

LEGISLATIVE REVIEW COMMITTEE ("LRC")
Meeting Action Report

Committee: Transportation

Members: City Representative Ann Lilly (Chair)
City Representative Susie Byrd
City Representative Beto O'Rourke
City Representative Steve Ortega

Date of Meeting: October 14, 2010

- I. Discussion and action on an Ordinance adding a new section to Title 12 (Vehicles and Traffic), Chapter 12.80 (Miscellaneous Traffic Regulations) of the City Code relating to restrictions on operating a motor vehicle near vulnerable road users; the penalty being as provided in Section 12.84.010 of the El Paso City Code.

Summary:

Staff presented a proposed ordinance aimed at outlining new requirements for drivers to share the roadways with "vulnerable road users". The goal of the ordinance is to make the roadways safe for the motorist, as well as the pedestrian, bicyclist, and other non-motor vehicle users. Generally, the proposed ordinance will require drivers to move over to a vacant lane whenever a pedestrian, including a person using a wheelchair and a bicyclist, is forced to use a street, as well as requiring a safe distance be used when passing a vulnerable road user.

The City of El Paso Police Department reviewed the ordinance and recommended the following revisions: (a) redefining the term pedestrian; (b) removal of "vague" language that may make enforcement difficult (ex. a "safe distance"); (c) removal of distance requirements (ex. three and six feet); and (d) language revisions. The members of the Transportation LRC disagreed with the majority of the recommendations proposed by the Police Department staff because the recommendations would make the ordinance less effective. The Transportation LRC also commented that an ordinance is required because El Paso leads the state in the number of roadway pedestrian fatalities. If the ordinance is adopted by the City Council, El Paso will be the fourth city in the State of Texas to adopt a vulnerable road user ordinance. Austin, San Antonio and New Braunfels have already adopted ordinances.

Action Taken:

The LRC voted 4-0 to bring the ordinance, with minor revisions, before the entire City Council for action.

Disposition:

The proposed ordinance, with the revisions recommended by the Transportation LRC, will be introduced to City Council.

SUBMITTED BY:

City Representative Ann Lilly, District 1
Chair, Transportation LRC

Jane Shang, Deputy City Manager
City Manager – Mobility Services



Austin Police Department

City of Austin Founded by Congress, Republic of Texas, 1839
P.O. Box 689001, Austin, Texas 78768-9001 Telephone (512) 974-5000
www.cityofaustin.org/police

Mr. Robin Stallings
Executive Director
BikeTexas
P.O. Box 1121
Austin, TX 78767

May 20, 2010

Dear Robin,

This is in response to your letter requesting our position on the Safe Passing Ordinance approved by the Austin City Council on October 22, 2009.

The action was to approve an ordinance adding a new section titled "Vulnerable Road Users" to the City Code, requiring a three-foot safe passing distance between vehicles and vulnerable road users. This ordinance protects the rights of vulnerable road users from being intimidated, threatened, or harassed by maneuvers of a motor vehicle. Operators of motor vehicles will have to exercise due care to avoid colliding with any vulnerable road users on a roadway or intersection.

In addition, the ordinance states that a six-foot passing distance is required 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.

As you know, this ordinance is modeled from the language of the statewide Safe Passing Act (SB 488) which was passed by the 2009 Texas Legislature. The highest value of the safe passing law is educational, which we believe directly translates into lives being saved. In order for us to achieve that goal, we as a community have taken the first step by initiating and passing the City ordinance.

With the push for a more healthy and active lifestyle by all levels of government in Texas, we are seeing more pedestrians, bicyclists and other motor-assisted vehicles on our roadways, including our very own police officers. The Austin Police Department and the City of Austin strongly support laws that promote the interest of overall public and transportation safety. At the end of the day, it is our responsibility to look at ways we can educate everyone about saving lives.

Please do not hesitate to contact me directly if more information is needed. I look forward to working on this initiative with you.

Sincerely,


ART ACEVEDO
Chief of Police



Keeping you, your family and our community safe.

Dedicated to Outstanding Customer Service for a Better Community

S E R V I C E S O L U T I O N S S U C C E S S



TO: Assistant Chief M. Gardner
FROM: Commander Zina Silva
DATE: 10/7/2010
RE: Vulnerable Road User Ordinance

- The El Paso Police Department supports the concept of creating an ordinance that provides adequate protection for "Vulnerable Road Users" however the ordinance as drafted conflicts with the Texas Transportation code (TTC) and existing El Paso City Municipal Ordinances.
- To enhance the safety of "Vulnerable Road Users" (VRU's) the public would best be served by:
 1. Creating a VRU public safety and awareness campaign
 2. Utilize radio, television, facebook and twitter to spread safe driver education information and safety tips for VRU's
 3. Encourage drivers to attend free approved defensive driving courses

- If the VRU Ordinance is adopted, then the below items should be considered

- 12.80.220 (a) (1)

Exclude "child" or create a specific definition of this word. Throughout State statutes, there are varying definitions of what constitutes a child i.e.,

The Texas Penal Code defines a "child" as a person under 17 years of age
The Texas Family Code defines a "child" as a person under 18 years of age
The TRC 545.412 Child Passenger Safety Seat defines a "child" as younger than 8.

