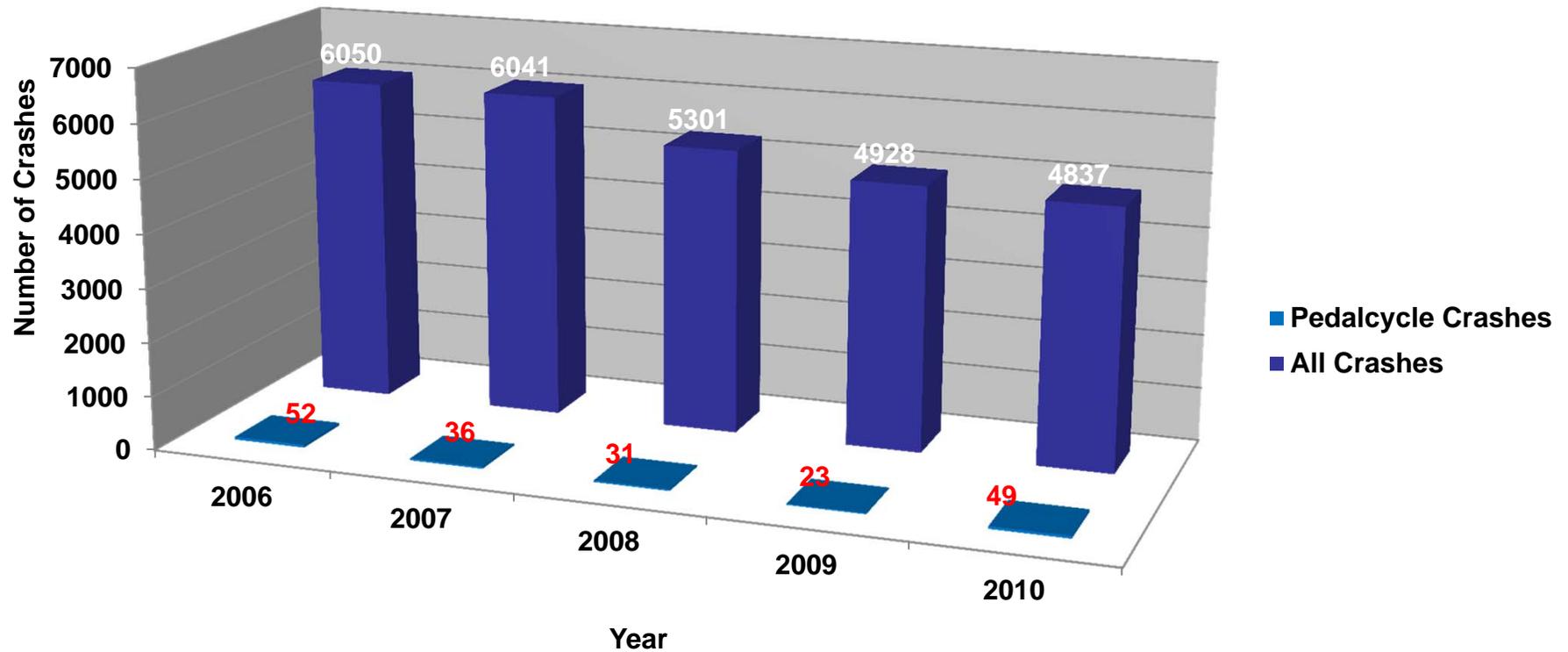
Plano Crash Analysis

- Crashes involving pedalcycles from 2006 to 2009 (142) accounted for less than one percent of all crashes
- 2010, percentage of crashes involving pedalcycles (49) was 1.01 percent
- Through September 2011, there have been 34 crashes involving pedalcycles



Plano Crash Analysis

Crashes Involving Pedalcycles Compared to all Crashes
2006 - 2010



Plano Crash Analysis

- From 2006 through 2010, the demographics of crashes most often :
 - August (21) – highest month
 - Mondays (40) – highest day of week
 - 7:00 a.m. & 8:00 a.m. (29-21) – hours
 - 13 to 17 years of age (26 percent) and 7 to 12 years of age (18 percent) – age groups
 - Not wearing helmets (76 percent)



Pedal Cyclist Crash Factors (Leading 10 Causes)

Pedal cyclist Crash Factor	Number	Pct of Crashes
Pedal cyclist Failed to Yield Right of Way	41	21.4%
Driver Inattention	11	5.7%
Disregard Stop and Go Signal	10	5.2%
No Opinion	10	5.2%
Failed to Yield Right of Way – Private Drive	8	4.2%
Wrong Side – Approach or Intersection	6	3.1%
Disregard Stop Sign or Light	4	2.1%
Failed to Stop at Proper Place	4	2.1%
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Changed Lanes When Unsafe	2	1.0%



Motorists Crash Factors (Leading 10 Causes)