The El Paso Police Department does not want to encourage children to use public roadways without the supervision of a parent or guardian

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susannah M. Byrd

District 3
Emma Acosta

District 4
Melina Castro

District 5
Rachel Quintana

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Beto O'Rourke

City Manager
Joyce A. Wilson

Chief of Police
Gregory K. Allen

Vulnerable Road User

- Exclude "pedestrian"

TRC Chapter 552 specifically governs the use of roadways by Pedestrians and Blind Pedestrians

1. Traffic Control Signals
2. Pedestrian Right-of-Way
3. Pedestrian Right-of-Way at Crosswalk
4. Pedestrian to keep to right
5. Crossing a Point Other than Crosswalk
6. Use of Sidewalk
7. Drivers to Exercise Due Care

- 12.80.220 (a) (1)

Exclude "skater"

El Paso Municipal Code 12.80.30 – Coasters, roller skates and similar devices
"No person upon roller skates, skateboard, or riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk, subject to the duties applicable to pedestrians, or upon the areas located within the Civic Center Plaza and the Arts Festival Plaza including but not limited to the sidewalks, public rights-of-way, parking lots, walkways, ramps and stairs."

- (3) Provide a detailed description of "a person operating equipment other than a motor vehicle" and "unprotected farm equipment". It is unknown what these items refer to and if they are authorized to be used upon the public roadway.
- Exclude (3) "bicycle"

TRC Chapter 551 governs - Operation of Bicycles, Mopeds, and Play Vehicles
Bicycle – a device that a person may ride and that is propelled by human power and has two tandem wheels at least one of which is more than 14 inches in diameter

1. Rights and Duties
2. General Operation
3. Operation on Roadway

- Exclude (a) (4) motorcycle, moped and motor driven cycle
TRC 541.201 clearly defines the above as:

Vehicles – a device that can be used to transport or draw persons or property on a highway. As such, they are regulated by the TRC and are authorized to occupy a single lane of traffic.

Vulnerable Road User

Below are the individual definitions

1. Moped – a motor-driven cycle that cannot attain a speed in one mile of more than 30 miles per hour...
2. Motorcycle – a motor vehicle, other than a tractor, that is equipped with a rider's saddle and designed to have when propelled not more than three wheels on the ground
3. Motor-driven-cycle – a motorcycle equipped with a motor that has an engine piston displacement of 250 cubic centimeters or less.

- Remove (b) (2) "pass the vulnerable road user at a safe distance"
Replace with: Slow to a speed not to exceed 10 mph less than the posted speed limit.
This removes the ambiguity of "safe distance" and gives motor vehicle operators specific instructions. Three feet and/or six feet in some instances may not ensure safety.
- Remove (c) (1) and (2) completely
The El Paso Police Department finds that the distances of 3 and 6 feet are too small of a measurement and places an unnecessary burden on the part of the motor vehicle operator and the Officer.
- Remove (d)
TRC Section 551.001 – 551.405 governs the operations, regulations, rights and duties of:
 1. Bicycles
 2. Mopeds
 3. Electric bicycles
 4. Electric personal assistive mobility devices
 5. Motor assisted scooters
 6. Golf carts

TRC Section 552.001 – 552.010 – governs: Pedestrians and Blind Pedestrians

- Remove (e) "taking into account the speed at which the vulnerable road user is traveling and the braking requirement of the motor vehicle making the right hand turn."
This places an undue burden on the motor vehicle operator to mathematically calculate speed, distance and braking ratios.

Change the last sentence to read: and the right hand turn can be made in a safe manner.



3 ft



3 ft



DRAFT

ORDINANCE NO. _____

AN ORDINANCE ADDING A NEW SECTION TO TITLE 12 (VEHICLES AND TRAFFIC), CHAPTER 12.80 (MISCELLANEOUS TRAFFIC REGULATIONS) OF THE CITY CODE RELATING TO RESTRICTIONS ON OPERATING A MOTOR VEHICLE NEAR VULNERABLE ROAD USERS; THE PENALTY BEING AS PROVIDED IN SECTION 12.84.010 OF THE EL PASO CITY CODE.