Motorists Crash Factors	Number	Pct . Of Crashes
Driver Inattention	26	13.5%
Failed to Yield Right of Way – To Pedestrian	15	7.8%
No Opinion	9	4.7%
Failed to Yield Right of Way – Left Turn	7	3.6%
Failed to Yield Right of Way – Stop Sign	7	3.6%
Impaired Visibility	5	2.6%
Turned When Unsafe	4	2.1%
Disregard Stop Sign or Light	3	1.6%
Fail to Control Speed	3	1.6%
Disregard Stop and Go Signal	2	1.0%



Plano Crash Analysis

- In 34.6 percent of crashes, pedal cyclists entered the roadway from a sidewalk just prior to the crash
- In 79 percent of these crashes, the pedal cyclist enter the roadway from the sidewalk to the right of the motorist
- Between 2006 and 2010, 13 citations/charges were filed against motorists in involved crashes



Proposed Ordinance - Existing

Proposed Safe Passing Ordinance	Existing Law or Ordinance
Definition of Vulnerable Road User	Various definitions exist under Plano City Ordinances and Texas Transportation Code
Passing a Vulnerable Road User	Safe distance, bicyclists must ride on right curb or edge
Safe Distance	Passing to the left at safe distance, maintain clear distance between vehicles
Left Turns at Intersections	Operators shall yield right-of-way when turning left
Overtaking a Vulnerable Road User	Requires safe distance and cannot move back to right side of road unless safely clear of passed vehicle
“Affirmative Defense to Prosecution” vs. “Defense to Prosecution”	Affirmative Defense – Action constitutes offense, defendant must raise issue at trial Defense – Element of the offense must be negated



Existing law discussion

- Sample Ordinance: *Vulnerable Road User includes (4) a person operating a moped, motor-driven cycle, or motor-assisted scooter*
 - C.O. 14-26 defines motorized scooter
 - C.O. 14-27 outlines where it is unlawful to operate and additional conditions
 - C.O. 14-28 outlines age restrictions
 - C.O. 14-7 addresses motorized device, bicycles, roller skates, rollerblades, skateboards, and similar devices



Existing law discussion

- *Sample Ordinance: Vulnerable Road User includes pedestrians (runners, physically disabled persons, child, etc.)*
 - TC 552.008 states operator of a vehicle shall exercise due care to avoid colliding with a pedestrian on a roadway.
 - TC 552.008 addresses additional precautions involved a child, or obviously confused or incapacitated person on a roadway

Existing law discussion

- *Sample Ordinance: Motorist, when passing a vulnerable road user shall (1) vacate the lane if street has two or more marked lanes; or (2) pass the vulnerable road user at a safe distance*
 - TC 551.101 states a person operating a bicycle has the rights and duties applicable to a driver operating a vehicle.
 - TC 551.103 notes bicyclist shall ride as near as practicable to the right curb or edge of roadway unless passing.
 - TC 552.006 states pedestrians may not walk along and on a roadway if an adjacent sidewalk is provided, or shall walk on left side of roadway facing oncoming traffic.



Existing law discussion

- *Sample Ordinance: Defines safe distance as at least: three feet if a passenger car or light truck, six feet if a truck other than a light truck or a commercial motor vehicle*
 - TC 545.053 states operator passing another vehicle must pass to the left of the other vehicle at a safe distance.
 - May not move back to right until safely clear of the passed vehicle
 - TC 545.062 requires an operator, if following, to maintain an assured clear distance between the two vehicles.
 - Requires operator to consider speed of vehicles, traffic, and road conditions



Existing law discussion

- *Sample Ordinance: Motorist making a left turn at an intersection with an alley or private road/driveway, shall yield the right-of-way to a vulnerable road user approaching from the opposite direction and is in the intersection, or in such proximity as to be an immediate hazard*
 - TC 545.152 states that to turn left at an intersection or into an alley or private road/driveway, an operator shall yield to a vehicle that is approaching from the opposite direction and that is in the intersection or in such proximity to the intersection as to be an immediate hazard.



Existing law discussion

- *Sample Ordinance: Motorist may not overtake a vulnerable road user traveling in the same direction and make a right-turn in front of the user unless the operator is safely clear of the vulnerable road user*
 - TC 545.051 states operator shall drive on the right half of roadway unless passing another vehicle
 - TC 545.053 requires operator passing another vehicle to pass to the left at a safe distance.
 - May not move back to the right until safely clear of the passed vehicle
 - Additional restrictions on the operator being passed



Existing law discussion

- Additional Transportation Code references:
 - TC 545.103 notes operator may not turn vehicle to enter a private road/driveway or otherwise turn unless the movement can be made safely
 - TC 545.062 regulates a safe distance between vehicles, requiring an operator to be able to safely stop without colliding with the preceding vehicle or veering into another vehicle, object, or person on or near the highway
 - TC 552.008 states operator shall exercise due care to avoid colliding with a pedestrian on a roadway, give a warning by sounding horn when necessary, exercise proper precaution on observing a child or obviously confused or incapacitated person on a roadway