WHEREAS, bicyclists and pedestrians are allowed to use the roadway by law in Texas, but these users do not have the same physical protection as motorists and are at greater risk of injury or death; and

WHEREAS, approximately 50 cyclists and 400 pedestrians are killed every year in Texas; and

WHEREAS, a safe passing ordinance provides the foundation for an education campaign of tolerance and acceptance for "active" forms of alternative transportation, which furthers the City's goals of promoting El Paso as a bicycle friendly community, as well as for the enhancement of walkable streets and neighborhoods.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Title 12 (Vehicles and Traffic), Chapter 12.80 (Miscellaneous Traffic Regulations) is amended to add the following section:

§ 12.80.220 VULNERABLE ROAD USERS.

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

(1) a pedestrian, including a runner, physically disabled person, ~~child~~, skater, highway construction and maintenance worker, tow truck operator, utility worker, other worker with legitimate business in or near the road or right-of-way, or stranded motorist or passenger;

(2) a person on horseback;

(3) a person operating equipment other than a motor vehicle, including, but not limited to, a bicycle, handcycle, horse-driven conveyance, or unprotected farm equipment; or

~~(4) a person operating a motorcycle, moped, motor-driven cycle, or motor-assisted scooter.~~

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

(2) 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 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.

(e) 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:

- (1) is intended to cause intimidation or harassment to a vulnerable road user; or
- (2) threatens 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.

(h) It is an affirmative defense to prosecution under this section that at the time of the offense the vulnerable road user was acting in violation of the law.

Section 2. Except as expressly herein amended, Title 12 (Vehicles and Traffic), Chapter 12.80 (Miscellaneous Traffic Regulations) of the El Paso City Code shall remain in full force and effect.

PASSED AND APPROVED this _____ day of _____, 2010.

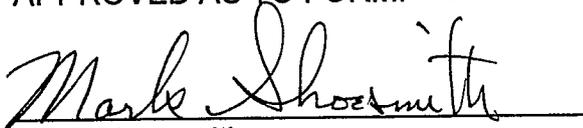
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Mark Shoemith
Assistant City Attorney

Vulnerable Road User

Presentation to Transportation
LRC 10/14/10

Proposed Ordinance

- **RESTRICTIONS ON OPERATING A MOTOR VEHICLE NEAR VULNERABLE ROAD USERS;**
- **THE PENALTY BEING AS PROVIDED IN**
- **SECTION 12.84.010 OF THE EL PASO CITY CODE.**

Intent of the Ordinance

- **Protection of Vulnerable Road User**

- Bicyclists and pedestrians are allowed to use the roadway by law in Texas, but these users do not have the same physical protection as motorists and are at greater risk of injury or death; and
- **A**pproximately 50 cyclists and 400 pedestrians are killed every year in Texas;
- A safe passing ordinance provides the foundation for an education campaign of tolerance and acceptance for “active” forms of alternative transportation, which furthers the City’s goals of promoting El Paso as a bicycle friendly community, as well as for the enhancement of walkable streets and neighborhoods.

Who is a Vulnerable Road User

- A Vulnerable Road User means:
- (1) a pedestrian, including a runner, physically disabled person, child, skater,
- highway construction and maintenance worker, tow truck operator, utility worker, other
- worker with legitimate business in or near the road or right-of-way, or stranded motorist
- or passenger;
- (2) a person on horseback;
- (3) a person operating equipment other than a motor vehicle, including, but not limited to, a bicycle, handcycle, horse-driven conveyance, or unprotected farm equipment; or
- (4) a person operating a motorcycle, moped, motor-driven cycle, or motor assisted scooter.

Requirements for Drivers

- 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.

What is Safe Distance

- Safe distance is at least:
- (1) three feet if the operator's vehicle is a passenger car or light truck; or
- (2) 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.

Additional Driver Requirements

- (d) 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.
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- 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.

Defense to Prosecution

- It is an affirmative defense to prosecution under this section that at the time of the offense the vulnerable road user was acting in violation of the law.

Police Department Comments

- El Paso Police Department supports the concept of creating an ordinance that provides adequate protection for “Vulnerable Road Users” however the ordinance as drafted conflicts with the Texas Transportation code (TTC) and existing El Paso City Municipal Ordinances.

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Police Department Comments

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 - This places an undue burden on the motor vehicle operator to mathematically calculate speed, distance and braking ratios.
- Change the last sentence to read: and the right hand turn can be made in a safe manner.

Action by Texas Cities

The following Cities have approved a safe passing act.

- San Antonio
- Austin
- New Braunfels