Legal Issues

- Enforceability Concerns
 - Vague and unclear language concerns, placing a burden on officers to obtain exact measurements of distance, speed, braking ratios between motorists and vulnerable road users
 - Subsection (f) of model ordinance provides no guidance to explain the specific actions or movement required to constitute a violation



Legal Issues

- Preemption Concerns
 - Transportation Code already controls multiple areas addressed in the model ordinance
 - Further attempts to regulate these areas may place the proposed ordinance at risk of being preempted by state law
 - If punishments/definitions of violations differ from state law, proposed ordinance may be considered in conflict and be declared invalid and unconstitutional



Legal Issues

- Concerns with enforcement and preemption issues
- Specific distances, measurements, and terminology are additional challenges
- Local ordinances should be drafted to address issues not already covered by state law



Meeting Notes

- On 11/16/11, members of the Police Department and Parks & Recreation met with Warren Casteel, Dudley Irby, and Rudy Andrea to discuss safe passing/vulnerable road user legislation
- This PowerPoint presentation and further modifications to the ordinance were discussed



Revised Ordinance Proposal

- On 11/30/11, Mr. Casteel provided an updated version of the proposed ordinance
- Potential issues were discussed and the version was amended before submitting for a legal review

Proposed Ordinance “draft”

- (a) In this section, a Vulnerable Road User means:
 - (1) a person operating equipment other than a motor vehicle, including, but not limited to, a bicycle, handcycle, unicycle, or other human powered wheeled vehicle; or
 - (2) a person operating a, motor-driven cycle, or motor-assisted bicycle



Proposed ordinance (cont'd)

- (b) An operator of a motor vehicle passing a vulnerable road user operating on a highway or street shall:
 - (1) vacate the lane in which the vulnerable road user is located if the highway or street has two or more marked lanes running in the same direction; or
 - (2) pass the vulnerable road user at a safe distance



Proposed ordinance (cont'd)

- (c) For the purpose of Subsection (b)(2), when road conditions allow, safe distance is at least:
 - (1) a minimum of three feet if the operator's vehicle is a passenger car or light truck; or
 - (2) a minimum of six feet if the operator's vehicle is a truck, other than a light truck, or a commercial motor vehicle as defined by Texas Transportation Code Section 522.003.



Proposed ordinance (cont'd)

- (d) An operator of a motor vehicle may not overtake a vulnerable road user traveling in the same direction and subsequently make a right-hand turn in front of the vulnerable road user unless the operator is safely clear of the vulnerable road user, taking into account the speed at which the vulnerable road user is traveling and the braking requirements of the motor vehicle making the right-hand turn.



Proposed ordinance (cont'd)

- (e) An operator of a motor vehicle may not maneuver the vehicle in a manner that causes intimidation or harassment to a vulnerable road user.

Proposed ordinance (cont'd)

- (f) An operator of a motor vehicle shall exercise due care to avoid colliding with any vulnerable road user on a roadway or in an intersection of roadways.

SAMPLE SAFE PASSING ORDINANCE

ORDINANCE NO.

AN ORDINANCE ADDING A NEW SECTION _____ OF THE CITY CODE RELATING TO RESTRICTIONS ON OPERATING A MOTOR VEHICLE NEAR VULNERABLE ROAD USERS, AND CREATING AN OFFENSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO:

PART 1. Section _____ of the City Code is amended to read:

§ 12-1-45 VULNERABLE ROAD USERS.

(a) In this section, a Vulnerable Road User means:

(1) a person operating equipment other than a motor vehicle, including, but not limited to, a bicycle, handcycle, unicycle, or other human powered wheeled vehicle; or

(2) a person operating a, motor-driven cycle, or motor-assisted bicycle.

(b) An operator of a motor vehicle passing a vulnerable road user operating on a highway or street shall:

(1) vacate the lane in which the vulnerable road user is located if the highway or street has two or more marked lanes running in the same direction; or

(2) pass the vulnerable road user at a safe distance.

(c) For the purpose of Subsection (b)(2), when road conditions allow, safe distance is at least:

(1) a minimum of three feet if the operator's vehicle is a passenger car or light truck;
or

(2) a minimum of six feet if the operator's vehicle is a truck, other than a light truck, or a commercial motor vehicle as defined by Texas Transportation Code Section 522.003.

(d) An operator of a motor vehicle may not overtake a vulnerable road user traveling in the same direction and subsequently make a right-hand turn in front of the vulnerable road user unless the operator is safely clear of the vulnerable road user, taking into account the speed at which the vulnerable road user is traveling and the braking requirements of the motor vehicle making the right-hand turn.

(f) An operator of a motor vehicle may not maneuver the vehicle in a manner that causes intimidation or harassment to a vulnerable road user.

(g) An operator of a motor vehicle shall exercise due care to avoid colliding with any vulnerable road user on a roadway or in an intersection of roadways.

PART 3. This ordinance takes effect on _____, 2012.

PASSED AND APPROVED

§

_____, 2011 § _____

Mayor

APPROVED: _____ **ATTEST:** _____

City Attorney

City Clerk